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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 Telephone Bank

7 CFR Part 1610

Rural Utilities Service

7 CFR Parts 1735, 1737, 1739, and 1746

RIN 0572-AB32

Rural Telephone Bank and Telecommunications Program Loan Policies, Types of Loans, Loan Requirements

AGENCY: Rural Utilities Service and Rural Telephone Bank, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to incorporate changes to the telecommunications loan program required by the 1996 Farm Bill and the regulatory reinvention initiative of the Vice President's National Performance Review. RUS has reviewed the regulations concerning the telecommunications program and the Rural Telephone Bank loan policies and requirements to determine whether they are necessary, impose the least possible burden consistent with safety and soundness, and are written in a clear, straightforward manner. As a result of this review, the RUS telecommunications program is updating and streamlining its regulations and policy statements. In addition, this regulation will eliminate some policies and procedures that have become obsolete.

EFFECTIVE DATE: This regulation is effective on October 6, 1997.

FOR FURTHER INFORMATION CONTACT: Jonathan Claffey, Acting Deputy Director, Advanced Telecommunications Services Staff, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1701,

Room 2919, South Building, Washington, DC 20250-1701. Telephone: (202) 720-0530. Facsimile: (202) 720-2734.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be not significant, and, therefore has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this final rule meets the applicable standards provided in Sec. 3. of the Executive Order.

Regulatory Flexibility Act Certification

Pursuant to § 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), RUS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The application for loans under the RUS telecommunications program are discretionary, regulatory requirements will, therefore, apply only to those entities which choose to apply for funding.

This action is being taken as part of the National Performance Review program to eliminate excess regulations and to improve the quality of those that remain in effect. This final rule reduces the Times Interest Earned Ratio requirement for all borrowers, simplifies current cash distribution and investment requirements for all borrowers, and standardizes determination of loan maturity. This final rule is consistent with RUS's continuing effort to devolve, in particular, cash management authority to the borrowers. It is also consistent with the goals of the regulatory reinvention initiative of the National Performance Review.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burden contained in this rule under

OMB control number 0572-0079 is not fully effective until approved by the Office of Management and Budget (OMB).

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, STOP 1522, Washington, DC 20250-1522.

National Environmental Policy Act Certification

RUS has determined that this final 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.

Program Affected

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under 10.851, Rural Telecommunications Loans and Loan Guarantees, and 10.582, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Intergovernmental Review

This program is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS and Rural Telephone Bank loans and loan guarantees to governmental and non-governmental entities from coverage under this Order.

Unfunded Mandate

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandate Reform Act) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act.

Background

On March 7, 1997, at 62 FR 10483, RUS published a proposed rule to incorporate changes to the telecommunications loan program required by the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127) (1996 Farm Bill) and the regulatory reinvention initiative of the Vice President's National Performance Review. The amendments as proposed would reduce regulatory burdens on RUS telecommunications program borrowers and simplify existing procedures and policies.

RUS received 7 comments regarding the proposed rule, which were taken into consideration in preparing the final rule. Overall, respondents generally expressed support for the proposed rule, but made specific comments. A list of the commenters and comment summaries and responses follows:

1. Joint comments submitted by: Eastern Rural Telecom Association; United States Telephone Association; Western Rural Telephone Association; and National Rural Telecom Association, Washington, DC.
2. Organization for the Promotion and Advancement of Small Telecommunications Companies, Washington, DC.
3. National Telephone Cooperative Association, Washington, DC.
4. Associated Communications & Research Services, Oklahoma City, OK.
5. Lackawaxen Telephone Company, Rowland, PA.
6. TDS Telecom, Madison, WI.
7. Kiesling Associates, LLP, West Des Moines, IA.

Sections 1610.6 and 1735.31 Concurrent Bank and RUS Cost-of-Money Loans

Comment Summary: One commenter objected to the proposal to limit the size of cost-of-money and Rural Telephone Bank (Bank) loans to no more than 10 percent of lending authority from appropriations in any fiscal year. The commenter believes no authority exists in the Rural Electrification Act of 1936, as amended (RE Act), for RUS to make loans for less than 100 percent of the borrowers needs. If there is a shortage of cost-of-money and Bank loan funds the solution is to increase loan levels, not ration available credit among borrowers.

Response: The proposed revision to the regulations reflects the government's current fiscal and budgetary constraints. To continue fulfilling RUS's mission of ensuring that rural telecommunications providers have the means to modernize their networks, to fully effect the mandated area coverage provision of the RE Act, and to achieve maximum use of

funds available, RUS will limit the loan amount to any single borrower in a fiscal year to, generally, no more than 10 percent of the lending authority from appropriations in any fiscal year.

Section 1610.11 Prepayments

Comment Summary: RUS was asked to clarify how new terms of the loan and remaining economic life will be determined for borrowers requesting refunding notes. One commenter asked if a borrower prepays 100 percent of the amount outstanding whether or not the equipment originally financed is no longer in service, would this be possible under the new provisions without penalty?

Response: The principal balance of the refunding notes would be the unpaid principal balance of the original notes associated with the loan. The term of the refunding notes would match the remaining composite economic life of the facilities financed, as determined by the original feasibility study prepared in connection with that particular loan. All other payment terms, including the rate of interest on the refunding notes, would remain unchanged. Only those Bank borrowers subject to the funded reserve or net plant to secured debt ratio requirements electing to issue refunding notes will not be required to pay a prepayment premium, if such requirement is contained in the original note. Barring this, Bank borrowers with notes containing prepayment premium provisions will still be bound by those provisions if prepaying a loan.

Section 1735.2 Definitions

Comment Summary: One commenter inquired about the definitions of *total assets* and *net worth* and how existing borrowers (e.g., those under an older form of mortgage with RUS) that elect to follow the new allowable distribution calculation under § 1735.46 determine total assets and net worth.

Response: The definitions for *total assets* and *net worth* have been added to § 1735.2. The new allowable distribution calculation under § 1735.46 will be based on the total assets and net worth of the borrower, and not on a consolidated basis.

Section 1735.17 Facilities Financed

Comment Summary: Many commenters objected to RUS adopting the policy that it will finance only buried plant for all loans unless RUS determines that buried plant is not economically feasible. Commenters believe that it is preferable to remain flexible in this uncertain telecommunications environment. Commenters suggested that, if RUS

determines that it is necessary to implement this proposal, that RUS define the term *economically feasible*, and, to conform to its intended purpose, refer solely to outside plant and not cover all facilities.

Response: The proposed rule reflects the extensive experience of RUS and consequently does not impose any new requirement on borrowers. To impose this requirement when the costs would be exorbitant would be burdensome to borrowers and counterproductive to achieving the objectives of the RE Act. RUS will only finance those system designs or facilities that can withstand or are designed to minimize damage caused by storms and other natural catastrophes, unless an alternate design or facility is more economically or technically feasible. Economic and technical feasibility will be determined using total long range economic costs and risk analysis.

Section 1735.43 Payments on Loans

Comment Summary: Several commenters expressed concern that the proposal to tie the amortization period for loans to the depreciated life of facilities financed may not be in the best interest of RUS borrowers. Commenters believe that there will be many circumstances in which borrowers will require loan terms that extend 3 years beyond the expected composite economic life of the facilities financed. In those circumstances, current RUS regulations are substantially adequate to protect the interest of the government, and that the proposal to require the borrower provide additional security (i.e., funded reserve) for a loan that exceeds the expected composite economic life of the facilities by more than 3 years is unwarranted and unnecessary. One commenter felt that the additional security in the form of a funded reserve should be replaced by a requirement to maintain a net plant to secured debt ratio of 1.2. Borrowers could certify they have maintained a 1.2 net plant ratio if they opted for loan amortization periods different than the standard; thus, simplifying the process and reducing paperwork and costs to the borrower and RUS.

Response: The final rule establishes that the repayment period will be based on the expected composite economic life of the facilities financed. Collateral for RUS loans rests on the value of the facilities financed. RUS relies on the revenues produced by the facilities financed for repayment of the loans. Therefore, RUS will continue to require borrowers electing maturities of more than the depreciated life plus 3 years maintain a funded reserve to ensure

adequate security over the life of the loan.

The RE Act sets no minimum length for amortization of loans, presumably to allow RUS to determine a prudent amortization period. There are several benefits to tying the amortization period to expected composite economic life of facilities financed. First, earnings of the company are based on, among other things, the economic life of the facilities (depreciation). Second, total interest expense is reduced. Finally, the government's loan security is enhanced by the loan life approximating plant life; the economic life of the mortgaged assets declines at approximately the same pace as the principal balance of the loan.

It is general practice for lenders making loans for capital assets to set the amortization period of the loan equal to or less than the expected economic life of the items financed. Consequently, RUS is not seeking to establish a unique requirement in this area. This option is intended to allow the borrower flexibility of extending loan maturity while allowing the government to maintain adequate security for its loan. This requirement is also consistent with OMB Circular A-129, Managing Federal Credit Programs, which in part states that the maturity offered should be shorter than the estimated economic life of the asset financed. With telecommunications borrowers facing increasing competition and the potential for regulatory changes, adequate security is of critical concern to RUS.

Section 1735.46 Loan Security Documents

Comment Summary: All commenters overwhelmingly supported the proposed simplification of RUS's policy for determining a borrower's allowable level of distributions and investments. Several commenters requested RUS clarify some minor technical aspects of the proposed formula. One commenter, however, in principle, believes that RUS borrowers should be able to dividend 100 percent of net earnings subsequent to loan approval. This would be more in line with private lenders without adversely affecting loan security.

Response: RUS's new policy regarding investments and distributions of assets by borrowers will be in all mortgages for loans approved after the effective date of this final rule. Borrowers that have not received a loan after the effective date of the final rule may request the Administrator to apply the new requirements to them; however, once the decision is made to switch to the new requirements, borrowers may not revert back to the old method. This new

policy is not an alternative method for borrowers to choose between from year to year.

Further, unlike the former method for determining allowable distributions whereby adjustments were made to net worth and total assets based upon, among other things, a borrower's investments in affiliates, no such adjustments will be factored into the new method for determining allowable distributions. RUS also modified the definition of *cash distributions* to include *dividend and capital credit distributions*.

A technical correction not published in the proposed rule will be made in the final rule to § 1735.32, Guaranteed loans. Presently, to qualify for a guaranteed loan, among other things, a borrower must have a projected TIER (including the proposed loan or loans) of at least 1.5 as determined by the feasibility study prepared in connection with the loan. To be consistent with RUS's previously proposed policy to reduce the maximum TIER maintenance requirement to no more than 1.5 for all borrowers receiving any type of loan after the effective date of the final rule, the TIER eligibility requirement for guaranteed loans will be reduced to a minimum of 1.2.

List of Subjects

7 CFR Part 1610

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

7 CFR Part 1737

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

7 CFR Part 1739

Accounting, Guaranteed program, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

7 CFR Part 1746

Accounting, Guaranteed program, Loan programs—communications, Reporting and Recordkeeping requirements, Rural areas, Telecommunications.

For the reasons set forth in the preamble, and under the authority of 7

U.S.C. 901 *et seq.*, chapters XVI and XVII of Title 7 of the Code of Federal Regulations are amended as follows:

CHAPTER XVI

PART 1610—LOAN POLICIES

1. The authority citation for part 1610 continues to read as follows:

Authority: 7 U.S.C. 941 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941, *et seq.*).

2. In § 1610.6, new paragraph (d) is added to read as follows:

§ 1610.6 Concurrent Bank and RUS cost-of-money loans.

* * * * *

(d) Generally, no more than 10 percent of lending authority from appropriations in any fiscal year for Bank and RUS cost-of-money loans may be loaned to a single borrower. The Bank will publish by notice in the **Federal Register** the dollar limit that may be loaned to a single borrower in that particular fiscal year based on approved Bank and RUS lending authority.

3. In § 1610.11, a new paragraph (c) is added to read as follows:

§ 1610.11 Prepayments.

* * * * *

(c) Borrowers that qualify to issue a refunding note or notes in accordance with 7 CFR 1735.43, Payments on loans, shall not be required to pay a prepayment premium on all payments made in accordance with the new payment schedule.

CHAPTER XVII

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

1. The part heading for part 1735 is revised as set forth above.

1a. The authority citation for part 1735 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

2. In § 1735.2, the definition of *Construction fund* is amended by removing the reference "See 7 CFR part 1758.", the definitions for *Adjusted assets* and *Adjusted net worth* are removed, and new definitions *Cash distribution*, *Net worth*, and *Total assets* are added in alphabetical order to read as follows:

§ 1735.2 Definitions.

* * * * *

Cash distribution means investments, guarantees, extensions of credit,

advances, loans, non-affiliated company joint ventures, affiliated company investments, and dividend and capital credit distributions. Not included in this definition are qualified investments (see 7 CFR part 1744, subpart D).

* * * * *

Net worth means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Capital stock	4510
(2) Additional paid-in capital	4520
(3) Treasury stock	4530
(4) Other capital	4540
(5) Retained earnings	4550

Note: For nonprofit organizations, owners' equity is shown in subaccounts of 4540 and 4550. All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

* * * * *

Total assets means the sum of the balances of the following accounts of the borrower:

Account names	Number
(1) Current assets	1100s through 1300s.
(2) Noncurrent Assets	1400s through 1500s.
(3) Total tele-communications plant.	2001 through 2007.
(4) Less: Accumulated depreciation.	3100 through 3300s.
(5) Less: Accumulated amortization.	3400 through 3600s.

Note: All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

3. In § 1735.3, the first sentence is revised to read as follows:

§ 1735.3 Availability of forms.

Single copies of RUS forms and publications cited in this part are available from Program Support Regulatory Analysis, Rural Utilities Service, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250-1522.

* * *

4. In § 1735.17, paragraph (c) is revised to read as follows:

§ 1735.17 Facilities financed.

* * * * *

(c) RUS will not make any type of loan to finance the following items:

(1) Station apparatus (including PBX and key systems) not owned by the borrower and any associated inside wiring;

(2) Certain duplicative facilities, see § 1735.12;

(3) Facilities to serve subscribers outside the local exchange service area of the borrower unless those facilities are necessary to furnishing or improving

telecommunications service within the borrower's service areas;

(4) Facilities to provide service other than 1-party; and

(5) System designs or facilities to provide service that cannot withstand or are not designed to minimize damage caused by storms and other natural catastrophes, including, but not limited to hurricanes, floods, tornadoes, mudslides, lightning, windstorms, hail, fire, and smoke, unless an alternate design or facility for modern telecommunications is more economically or technically feasible. Economic and technical feasibility will be determined using total long range economic costs and risk analysis.

* * * * *

5. In § 1735.22, paragraph (g) is redesignated as new paragraph (i), paragraph (f) is revised, and new paragraphs (g) and (h) are added to read as follows:

§ 1735.22 Loan security.

* * * * *

(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 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.

* * * * *

6. In § 1735.31, paragraphs (d) and (e) are redesignated as new paragraphs (e) and (f), and new paragraph (d) is added to read as follows:

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

* * * * *

(d) Generally, no more than 10 percent of lending authority from

appropriations in any fiscal year for RUS cost-of-money and RTB loans may be loaned to a single borrower. RUS will publish by notice in the **Federal Register** the dollar limit that may be loaned to a single borrower in that particular fiscal year based on approved RUS and RTB lending authority.

* * * * *

7. In § 1735.32, the first sentence of paragraph (b), and paragraph (c) are revised to read as follows:

§ 1735.32 Guaranteed loans.

* * * * *

(b) *Requirements.* To qualify for a guaranteed loan, a borrower must have a projected TIER (including the proposed loan or loans) of at least 1.2 as determined by the feasibility study prepared in connection with the loan.

* * *

(c) *Net worth requirements.* RUS generally requires that borrowers seeking guaranteed loans have a net worth in excess of 20 percent of assets. RUS will, however, consider loan guarantees for borrowers with a net worth less than 20 percent.

* * * * *

8. Section 1735.33 is added to read as follows:

§ 1735.33 Variable interest rate loans.

After June 10, 1991, and prior to November 1, 1993, RUS made certain variable rate loans at interest rates less than 5 percent but not less than 2 percent. For those borrowers that received variable rate loans, this section describes the method by which interest rates are adjusted. The interest rate used in determining feasibility is the rate charged to the borrower until the end of the Forecast Period for that loan. At the end of the Forecast Period, the interest rate for the loan may be annually adjusted by the Administrator upward to a rate not greater than 5 percent, or downward to a rate not less than the rate determined in the feasibility study on which the loan was based, based on the borrower's ability to pay debt service and maintain a minimum TIER of 1.0. Downward and upward adjustments will be rounded down to the nearest one-half or whole percent. To make this adjustment, projections set forth in the loan feasibility study will be revised annually by RUS (beginning within four months after the end of the Forecast Period) to reflect updated revenue and expense factors based on the borrower's current operating condition. Any such adjustment will be effective on July 1 of the year in which the adjustment was determined. If the Administrator determines that the borrower is capable of meeting the

minimum TIER requirements of § 1735.22(f) at a loan interest rate of 5 percent on a loan made as described in this section, then the loan interest rate shall be fixed, for the remainder of the loan repayment period, at the standard interest rate of 5 percent.

9. In § 1735.43, the section heading is revised, paragraph (a) is revised, paragraph (b) is redesignated as new paragraph (f), and new paragraphs (b) through (e) are added to read as follows:

§ 1735.43 Payments on loans.

(a) Except as described in this paragraph (a), RUS loans approved after October 6, 1997 must be repaid with interest within a period that, rounded to the nearest whole year, equals the expected composite economic life of the facilities to be financed, as calculated by RUS; expected composite economic life means the depreciated life plus three years. The expected composite economic life shall be based on the depreciation rates for the facilities financed by the loan. In states where the borrower must obtain state regulatory commission approval of depreciation rates, the depreciation rates used shall be the rates currently approved by the state commission or rates for which the borrower has received state commission approval. In cases where a state regulatory commission does not approve depreciation rates, the expected composite economic life shall be based on the most recent median depreciation rates published by RUS for all borrowers (see 7 CFR 1737.70). Borrowers may request a repayment period that is longer or shorter than the expected composite economic life of the facilities financed. If the Administrator determines that a repayment period based on the expected composite economic life of the facilities financed is likely to cause the borrower to experience hardship, the Administrator may agree to approve a period longer than requested. A shorter period may be approved as long as the Administrator determines that the loan remains feasible.

(b) Borrowers with RTB loans approved after October 6, 1997 with a maturity that exceeds the expected composite economic life of the facilities to be financed by the loan by a period of more than three years, release of funds included in the loan shall be conditioned upon the borrower establishing and maintaining, pursuant to a plan approved by RUS, a funded reserve in such an amount that the balance of the reserve plus the value of the facilities less depreciation shall at all times be at least equal to the remaining principal payments on the

loan. Funding of the reserve must begin within one year of approval of release of funds and must continue regularly over the expected composite economic life of the facilities financed.

(c) Borrowers that have demonstrated to the satisfaction of the Administrator an inability to maintain the funded reserve or net plant to secured debt ratio requirements, if any, contained in their mortgage, may elect to replace notes with an original maturity that exceeded the composite economic life of the facilities financed with notes bearing a shorter maturity approximating the expected composite economic life of the facilities financed, if this will result in a shorter maturity for the loan. The principal balance of the notes (hereinafter in this section called the "refunding notes") issued to refund and substitute for the original notes would be the unpaid principal balance of the original notes. The refunding notes would mature at a date no later than the remaining economic life of the facilities financed by the loan, plus three years, as determined by the original feasibility study prepared in connection with the loan. Interest on the original note must continue to be paid through the closing date. All other payment terms, including the rate of interest on the refunding notes, would remain unchanged. Disposition of funds in the funded reserve will be determined by RUS at the closing date. RUS will notify the borrower in writing of the amendment of loan payment requirements and the terms and conditions thereof.

(d) A borrower qualifying under paragraph (c) of this section shall not be required to pay a prepayment premium on such portion of the payments under its new notes as exceeds the payments required under the notes being replaced.

(e) To apply for refunding notes, borrowers must send to the Area Office the following:

- (1) A certified copy of a board resolution requesting an amendment of loan payment requirements and that certain notes be replaced;
- (2) If applicable, evidence of approval by the regulatory body with jurisdiction over the telecommunications service provided by the borrower to issue refunding notes; and
- (3) Such other documents as may be required by the RUS.

10. In § 1735.46, paragraphs (b), (c) and (d) are revised, paragraphs (e) and (f) are removed, and paragraphs (g) and (h) are redesignated as paragraphs (e) and (f) to read as follows:

§ 1735.46 Loan security documents.

* * * * *

(b) Loan security documents of borrowers with loans approved after October 6, 1997 will provide limits on allowable cash distributions in any calendar year as follows:

- (1) No more than 25 percent of the prior calendar year's net earnings or margins if the borrower's net worth is at least 1 percent of its total assets after the distribution is made;
- (2) No more than 50 percent of the prior calendar year's net earnings or margins if the borrower's net worth is at least 20 percent of its total assets after the distribution is made;
- (3) No more than 75 percent of the prior calendar year's net earnings or margins if the borrower's net worth is at least 30 percent of its total assets after the distribution is made; or
- (4) No limit on distributions if the borrower's net worth is at least 40 percent of its total assets after the distribution is made.

(c) Borrowers that have not received a loan after October 6, 1997 may request the Administrator to apply these requirements to them. Borrowers may request in writing that RUS substitute the new requirements described in paragraphs (b)(1) through (b)(4) of this section. Upon request by the borrower, the provisions of the borrower's loan documents restricting cash distributions or investments shall not be enforced to the extent that such provisions are inconsistent with this section.

(d) Rural development investments meeting the criteria set forth in 7 CFR part 1744, subpart D, will not be counted against a borrower's allowable cash distributions in any calendar year (7 U.S.C. 926).

* * * * *

§ 1735.60 [Amended]

11. § 1735.60, paragraph (a) introductory text is amended by removing the reference "(see 7 CFR part 1758)" and paragraph (a)(3) is removed.

§ 1735.76 [Amended]

12. § 1735.76, the second "or" is removed and the word "of" is added in its place.

PART 1737—PRE-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED TELECOMMUNICATIONS LOANS

13. The part heading for part 1737 is revised as set forth above.

14. The authority citation for part 1737 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

§ 1737.70 [Amended]

15. In § 1737.70, paragraph (d) is removed and reserved.

PART 1739—[REMOVED]

16. Part 1739 is removed.

PART 1746—[REMOVED]

17. Part 1746 is removed.

Dated: August 28, 1997.

Inga Smulkstys,

Acting Under Secretary, Rural Development.

[FR Doc. 97-23580 Filed 9-4-97; 8:45 am]

BILLING CODE 3410-15-P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 936

[No. 97-56]

RIN 3069-AA35

Technical Amendment to the Community Support Requirement

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation on the community support requirement to allow every Federal Home Loan Bank (FHLBank) member to provide all of the information necessary to apply to the Finance Board to remove restrictions on access to long-term advances that may adversely affect the member's safety and soundness.

EFFECTIVE DATE: The final rule will become effective October 6, 1997.

FOR FURTHER INFORMATION CONTACT: Penny S. Bates, Program Analyst, Community Support Program, Office of Policy, 202/408-2574, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, 202/408-2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service that FHLBank members must meet in order to maintain access to long-term advances. See 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the FHLBank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901, *et seq.*, and record of

lending to first-time homebuyers. See 12 U.S.C. 1430(g)(2). In May 1997, the Finance Board published a final community support requirement rule establishing uniform standards and review criteria for determining compliance with section 10(g) of the Bank Act. See 62 FR 28983 (May 29, 1997). The streamlined community support requirement rule became effective on June 30, 1997. See *id.*

II. Analysis of the Technical Amendment

Section 936.5(d)(1)(i) of the community support requirement regulation authorizes the Finance Board, in its sole discretion, to remove a restriction on access to long-term advances imposed under this part if it determines that application of the restriction may adversely affect the safety and soundness of the member. For purposes of the community support requirement rule, the term "appropriate federal financial supervisory agency" means the Office of the Comptroller of the Currency for national banks; the Board of Governors of the Federal Reserve System for state chartered banks that are members of the Federal Reserve System and bank holding companies; the Federal Deposit Insurance Corporation for state chartered banks and savings banks that are not members of the Federal Reserve System and the deposits of which are insured by the Federal Deposit Insurance Corporation; and the Office of Thrift Supervision for savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation and savings and loan holding companies. *Id.* § 936.1(e).

Since the regulatory definition is the same as the one provided for purposes of the CRA, see 12 U.S.C. 2902(1), it does not include the primary regulators of a federally insured credit union member that is not subject to the CRA or a FHLBank member that is subject to supervision only by a state regulator. Thus, such members would be unable to provide all of the information required to make a request to the Finance Board for removal of a restriction on access to long-term advances based on safety and soundness concerns. In order to correct this oversight, the Finance Board is

amending § 936.5(d)(1)(i) to permit a FHLBank member that is not subject to supervision by an appropriate federal financial supervisory agency to submit a statement concerning the adverse effects on safety and soundness of a restriction on long-term advances from the National Credit Union Administration or its primary state regulator, as appropriate.

III. Notice and Public Participation

The notice and comment procedure required by the Administrative Procedure Act is unnecessary in this instance because the final rule makes only a minor technical change to a recently promulgated rule. See 5 U.S.C. 553(b)(3)(B).

IV. Regulatory Flexibility Act

The Finance Board is adopting this technical amendment in the form of a final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. See *id.* 601(2), 603(a).

V. Paperwork Reduction Act

This final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 936

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby amends title 12, chapter IX, part 936 of the Code of Federal Regulations to read as follows:

PART 936—COMMUNITY SUPPORT REQUIREMENTS

1. The authority citation for part 936 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3)(B), 1422b(a)(1), 1429, and 1430.

2. Revise § 936.5(d)(1)(i) to read as follows:

§ 936.5 Restrictions on access to long-term advances.

* * * * *

(d) * * *

(1) * * *

(i) If the Finance Board determines that application of the restriction may adversely affect the safety and soundness of the member. A member may submit a written request to the Finance Board to remove a restriction on access to long-term advances under this paragraph (d)(1)(i). Such written