

# 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 Part 1719

RIN 0572-AC45

#### Rural Energy Savings Program

**AGENCY:** Rural Utilities Service, USDA.

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

**SUMMARY:** The Rural Utilities Service (RUS), a Rural Development agency of the United States Department of Agriculture (USDA), hereinafter referred to as RUS or the Agency, is issuing a final rule to establish the Rural Energy Savings Program (RESP) as authorized by Section 6407 of the Farm Security and Rural Investment Act of 2002, as amended and the Agriculture Improvement Act of 2018 to assist rural families and small businesses achieve cost savings by providing loans to eligible entities that agree to make loans to qualified consumers to implement durable cost-effective energy efficiency measures. This rule describes the eligibility requirements, the application process, the criteria that will be used by RUS to assess Applicants' creditworthiness and how to obtain application materials.

**DATES:** This rule is effective April 2, 2020.

Electronic and written comments must be received on or before May 18, 2020.

**ADDRESSES:** Submit your comments on this final rule by 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-19-Electric-0024 to submit or view public comments and to view supporting and related materials available

electronically. 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.

*Other Information:* Additional information about Rural Development and its programs is available on the internet at <http://www.rd.usda.gov>.

**FOR FURTHER INFORMATION CONTACT:** Robert Coates, 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) 260-5415; Email [Robert.Coates@usda.gov](mailto:Robert.Coates@usda.gov).

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866, Regulatory Planning and Review

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

#### Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Management and Budget designated this final rule as not a major rule, as defined by 5 U.S.C. 804(2).

#### Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this final rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that conflict with this rule will be preempted. No retroactive effect will be given to this final rule and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures must be exhausted before an action against the Department or its agencies may be initiated.

#### Executive Order 12372, Intergovernmental Review

This final rule is not subject to the requirements of Executive Order 12372, Intergovernmental Review, as

implemented under USDA's regulations at 7 CFR part 3015.

#### Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

Executive Order Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This final rule is not subject to the requirements of Executive Order 13771 (82 FR 9339, February 3, 2017) because this final rule is not significant under Executive Order 12886.

#### Executive Order 13132, Federalism

The policies contained in this final 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 States is not required.

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

This final 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. Rural Development has assessed the impact of this final rule on Indian tribes and determined that this final rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a tribe would like to engage in consultation with Rural Development on this rule, please contact Rural Development's Native American Coordinator at (720) 544-2911 or [AIAN@wdc.usda.gov](mailto:AIAN@wdc.usda.gov).

### Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). RUS provides loans to borrowers at interest rates and on terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

### Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), OMB approved this information collection under OMB Control Number 0572–0151. This final rule contains no new reporting or recordkeeping burdens under OMB control number 0572–0151 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

### E-Government Act Compliance

The Rural Utilities Service 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.

### National Environmental Policy Act Certification

This final rule has been examined under Agency environmental regulations at 7 CFR part 1970. The Administrator has determined that this is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an Environmental Impact Statement is not required.

### Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.751—Rural Energy Savings Program. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC, 20402–9325, telephone number (202) 512–1800 and at <https://www.cfda.gov>.

### 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. Therefore, this final rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

### Civil Rights Impact Analysis

Rural Development has reviewed this final 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. After review and analysis of the final rule and available data, it has been determined that based on the analysis of the program purpose, application submission and eligibility criteria, issuance of this final Rule will neither adversely nor disproportionately impact very low, 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 familiar status.

### USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and 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.

Persons with disabilities who require alternative means of communication for program information (*e.g.*, Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA’s TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program

Discrimination Complaint Form, AD–3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter 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; (2) fax: (202) 690–7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

USDA is an equal opportunity provider, employer, and lender.

### Background

Rural Development is a mission area within the USDA comprised of the Rural Utilities Service, Rural Housing Service and Rural Business/Cooperative Service. Rural Development’s mission is to increase economic opportunity and improve the quality of life for all rural Americans. Rural Development meets its mission by providing loans, loan guarantees, grants, and technical assistance through more than 40 programs aimed at creating and improving housing, businesses, and infrastructure throughout rural America.

Promoting the American agriculture and protecting our rural communities where food, fiber, forestry and many of our renewable fuels are cultivated have been recognized as matters of national interest. It has further been recognized in the national interest to ensure that regulatory burdens do not unnecessarily encumber agricultural production, harm rural communities, constrain economic growth, or hamper job creation. On April 25, 2017, President Trump established the Interagency Task Force on Agriculture and Rural Prosperity, Executive Order 13790, 82 FR 20237 (April 28, 2017). This working group (the Task Force) was charged with identifying legislative, regulatory, and policy changes to promote agriculture, economic development, job growth, infrastructure improvements, technical innovation, energy security, and quality of life in rural America. In response to the President’s call to action, the Task Force envisioned a rural America with world-class resources, tools, and support to build robust, sustainable communities for generations to come. Ensuring rural Americans can achieve a high quality of life is the foundation of prosperity. *See* the Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity, October 21, 2017 (the Report).

RUS loan, loan guarantee, and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, telecom and broadband infrastructure, RUS also plays a big role in improving other measures of quality of life in rural America, including public health and safety, environmental protection and conservation, and cultural and historic preservation.

Consistent with the above stated policy and under the authority of Section 6407 of the Farm Security and Rural Investment Act of 2002, as amended, the USDA, through the RUS, provides RESP loans to eligible entities that agree, in turn, to make loans to qualified consumers for energy efficiency measures, including cost effective energy storage and renewable energy systems. Eligible energy efficiency measures must be for or at a property or properties served by a RESP borrower and use commercially available technologies that would allow qualified consumers to decrease their energy use or costs through cost-effective energy efficiency investments. Loans made by RESP borrowers under this program are repaid through a recurring service bill to the qualified consumer.

### Assisting Rural Communities

The purpose of the RESP is to help rural families and small businesses achieve cost savings by providing loans to qualified consumers through eligible entities to implement durable cost-effective energy efficiency measures pursuant to 7 U.S.C. 8107a(a) of the RESP authorizing statute. Rurality was not defined in the statute and there is no cross-reference for an existing definition for “rurality” in another statute. Thus “rurality” was left to the Agency’s discretion. The Agency has determined that the definition of “rural” in § 1719.2 of this rule will be “any area that has a population of 50,000 or less inhabitants or any other area designated eligible by statute.” The Agency believes this definition is appropriate for RESP because Congress, rather than amending the Rural Electrification Act of 1936 (RE Act) which is RUS’s primary authority to facilitate financing for energy efficiency and renewable energy technologies in rural areas, intended the RESP to be a standalone program under Section 6407 of the Farm Security and Rural Investment Act of 2002, as amended. Although RUS makes loans for energy efficiency and renewable energy technologies in rural areas under the RE Act, the RESP was clearly intended as a separate distinct

program, providing additional authority to the Secretary for facilitating these types of technologies under RESP. This directive was further stressed, in the Consolidated Appropriations Act of 2018, where the Secretary was authorized to allow eligible RESP entities to offer loans to customers in any part of their service territory. And more recently, Section 732, Title 3, of the FY 2020 Appropriations, “provided that the Secretary may allow eligible entities, or comparable entities that provide energy efficiency services using their own billing mechanism to offer loans to customers in any part of their service territory and to offer loans to replace a manufactured housing unit with another manufactured housing unit, if replacement would be more cost effective in saving energy.”

RUS acknowledges that there are several population thresholds to determine the rural nature of an area in order to participate in the multiple USDA Rural Development programs. Under the traditional RUS-Electric Program authorized by the RE Act, entities serving any area other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants are eligible to participate in the program. The Administrator may also approve the use of loan funds to serve non-RE Act beneficiaries upon finding that it is necessary and incidental to the primary purpose of the loan. The Agency recognizes the distinct nature of the RESP and adopts a population threshold that enables more rural families and small businesses to achieve cost savings through energy efficiency investments.

In April 2017 President Trump issued the Presidential Executive Order on Promoting Agriculture and Rural Prosperity in America, Exec. Order No. 13790, 82 FR 20237 (April 25, 2017). The Executive Order charged the task force with identifying legislative, regulatory, and policy changes to promote economic development, job growth, energy security, infrastructure improvements and quality of life amongst others. In particular, it instructed the task force to identify the policy changes that remove barriers to economic prosperity and quality of life in rural America, advance the adoption of innovations and technology for agricultural production and long-term, sustainable rural development; empower the State, local, and tribal agencies that implement rural economic development, agricultural, and environmental programs to tailor those programs to relevant regional circumstances, and further the Nation’s energy security by advancing traditional

and renewable energy production in the rural landscape.

Taking into account the above mentioned guiding principles, the Interagency Task Force on Agriculture and Rural Prosperity, in its Report to the President, predominantly considered nonmetropolitan counties (counties outside of Metropolitan Statistical Areas, as defined by the Office of Management and Budget (OMB)) when referring to rural areas. According to the OMB definition, the Metropolitan Statistical Areas include cities of 50,000 or more and counties connected to those cities through commuting. Furthermore, the 50,000 threshold is consistent with many of the Rural Development programs currently offering financial assistance in areas with populations of 50,000 or less inhabitants or that are rural in character, such as the Business and Industry Loan Guaranty Program and the Rural Energy for America Loan Guaranty Program.

The Report identified several indicators to promote rural prosperity in America, many of which can be supported with the RESP. High quality of life was identified as a foundational element of rural prosperity. One way to improve the quality of life is providing the necessary tools to utilities, energy service companies and similar entities so that they can provide the modern financing mechanisms and equipment that empower rural residents and businesses to take control of their energy use. The RESP enables those entities to access low-cost capital to carry out those activities. Economic development in rural communities was also identified in the Report as a key element to promote rural prosperity. Through RESP, small businesses in rural communities will be able to reduce their operational costs. This program also fosters the development of a workforce with transferable skills, capable of delivering energy efficiency services in diverse rural settings.

In light of the above stated policies and circumstances, the Agency will consider the term “rural”—for RESP beneficiaries’ purposes—as any area that has a population of 50,000 or less inhabitants or any other area designated eligible by statute.

### Types of Eligible Borrowers

RESP is made available to any public power district, public utility district, or similar entity, or any electric cooperative described in section 501(c)(12) or 1381(a)(2) of title 26, that borrowed and repaid, prepaid, or is paying an electric loan made or guaranteed by the Rural Utilities Service (or any predecessor agency) and any

entity primarily owned or controlled by one or more of those entities. In addition, the program is available to any other entity that is an eligible borrower of the Rural Electric Service, as determined under 7 CFR 1710.101 or a successor regulation.

Section 1710.101 provides that RUS makes loans to corporations, states, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, limited-dividend, or mutual associations that provide or propose to provide: (1) The retail electric service needs of rural areas, or (2) the power supply needs of distribution borrowers under the terms of power supply arrangements satisfactory to RUS. This provision has been traditionally construed as referring to electric related services through utilities in rural areas.

In addition, the original implementing statute provided that loans from the RUS borrower to the qualified consumers had to be repaid through charges added to the electric service bill for the property, or at which, the energy efficiency measures were implemented or would be implemented. The Agriculture Improvement Act of 2018 replaced the term "electric" with the term "recurring" service bill, effectively expanding the reach of the program to a diverse set of energy efficiency initiatives.

The Agency recognizes that states have arranged different and diverse approaches and mechanisms to deliver energy efficiency programs. The evolution and restructuring of the electric industry and the broader efforts to save energy across the utility sector have led some states to look to specialized entities and other utilities to administer energy efficiency programs. Some jurisdictions have assigned the implementation of energy efficiency programs to state government entities or quasi-public organizations or entered into agreements with non-profits or private entities to deliver the energy efficiency services. States have compelling reasons to facilitate energy efficiency in rural areas since research shows that rural households in America spend 40 percent more on their energy bills than households in metropolitan areas. Energy efficiency upgrades have the potential of reducing as much as 25 percent of the energy burden in rural households. Alleviating the energy burden in rural America has the potential of improving the quality of life and promoting economic development in our rural communities.

In recognition of the multiple and distinct models and mechanisms that

have been developed by the states to deliver energy efficiency programs as the energy industry has evolved, the amendments to the program introduced by the Agriculture Improvement Act of 2018, and to fulfill the goals set forth in Executive Order 13790 of removing the barriers to economic development and quality of life in rural America, the Agency is amending § 1710.101 to meet the purposes of RESP. Section 1710.101 has been revised to recognize that corporations, states, territories, and subdivisions and agencies thereof; municipalities; people's utility districts; and cooperative, nonprofit, limited-dividend, or mutual associations that provide or propose to provide eligible purposes under the Rural Energy Savings Program, including energy efficiency, renewable energy, energy storage or energy conservation measures are considered eligible entities.

#### **Eligible Activities and Energy Efficiency Measures**

Eligible entities that participate in RESP need to submit with their loan application a list of energy efficiency measures that will be implemented with a RESP loan funds. The eligible entity may update the list of the energy efficiency measures from time to time upon approval of the Administrator to account for newly available efficiency technologies. RESP loan funds will only be approved to fund projects where commercially available technologies are used to increase energy efficiency (including cost-effective on- and off-grid renewable energy technologies or energy storage systems).

In § 1719.9 of this rule, the Agency has outlined a series of energy efficiency measures that will be eligible under the program. This list is not exhaustive. The Agency recognizes the dynamic nature and frequent evolution of the energy efficiency technologies and applications that could benefit the RESP beneficiaries. To avoid depriving rural communities from commercialized technological innovations in energy efficiency, energy storage, and renewable energy applications, the Agency may update the acceptable energy efficiency measures, adjust, and clarify the scope of the eligible activities by amending this rule from time to time. RUS will welcome innovative solutions to deliver durable cost-effective energy efficiency measures in our rural communities if they are consistent with the statutory requirements of the program. Consideration will be given to the payback period of those solutions.

#### **Measurement and Verification**

RESP loans require eligible entities to implement an appropriate measurement and verification (M&V) plan, addressed in § 1719.10 of this rule, to ensure the effectiveness of the energy efficiency loans and the avoidance of conflicts of interest in carrying out their energy efficiency programs.

Our experience in RESP shows that energy efficiency programs using RESP loan funds target multiple customer classes with a wide variety of energy efficiency project profiles. The eligible entities or their designees, will have to exercise professional judgment in developing their M&V plans. Considering the circumstances, it is in the best interest of RESP to facilitate a framework upon which the eligible entities or their designees, can exercise professional judgement in developing their M&V plans. The M&V plans will need to be based on generally accepted principles and apply the best practices of the industry, using reliable data, reasonable assumptions and verifiable analytical methodologies. In developing the M&V plans, eligible entities are expected to exercise professional judgment in attaining the satisfactory level of effort needed to quantify and verify the energy savings. The nature, scope, and complexity of the energy efficiency measures and activities will dictate the level of effort so that it can be commensurate with the project capital investment and the risk of miscalculating the savings. In other words, the value of the information provided by the M&V activities is appropriate to the value of the project itself. The goal for each project ought to be balancing the uncertainty in reporting the savings values with the cost of the measuring and verifying those saving values.

In general, the Agency will consider M&V plans from eligible entities that apply any of the following techniques to measure, calculate and report the savings:

1. The retrofit isolation with key parameter measurement whereby measurements will be taken at the component or system level for the baseline and the retrofit equipment, including the key performance parameters that define the energy use of the energy reduction measure.

2. The retrofit isolation with all parameter measurement whereby short-term, periodic or continuous measurements of baseline and post-retrofit use is taken at the component or system level and saving values will result from the analysis of the baseline

and reporting-period energy use (or proxies of energy use).

3. The whole facility measurement whereby the whole facility energy use or sub-facility level energy use is continuously measured during the baseline and post-retrofit period. The analysis of the baseline and post-retrofit energy use will be used to determine the savings.

4. The calibrated simulation where computer simulations are used to model energy performance of the whole facility and the model is calibrated with actual billing data from the facility.

5. Applying deemed savings values and calculations when reference to technical resource manuals upon which the savings values and calculations are based is available and adequate mechanisms to ensure that such values and calculations are maintained up to date.

The Agency considers that deemed savings is a reasonable mechanism to quantify the energy savings in certain projects where the performance of commercially available technology and related energy efficiency measures are well known, accepted in the industry and documented with repeatable results.

In those above circumstances, requiring costly and sophisticated measurement activities are unlikely to produce a meaningful difference in the expected savings while significantly increasing the cost of the project. It could further jeopardize an otherwise cost-effective energy efficiency project. A material cost increase in a project as a result of measurement and verification activities that do not significantly reduce the risk of miscalculating the energy savings, would unreasonably limit the access to energy efficiency measures that the RESP aims to support. In accepting M&V plans based on deemed savings, the Agency will be taking into consideration applicable technical resource manuals, M&V studies performed by entities like the eligible entity, or such other M&V analysis reasonably applicable to the conditions in the area where the energy efficiency measures will be implemented.

#### **Auditing and Accounting Requirements**

Section 6303 of The Agriculture Improvement Act of 2018 (Pub. L. 115–334) amended the RESP and required the Agency “to take the appropriate steps to streamline the accounting requirements on [RESP] borrowers . . . while maintaining adequate assurances of the repayment of the loans.” Auditing and accounting requirements are found in § 1719.13 of this rule.

As a lending program, the Agency monitors the borrowers’ ability to repay their indebtedness to the Federal Government. In order to provide a standardized method to carry out the Agency’s responsibility, borrowers are required to adopt and follow systems of accounts based on the generally accepted accounting principles in the United States of America (GAAP). The Agency further requires the financial statements to be audited to ensure that information upon which decisions will be made are based on legitimate data.

Traditional RUS-Electric Program borrowers follow 7 CFR 1767, the RUS Uniform Systems of Accounts-Electric, and submit annual audited comparative financial statements in accordance with 7 CFR part 1773. Audits are required to follow Generally Accepted Governmental Auditing Standards (GAGAS) as set forth by the Comptroller General of the United States and the provisions of 2 CFR part 200, subpart F. These requirements are material covenants in the existing loan contracts executed by the RUS borrowers and these existing RUS borrowers that apply for RESP loans will be required to continue to comply with these provisions in their existing loan documents.

The Agency acknowledges that there may be eligible entities interested in participating in RESP that are not bound by existing loan contracts with RUS and thus are not familiar with the RUS Uniform Systems of Accounts-Electric. There also may be provisions of the RUS Uniform Systems of Accounts-Electric that do not apply in the context of certain eligible entities’ business models.

In the interest of balancing the statutory mandate and preserving the integrity of the portfolio and taxpayer’s money, the Agency will accept systems of accounts based on GAAP as the baseline standard for new and RESP borrowers. The Agency will consider reasonable proposals of RESP borrowers to streamline the accounting requirements only if such proposals afford the Agency adequate mechanisms to ensure the full and timely repayment of the RESP loan.

RESP borrowers will be required to prepare and furnish to RUS, at least once during each 12- month period, a full and complete audited financial report. RESP borrowers must also comply with the requirements of 2 CFR part 200, subpart F. As noted above, RESP borrowers with existing RUS loans must continue to comply with the auditing requirements in their existing RUS loan documents. The Administrator may modify the audit

requirements for RESP Borrowers if in his or her judgement it is necessary to satisfy RESP Program goals.

#### **Application Process and Agency Review**

The application process in RESP is comprised of two steps. In the initial step, an entity interested in RESP will submit a Letter of Intent as described in § 1719.5 of this rule. The Letter of Intent will be a brief description of the proposed energy efficiency program and a description of the prospective RESP applicant. RUS will consider the letters of intent in the order they are received and will review it to determine if the Applicant and the proposed project are eligible to participate in the program as well as to whether the Applicant’s financial condition will allow it to complete the application process and successfully repay the loan. At this stage of the process the Applicant is expected to provide a brief overview of its energy efficiency program and its financial status in enough detail for RUS to make a determination that the potential borrower is likely to successfully complete a loan application. A successful Letter of Intent will be followed by an invitation to proceed with a complete loan application. In the interest of avoiding unnecessary time and effort, and expenses on behalf of the Applicant, RUS will only consider complete loan applications from entities that have been officially invited to proceed with a loan application.

In reviewing RESP loan applications, the Administrator will assess the Applicant’s ability to repay the loan in full and its ability to meet all other obligations and will also review its past performance as well as its determination to satisfy its obligations. The Administrator will also consider the financial resources retained by the Applicant to provide for a cushion against unexpected losses. In addition, the Agency will consider the adequacy of the collateral to ensure the interest of the government is sufficiently protected and secured. In approving a RESP loan, the Agency will review the energy efficiency program implementation and the proposed M&V methods and activities.

#### **Loan Closing**

Upon approval of a RESP loan, the Applicant will be notified by written notification through a conditional commitment letter. This notification will be a RESP loan offer and will include all the terms and conditions considered necessary by the Administrator to make the RESP loan. The conditional commitment letter will

indicate the steps the RESP applicant will need to take to inform RUS of its intent to meet the stated loan conditions and will also include further loan closing instructions.

### Federal Register Notices

To implement this Part, the Agency will publish at least an annual **Federal Register** notice. Each notice will address the following items as necessary:

**Funding Availability.** The Agency will issue notices each year specifying the amount of funds available for RESP loans. Notices may also include funding priorities and application periods.

**Program Changes.** If there are any changes to the RESP Program, this rule will be amended accordingly.

### Request for Comments

Since its inception in 2016, the RESP has evolved. New and clarifying authorities have been added to the program including changes made by the Agriculture Improvement Act of 2018 (2018 Farm Bill) (Pub. L. 115–334) which reauthorized the implementation of the RESP. Title VI, subtitle C, Section 6303 of the 2018 Farm Bill introduced several amendments to Section 6407 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8107a). These changes include an increase in the maximum interest rate RUS eligible borrowers may charge to their qualified consumers, streamlining the accounting requirements, and the use of a recurring bill to the qualified consumer as a repayment mechanism for the RUS borrowers.

To enhance program delivery, the Agency seeks input from the public on this rule. The Agency will follow this final rule which affords the public an opportunity to comment, with a subsequent final rule which will be published in the **Federal Register**.

### List of Subjects

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

Therefore, for reasons set forth in the preamble, chapter XVII, title 7, the Code of Federal Regulations is amended 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.*, 6941 *et seq.*

■ 2. In § 1710.101, revise (a)(2) and add new paragraph (a)(3) to read as follows:

### § 1710.101 Types of eligible borrowers.

(a) \* \* \*

(2) The power supply needs of distribution borrowers under the terms of power supply arrangement satisfactory to RUS, or

(3) Eligible purposes under the Rural Energy Savings Program, including energy efficiency, renewable energy, energy storage or energy conservation measures and related services, improvements, investments, financing or relending.

■ 3. Add part 1719 to read as follows:

## PART 1719—RURAL ENERGY SAVINGS PROGRAM

### Subpart A—General Provisions

Sec.

1719.1 Purpose.

1719.2 Definitions.

1719.3 Policy.

### Subpart B—Application, Submission and Administration of RESP Loans

1719.4 Eligibility.

1719.5 Application process and required information.

1719.6 Agency review.

1719.7 Conditional commitment letter and loan closing.

1719.8 Loan provisions.

1719.9 Eligible activities and energy efficiency measures.

1719.10 Measurement and verification.

1719.11 Compliance with USDA departmental regulations, policies, and other federal laws.

1719.12 Reporting.

1719.13 Auditing and accounting requirements.

**Authority:** 7 U.S.C. 8107a (Section 6407).

### Subpart A—General Provisions

#### § 1719.1 Purpose.

This part establishes policies and procedures for the implementation of the Rural Energy Savings Program (RESP) under Section 6407 of the Farm Security and Rural Investment Act of 2002, as amended, by the Rural Utilities Service (RUS). It is the purpose of this part to help rural families and small businesses achieve cost savings by providing loans through eligible entities to qualified consumers to implement durable cost-effective energy efficiency measures.

#### § 1719.2 Definitions.

The following definitions apply to subparts A and B of this part and must have the following meanings for purposes of the Rural Energy Savings Program:

**Administrator** means the Administrator of the Rural Utilities

Service, an agency under the Rural Development mission area of the United States Department of Agriculture.

**Applicant** means an Eligible entity interested in applying for a RESP loan that is planning to submit a Letter of Intent.

**Commercial technology** means equipment, devices, applications, or systems that have a proven, reliable performance and replicable operating history specific to the proposed application. The equipment, device, application or system is based on established patented design or has been certified by an industry-recognized organization and subject to installation, operating, and maintenance procedures generally accepted by industry practices and standards. Service and replacement parts for the equipment, device, application or system must be readily available in the marketplace with established warranty applicable to parts, labor and performance.

**Completed loan application** means an application containing all information required by RUS to approve a loan and that is materially complete in form and substance satisfactory to RUS within the specified time.

**Conditional commitment letter** means the notification issued by the Administrator to a RESP Applicant advising it of the total loan amount approved for it as a RESP borrower, the acceptable security arrangement, and such controls and conditions on the RESP borrower's financial, investment, operational and managerial activities deemed necessary by the Administrator to adequately secure the Government's interest. This notification will also describe the accounting standards and audit requirements applicable to the transaction.

**Conflict of interest** means a situation or situations, event or series of events, that taken together or separately undermine an individual's judgement, ability, or commitment to providing an accurate, unbiased, fair and reliable assessment, or determination about the cost effectiveness of the Energy efficiency measures, due to self-interest or if such judgement, ability, commitment or determination cannot be justified by the prevailing and sound application of the generally accepted standards and principles of the industry.

**Deemed savings** means the per-unit energy savings values that can be claimed from installing specific measures under specific operating situations. Savings are based on stipulated values stemming from historical and verified data, derived

from research of historical savings values from typical projects.

*Deemed savings calculations* means standardized algorithms to calculate energy savings applicable to well-defined energy efficiency measures that have documented and consistent savings values.

*Eligible entity* means an entity described in § 1719.4.

*Energy audit* means an analysis of the current energy usage or costs of a Qualified consumer with the goal of identifying opportunities to enhance energy efficiency. The activity should result in an objective standard-based technical report containing recommendations on the Energy efficiency measures to reduce energy costs or consumption of the Qualified consumer and an analysis of the estimated benefits and costs of pursuing each recommendation in a payback period not to exceed the loan term to the Qualified consumer. The analysis must meet professional and industry standards and be commensurate to the complexity of the project.

*Energy efficiency measures* (EE measures) means for or at property served by an Eligible entity, structural improvements and investments in cost-effective, commercial technologies to increase energy efficiency (including cost-effective on- or off-grid renewable energy or energy storage systems).

*Energy efficiency program* (EE Program) means a program set up by an Eligible entity to provide financing to Qualified consumers so that they can implement durable cost-effective Energy efficiency measures.

*Financial feasibility* means an Eligible entity's capacity to generate enough revenues to cover its expenses, sufficient cash flow to service its debts and obligations as they come due, and meet the financial ratios set forth in the applicable loan documents.

*Government* means the Federal Government.

*GAAP* means the generally accepted accounting principles in the United States of America as issued by the Financial Accounting Standards Board (FASB) in the Accounting Standards Codification (ASC).

*Implementation Work Plan or EE Program Implementation Work Plan (IWP)* means an Implementation work plan that meets the requirements listed in § 1719.5(b)(3)(i)(F).

*Invitation to proceed* means the written notification issued by RUS to the Eligible entity acknowledging that the Letter of Intent was received and reviewed, describing the next steps in the application process, and inviting the

Eligible entity to submit a complete loan application.

*Key performance indicators* mean the set of measures that help an entity to determine if it is reaching its performance and operational goals. These indicators can be both financial and non-financial.

*Letter of Intent* means a signed letter issued by an Applicant notifying RUS of its intent to apply for a RESP loan and addressing all the elements identified in § 1719.5(b)(2).

*Loan to a Qualified consumer* means a transaction by which an RUS borrower makes RESP funds available to a Qualified consumer for the purpose of implementing Energy efficiency measures at a property or for the property of a Qualified consumer to increase energy efficiency on the condition that the RUS borrower will be able to collect the funds made available to the Qualified consumer.

*Manufactured home* means a structure that is transportable, built on a permanent chassis and designed to be used as a dwelling that meets the U.S. Department of Housing and Urban Development definition set forth in 24 CFR 3280.2 or a successor rule.

*Measurement and Verification (M&V)* means the process of quantifying the energy and cost savings resulting from the improvements in an energy-consuming system or systems.

*Multi-tier Agreement* means an agreement entered into by the RESP applicant that complies with the Rural Development's Environmental Policies and Procedures, pursuant to 7 CFR part 1970 or its successor regulation.

*Qualified consumer* means a consumer served by an Eligible entity that has the ability to repay a loan made by a RESP borrower under the RESP program, as determined by the Eligible entity.

*RESP applicant* means an Eligible entity that has received a written Invitation to proceed from RUS to apply for a RESP loan.

*RESP borrower* means an Eligible entity with an approved RESP loan as evidenced by duly executed RESP loan documents.

*Rural*, for purposes of 7 U.S.C. 8107a(a), means any area that has a population of 50,000 or less inhabitants or any other area designated eligible by statute.

*Small business* means an entity that is in accordance with the Small Business Administration's (SBA) small business size standards found in 13 CFR part 121.

*Special advance* means an advance, not to exceed 4 percent of the total approved loan amount, that a RESP borrower may request to defray the

startup costs of establishing a new EE Program.

*Start-up costs* mean amounts paid or incurred for:

(1) Creating or implementing an active EE program; or

(2) Investing in the integration of an active EE Program. Start-up costs may include, but are not limited to, amounts paid or incurred in the analysis or survey of potential markets, products such as software and hardware, labor supply, consultants, salaries and other working capital directly related to the creation or enhancement of an EE Program consistent with RESP.

*Technical Resource Manual (TRM)* means a resource document that includes information used in program planning and reporting of EE Programs. A TRM may include savings values for measures, engineering algorithms to calculate savings, impact factors to be applied to calculated savings, foundational documentation, specified assumptions, and such other pertinent information to support the calculation of measure and program savings and the application of such values and algorithms in appropriate applications.

#### § 1719.3 Policy and Federal Register Notices.

(a) Eligible entities (see § 1719.2 and § 1719.4) are permitted to participate in the Rural Energy Saving Program on the condition that loan funds will be used to make loans to Qualified consumers for the purpose of implementing EE measures.

(b) The Agency will issue annual **Federal Register** notices each year specifying the amount of funds available under this Part. Notices may also include program priorities and loan application periods. The Administrator in setting funding priorities and application periods may consider the amount of available funds, the nature and amount of unfunded loan applications, prior commitments, Agency resources, Agency priorities and policy goals, and any other pertinent information.

(c) In making loans under this Part, the Administrator may consider a proposed EE Program's effect on existing RUS borrowers and the integrity of the RUS portfolio and deny or limit approval of a specific RESP loan application on that basis if it is determined that such requested loan would have a negative effect on existing RUS or RESP borrowers or the RUS loan portfolio.

(d) The Administrator may, on a case-by-case basis, grant an exception to any requirement or provision of this subpart provided that such an exception is in

the best financial interests of the Federal government. Exercise of this authority cannot be in conflict with applicable law.

(e) With regard to the rules of grammatical construction, unless the context otherwise indicates, “includes” and “including” are not limiting, and “or” is not exclusive.

### Subpart B—Application, Submission and Administration of RESP Loans

#### § 1719.4 Eligibility.

Under this subpart, Eligible entities for the RESP include:

(a) Any public power district, public utility district, or similar entity, or any electric cooperative described in section 501(c)(12) or 1381(a)(2) of the Internal Revenue Code of 1986, that borrowed and repaid, prepaid, or is paying an electric loan made or guaranteed by the Rural Utilities Service (or any predecessor agency);

(b) Any entity primarily owned or controlled by one (1) or more entities described in paragraph (a) of this section; or

(c) Any other entity that is an eligible borrower of the Rural Utilities Service, as determined under 7 CFR 1710.101.

#### § 1719.5 Application process and required information.

(a) *General.* The following are general provisions for the application process:

(1) The RUS, from time to time and subject to appropriations, will notify the public specifying funding priorities, funding availability, and deadlines.

(2) Complete applications for loans to Eligible entities will be processed pursuant to the provisions in this Part and on a first-come-first served basis until the funding appropriated to the program is fully obligated.

(3) The submittal of a Letter of Intent is required to participate in the program. The letters of intent will be queued as they are received. If it advances program and policy goals, RUS may consider loan applications from Eligible entities that have submitted Letters of Intent under prior funding announcements but that were not invited to proceed with a loan application.

(4) Upon review of the Letter of Intent, RUS may issue an Invitation to proceed with a loan application. RUS reserves the right to notify the Applicant in the queue that the amount of financing RUS will consider for a loan is below the level sought in the Letter of Intent. In making this consideration, RUS will consider overall RUS program objectives or budgetary constraints. An Invitation to proceed with the loan application issued by RUS is not to be deemed as an offer by RUS.

(5) A RESP applicant will have up to ninety (90) days to complete the documentation for a complete loan application. The ninety (90) day timeframe will begin on the date the RESP applicant receives RUS' Invitation to proceed. If the deadline to submit the completed loan application falls on Saturday, Sunday, or a Federal holiday, the application is due the next business day.

(6) The Administrator may grant an extension of time to complete the documentation required for an application if, in the Administrator's sole judgment, the interest of the program would be advanced by the extension.

(7) RUS may limit the number of applications it will consider in the same funding cycle from the same Applicant or combine applications from a single entity.

(b) *Application process.* The application process consists of the following two steps:

(1) An Applicant seeking financing must submit a Letter of Intent to be considered under this Part.

(2) The Letter of Intent must include the following information:

(i) Legal name and status of the entity seeking financing under this Part and its address and principal place of business.

(ii) The Applicant's tax identification number, SAM Managed Identifier (SAMMI), Dun and Bradstreet (DUNS) number, and such similar information as it may be subsequently amended or required for federal funding.

(iii) A statement indicating if the Applicant is a current or a former RUS borrower.

(iv) A description of the service territory.

(v) Value of the net assets, including any information as to whether the Applicant has been placed in receivership, liquidation, or under a workout agreement or whether the Applicant has declared bankruptcy or has had a decree or order issued for relief in any bankruptcy, insolvency or other similar action over the last 10 years. The Applicant must submit a copy of its balance sheet and income statements for the last 3 years. If applicable, the Applicant must provide the balance sheet and income statements for the last 3 years of the entity or entities providing equity or security for the RESP loan together with an explanation of the legal relationship among the entities.

(vi) Identification of a point of contact and provide contact information.

(vii) Description of the program or projects expected to be financed with the RESP loans funds. This description

must not exceed five (5) pages (size 8.5 x 11). RUS reserves the right not to consider Letters of Intent where the project description exceeds five (5) pages. The description should include the following:

(A) Description of the service to be provided to Qualified consumers.

(B) Identity of the staff or contractors that will be implementing the EE Program and their credentials.

(C) A summarized version of the expected IWP addressing the following elements:

(1) The marketing strategy.

(2) The relending process.

(3) A brief description of the processes, procedures, and capabilities to quantify and verify the reduction in energy consumption or decrease in the energy costs of the Qualified consumers.

(4) A list of eligible EE measures expected to be implemented. An Applicant with an existing EE Program in place by April 8, 2014, may describe the EE measures, its IWP, and its M&V plan for the existing program in its Letter of Intent to expedite the application process.

(viii) The Applicant must provide evidence of its key performance indicators for the 5 complete years prior to the submission of the loan application if the total loan amount exceeds \$5 million.

(3) Instructions on how to submit the loan application package will be included in the RUS Invitation to proceed to the RESP applicant. RUS will timely schedule an initial conference call with the RESP applicant to discuss the elements of the loan application.

(i) Content of the application package includes the following:

(A) A signed cover letter from the RESP applicant's General Manager or highest-ranking officer requesting RESP loan funds to make loans to Qualified consumers for the purpose of implementing EE measures.

(B) A signed copy of the board resolution or applicable authorizing document approving and establishing the EE Program and authorizing the Eligible entity to take a RESP loan.

(C) The RESP applicant must provide the Applicant's articles of incorporation or other applicable organizational documents currently in effect, as filed with the appropriate state office, setting forth the RESP applicant's corporate purpose; and the RESP Applicant must also provide the bylaws or other applicable governing documents currently in effect, as adopted by the RESP applicant's applicable governing body. RESP applicants that are active RUS borrowers may comply with this requirement by notifying RUS in writing



that there are no material changes to the documents already on file with RUS.

(D) A copy of the duly executed Multi-Tier Action Environmental Compliance Agreement (Multi-Tier Agreement) consistent with Rural Development's Environmental Policies and Procedures, 7 CFR part 1970 or its successor regulation. A copy of the Multi-tier Agreement will be provided to the RESP applicant with the Invitation to proceed and the requirements of § 1970.55 will be discussed with the RESP applicant in the initial conference call. Activities and investments listed in the IWP must match the activities and investments identified in the Multi-tier Agreement executed between RUS and the RESP applicant. Additional RUS environmental review will be required if the RESP applicant pursues additional or different activities other than the ones listed in the Multi-tier Agreement. If funded, a RESP borrower would be responsible for performing and documenting environmental reviews consistent with § 1970.55.

(E) A financial forecast approved by the applicable governing body of the RESP applicant in support of its loan application. The financial forecast must cover a period of at least 10 years and must demonstrate that the RESP applicant's operation is economically viable and that the proposed loan is financially feasible. RUS may request additional information or projections for a longer period, if RUS deems such supplemental data necessary based on the financial structure of the RESP Applicant or necessary to make a determination regarding loan feasibility. A RESP applicant must, after submitting a loan application, promptly notify RUS of any changes in its circumstances that materially affect the information contained in the loan application. The financial forecast and related projections submitted in support of a loan application must include:

(1) Current and projected cash flows.

(2) A pro forma balance sheet, statement of operations, and general funds summary projected for each year during the forecast period. The requested RESP loan must be included in the financial forecast. Revenue from the interest charged to the Qualified consumer must also be included together with an explanation of the expected use of such proceeds.

(3) The financial goals established for margins, debt service coverage, equity, and levels of general funds to be invested in the EE Program. The financial forecast must use the accrual method of accounting for analyzing costs and revenues and, as applicable,

compare the economic results of the various alternatives on a present value basis.

(4) A full explanation of the assumptions, supporting data, and analysis used in the forecast, including the methodology used to project revenues, operating expenses, and any other factors having a material effect on the balance sheet and the financial ratios such as equity and debt service coverage. RUS may require additional data and analysis on a case-by-case basis to assess the probable future competitiveness of the RESP applicant.

(5) Current and projected nonoperating income and expense.

(6) An itemized budget and schedule for the activities to be implemented with the RESP funds and a discussion on the expected delinquency and default rates and how the loan loss reserve will be set up. The RESP applicant is expected to forecast the amount of loans to be made to Qualified consumers over a 10-year timeframe. If the RESP applicant determines to charge interest, the RESP applicant must describe how it is going to use the funds generated from the interest to be received from the loans to the Qualified consumers.

(7) A sensitivity analysis may be required by RUS on a case-by-case basis.

(F) The RESP applicant must produce, to the satisfaction of the Administrator, an Implementation Work Plan or EE Program Implementation Work Plan (IWP), duly approved by the applicable governing body of the Eligible entity. The IWP will cross reference the Financial Forecast and must address the following core elements:

(1) The RESP applicant will identify the Qualified consumers by customer classes that will benefit from the proceeds of a loan made under this Part and explain the promotional activities that will be executed to carry out the energy efficiency relending program. The RESP applicant should also include the target penetration rates by market segment and expected investments in marketing the relending program. In doing so, it is expected that racial and ethnic demographics for the service area would be provided.

(2) The RESP applicant will describe the activities and investments (list of EE measures) to be implemented in the EE Program and the expected energy savings.

(i) The RESP applicant must include a schedule for implementation with an itemized list of anticipated costs for each task.

(ii) The RESP applicant must specify whether a Special advance will be

requested and, if so, must detail the expected use of such loan proceeds.

(iii) In describing the EE Program, the RESP applicant must describe the intake process, including but not limited to, the underwriting criteria, if applicable, and the quantifiable elements considered in recommending energy retrofits or investments to reduce the Qualified consumer's energy cost or consumption. It is also expected that a description of the process for documenting and perfecting collateral arrangements with Qualified Consumers, when applicable, be also included in the narrative.

(iv) The RESP applicant will also identify the staff that will be carrying out the EE Program and will describe the tasks that will be performed by such individuals together with their expertise and credentials. Should the RESP applicant decide to outsource implementation of the EE Program, the credentials and expertise of the third party implementing the outsourced tasks must be described. Consideration must be given to the third party's ability and expertise in implementing an EE Program at the scale pursued with the RESP funding. The statement of qualifications must show the party's experience carrying out the financial and technical components of an EE Program at the desired scale. A RESP applicant with an existing EE Program as of April 8, 2014, may submit the IWP plan previously established to fulfill this requirement.

(3) The RESP applicant must include an evaluation of the financial and operational risk associated with the EE Program. When applicable, the RESP applicant should include an estimate of the prospective consumer loan losses consistent with the loan loss reserve.

(4) A Measurement and Verification (M&V) plan that meets the requirements of § 1719.10. In the alternative, a RESP applicant may provide an M&V plan approved by a state or local regulatory entity.

(G) The RESP applicant must provide a statement of compliance with the federal statutes as provided in § 1719.11.

#### **§ 1719.6 Agency review.**

(a) *General.* Loans made under this program will be made only when the Administrator finds and certifies that in his or her judgment there is reasonably adequate security and the loan will be repaid within the time agreed.

(b) *Eligibility for other loans.* RUS will not include any debt incurred by a borrower under this program in the calculation of the debt-equity ratios of the borrower for purposes of eligibility

for loans under the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*).

(c) *Letter of intent.* RUS will consider complete Letters of intent in the order they are received. In reviewing Letters of intent, RUS will be assessing:

(1) *Applicant eligibility.* Applicant's eligibility to participate in the program.

(2) *Project eligibility.* Eligibility of the proposed EE Program or project.

(3) *Financial status.* The financial status of the RESP applicant to determine the Applicant's likelihood to complete a loan application and successfully repay a RESP loan.

(d) *Loan application.* Prudent lending practices require that the Administrator make certain findings prior to approving a RESP loan. RESP applicants must provide the evidence, in form and substance satisfactory to the Administrator, to be able to make such findings. In making loans under this Section, the Administrator will consider, including, but not limited to, the following factors:

(1) *Loan feasibility.* The RESP applicant's ability to repay the loan in full as scheduled and all other obligations of the borrower will be met.

(2) *RESP applicant's character.* The RESP applicant's past performance and determination to satisfy its obligations; evidenced by such factors as credit history, previous experience addressing adversity, and manner of conducting business.

(3) *RESP applicant's equity.* The financial resources retained by the RESP applicant to provide a cushion against unexpected losses.

(4) *Overall condition of RESP applicant and project.* Verification that the proposed EE Program meets all the requirements of the Rural Energy Savings Program and an assessment of those factors that may affect the RESP applicant's ability to repay the RESP loan or implement the EE Program as proposed.

(5) *Loan security.* The RESP applicant's assets pledged to secure the loan. Collateral will be assessed for each applicant taking into consideration asset value, lien position, credit risk and borrower's profile. Collateral pledged should be adequate to protect the Government's interest. RUS reserves the right to require an asset appraisal.

(6) *EE program implementation and measurement and verification.* RESP applicant's IWP must be based on reasonable assumptions and adequate supporting data and the M&V plan reasonably complies with § 1719.10. However, the Administrator, in his or her sole discretion, may deem this requirement satisfied upon finding that the IWP and M&V plan from an existing

EE Program as of April 8, 2014 is consistent with the purpose of the Rural Energy Savings Program. A RESP applicant with an existing EE Program as of April 8, 2014, may submit the M&V plan previously established to fulfill this requirement.

#### **§ 1719.7 Conditional commitment letter and loan closing.**

(a) *Conditional commitment letter.* A successful RESP loan applicant will receive a Conditional commitment letter from the Administrator notifying the RESP applicant of the total loan amount approved by RUS; any additional controls on the its financial, investment, operational and managerial activities; acceptable security arrangements; and such other conditions deemed necessary by the Administrator to adequately secure the Government's interest, ensure repayment, and abide by the RESP requirements as outlined in this Part. This written notification is a conditional RESP loan offer.

(1) The requirements for coverage ratios will be set forth in the Conditional commitment letter.

(2) Receipt of a Conditional commitment letter from the Administrator does not authorize the RESP applicant to commence performance under the approved loan.

(b) *Intent to meet conditions.* The RESP applicant must acknowledge receipt of the Conditional commitment letter and notify RUS in writing within 60 days or otherwise specified in the Conditional commitment letter that it has reviewed and understood the conditions set forth in the Conditional commitment letter and that it is the intent of the RESP applicant to meet all the conditions. The RESP applicant must promptly notify RUS should circumstances or its intent of meeting the conditions change. The Administrator may consider requests to amend the conditions and amend the conditions in a subsequent Conditional commitment letter, when it advances program and policy goals and is in the best interest of the Government.

(c) *Loan closing.* The loan will be closed in accordance with RUS instructions.

(1) Upon receipt of the acceptance of the loan offer from the RESP applicant, RUS, working with its legal counsel, will draft the loan documents which will include the loan conditions and other applicable legal requirements.

(2) The loan documents will be forwarded to the RESP applicant by RUS for execution by the RESP applicant's signatories and returned to RUS prior to a mutually acceptable closing date. RUS reserves the right to

unilaterally set a closing date to advance program and policy goals.

(3) The loan closing date will be used to determine the RESP loan maturity date which under no circumstances will exceed 20 years.

(4) An opinion of counsel is required at closing and must be in form and substance acceptable to the Administrator. A form opinion of counsel will be included in the closing instructions.

(d) *Post-closing activities.* All RUS requirements and conditions for lending set forth in the loan agreement must be met before the loan will be advanced. RUS will notify the RUS borrower when it is authorized to commence activities to be funded by the RESP loan.

#### **§ 1719.8 Loan provisions.**

(a) *Financial ratios.* The Administrator will set financial coverage ratios based on the risk profile of the RESP applicant and specific loan terms. Those financial ratios will be included in the RESP borrower's loan documents with RUS.

(1) Unless otherwise notified, existing RUS borrowers will be subject to their current debt service coverage ratios as provided in their previously executed loan contracts with RUS.

(2) The minimum coverage ratio required for RESP borrowers, whether applied on annual or average basis is 1.05 Debt Service Coverage (DSC) unless specifically waived by the Administrator.

(3) DSC for RESP borrowers that are not existing RUS borrowers under the Rural Electrification Act will be defined as (Net Income or Total Margins) + (Interest Charges on Long Term Debt) + (Principal payments from RESP relending activities) + (Depreciation and Amortization Expenses)/Total Debt Service Billed.

(4) In reviewing and approving a RESP loan, the Administrator may increase the coverage ratio required to be met by an individual RESP borrower if the Administrator determines that higher ratios are required to ensure the repayment of the loan made by RUS, or reduce the coverage ratios if the Administrator determines that the lower ratios are in the best interest of the Government. The coverage ratios will be set forth in the loan documents.

(b) *Collateral.* RUS generally requires that borrowers provide it with a first priority lien on all of the borrower's real and personal property, including intangible personal property and any property acquired after the date of the loan. Collateral that is used to secure a loan must ordinarily be free from liens or security interests other than those

permitted by RUS or existing security documents.

(1) For existing RUS borrowers, the Administrator may, in his or her sole discretion, rely on existing security arrangements with RUS.

(2) When a RESP borrower is unable, by reason of preexisting encumbrances, or otherwise, to furnish a first priority lien on its entire system, the Administrator may accept other forms of security, including but not limited to a parent guarantee, state guarantee, an irrevocable letter of credit, surety bond, pledge of revenues, or other security if the Administrator determines such credit support is reasonably adequate to protect the government's interests and otherwise acceptable in form and substance.

(3) RUS may in certain circumstances agree to share its priority lien position with another lender provided the RESP loan is adequately secured and the security arrangements are acceptable to RUS. In such circumstances, RUS will consider entering into joint security arrangements with other lenders on a *pari passu* basis.

(c) *Equity contributions.* To be eligible for a RESP loan, a newly created Eligible entity or an entity primarily owned or controlled by one (1) or more entities as described in § 1719.4 must meet a minimum equity contribution in the proposed EE Program requirement at the time of the loan closing. The eligible entity will be required to continue to maintain the minimum equity contribution for the life of the loan or other time period as determined by the Administrator and as set forth in the loan documents. The minimum acceptable equity contribution for each RESP borrower will be determined by the Administrator as set forth below and will be included in the Conditional commitment letter and the loan documents as a condition and covenant to the RESP loan.

(1) The required equity contribution and related terms will be determined by the Administrator for the individual RESP applicant based upon the its risk profile and available collateral for the RESP loan.

(2) RUS reserves the right to require additional equity contributions from existing RUS or RESP borrowers when it is in the best interest of the Government.

(3) If the RESP applicant under this section is unable to achieve a minimal acceptable contribution, as set forth in the Conditional commitment letter, the Administrator may consider the following to meet such shortfall to the minimum acceptable equity contribution:

(i) The infusion of additional capital into the EE Program by an Investor to meet the shortfall to the minimum acceptable equity contribution. RUS may require that the additional capital be deposited into a RESP applicant's special account subject to a deposit account control agreement with RUS prior to loan closing.

(ii) An unconditional, irrevocable letter of credit, in form and substance satisfactory to the Administrator, in the amount necessary to meet the shortfall to the minimum acceptable equity contribution. RUS must be an unconditional payee under the letter of credit and the letter of credit must be in place prior to loan closing and remain in place until the loan is repaid unless specified otherwise in the loan documents.

(iii) General obligation bonds or special revenue bonds issued by tribal, state or local governments in the amount necessary to meet the shortfall to the minimum acceptable equity contribution. If the minimum acceptable equity position is satisfied in full or part with general obligation bonds or special revenue bonds, any lien securing the bonds must be subordinate to the lien of the Government securing the RESP loan.

(iv) Any other requirements or mechanisms approved by the Administrator to meet the shortfall to the minimum acceptable equity contribution.

(d) *Loan advances.* RUS will disburse loan funds to the RESP borrower in accordance with the terms and conditions of the executed loan documents.

(1) Excluding the Special Advance, all loan funds will be disbursed either as an advance in anticipation of loans to be made by the RESP borrower to the Qualified consumers; or as a reimbursement for eligible program costs, including loans already made to Qualified consumers. No disbursements will be made until the RESP borrower has complied with the loan conditions set forth in the loan documents. Any disbursement of loan funds to a RESP borrower within a 12-month consecutive period must not exceed 50 percent of the approved loan amount.

(i) The RESP borrower must provide to the Qualified consumers all RESP loan funds that the RESP borrower receives within one year of receiving them from RUS. If the RESP borrower does not re-lend the RESP loan funds within one year, the unused RESP loan funds, and any interest earned on those RESP loan funds, must be returned to the Government and will be applied to the RESP borrower's debt.

(ii) The RESP borrower will not be eligible to receive additional RESP loan funds from RUS until providing evidence, in form and substance satisfactory to the Administrator, that RESP loan funds from a previous advance have been fully relented to Qualified consumers or returned to the Government.

(iii) RUS will disburse the RESP loan funds as an advance in anticipation of loans to be made by the RESP borrower to the Qualified consumers only if the RESP borrower has established written procedures that will minimize the time elapsing between the transfer of RESP loan funds from RUS to the RESP borrower and its corresponding disbursement to the Qualified consumer.

(iv) A RESP borrower's request for an advance in anticipation of loans to Qualified consumers should be limited to the minimum amounts needed and timed to be in accordance with the actual immediate cash needs to carry out the EE Program.

(2) The RESP borrower may elect to request a Special advance to defray the appropriate start-up costs of establishing a new EE Program or modify an existing EE Program.

(i) The Special advance must not exceed 4 percent of the total approved loan amount.

(ii) Repayment of the Special advance must be required during the 10-year period beginning on the date on which the Special advance is made.

(iii) The RESP borrower may elect to defer the repayment of the Special advance to the end of the 10-year period.

(iv) All Special advances must be made during the first 10-years of the term of the loan.

(v) All amounts advanced on the loan by RUS to the RESP borrower, including the Special advance, must be paid prior to the final maturity which must not exceed 20 years.

(vi) The Special advance maximum amount must be requested by the Borrower and approved by RUS prior to loan closing.

(e) *Loans to Qualified Consumers.* RUS borrowers loans to Qualified Consumers will be subject to the following terms and for the purposes listed below.

(1) RESP borrower's loans to its Qualified consumers must be for the purpose of implementing EE measures.

(2) Loans to Qualified consumers may bear interest not to exceed 5 percent.

(3) Each loan made by the RESP borrower to a Qualified consumer may not exceed a term of 10 years.

(4) The EE measures financed with a RESP loan proceeds must be for the purpose of decreasing energy (not just electricity) usage or costs of the Qualified consumer by an amount that ensures, to the maximum extent practicable, that a loan term of not more than 10 years will not pose an undue financial burden on the Qualified consumer.

(5) RESP loan proceeds must not be used to fund purchases of, or modifications to, personal property unless the personal property is or becomes attached to real property (including a manufactured home) as a fixture.

(6) Loans made to Qualified consumers must be repaid through charges added to the recurring service bill for the property for, or, at which the EE measures have been or will be implemented. This requirement does not prohibit the voluntary prepayment of the loan by the owner of the property; or the use of any additional repayment mechanisms that are demonstrated to have appropriate risk mitigation measures, as determined by the RESP borrower, or required if the Qualified consumer is no longer a customer of the RESP Borrower.

(7) Loans made by a RESP borrower to a Qualified consumer using RESP loan funds must require an Energy audit by the RESP borrower to determine the impact of the proposed EE measures on the energy costs and consumption of the Qualified consumer. For purposes of this section, an energy audit performed by a contractor or agent of the RESP borrower would be deemed as performed by the RESP borrower.

(8) The RESP borrower must comply with all applicable federal, state, and local laws and regulations in making loans to Qualified consumers. Approval by RUS and its employees of a loan under this section does not constitute a Government endorsement. The Government and its employees assume no legal liability for the accuracy, completeness or usefulness of any information, product, service, or process funded directly or indirectly with financial assistance provided under RESP. Nothing in the loan documents between RUS and the RESP borrower will confer upon any other person any right, benefit or remedy of any nature whatsoever. Neither the Government nor its employees make any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, with respect to any information, product, service, or process available from a RESP borrower or its agents.

(f) *Loan term and repayment.* RUS loans to an eligible borrow will be subject to the following terms and repayment conditions set forth in this section.

(1) The RESP loans under this section will bear no interest (0 percent) and have a maturity not exceeding 20 years.

(2) The amortization schedule must be based on a loan term that does not exceed 20 years from the date on which the loan is closed.

(3) Except for the Special advance, the repayment of each advance must be amortized for a period not to exceed 10 years.

(4) The Administrator may include additional conditions on the repayment schedule if, in his or her sole discretion, it is in the best interest of the Government.

(5) The RESP borrower is responsible for fully repaying the RESP loan to RUS according to the loan documents regardless of repayment by its Qualified consumers.

(6) The RESP borrower may use the revenues from the interest charged to the Qualified consumer to establish a loan loss reserve, and to offset personnel and EE Program costs.

(7) Loans under this Section will not bear interest (0 percent), however, indebtedness not paid when due will be subject to interest, penalties, administrative costs and late fees as provided in the loan documents.

**§ 1719.9 Eligible activities and energy efficiency measures.**

(a) A RESP Borrower may provide financing to Qualified consumers to implement or invest in one or more set of EE measures such as those listed in this section.

(b) A RESP borrower may be able to provide financing to Qualified consumers for EE measures not listed in this section, if it can justify, to the satisfaction of the Administrator, that the proposed EE measure is consistent with the RESP statute, is cost effective, and the technology is commercially available. The Administrator must make the determination prior to the borrower implementing the EE measure.

(c) A RESP applicant with an existing EE Program as of April 8, 2014, may submit the list of the EE measures used in its program to RUS for validation and approval. The Administrator will make a finding as to whether such EE measures are consistent with the purpose of RESP.

(d) A RESP borrower, subject to the Administrator's written approval, may modify the list of EE measures if those measures are consistent with the statutory purpose of RESP.

(e) RESP loan proceeds must finance EE measures for the purpose of decreasing energy usage or costs of the Qualified consumer by an amount that ensures, to the maximum extent practicable, that the loan term will not pose an undue financial burden on the Qualified consumer.

(f) Eligible EE measures and investments include, but are not limited, to:

- (1) Lighting:
  - (i) Lighting fixture upgrades to improve efficiency.
  - (ii) Lighting control technologies.
  - (iii) Daylighting systems.
  - (iv) Energy-efficient lighting technologies.
- (2) Space conditioning, including Heating, Ventilation, and Air Conditioning (HVAC):
  - (i) Central Air Systems—Energy Star<sup>®</sup> qualified equipment.
  - (ii) Room air conditioners.
  - (iii) Boilers.
  - (iv) Heat pumps.
  - (v) Ducts and duct sealing.
  - (vi) Furnaces—Energy Star<sup>®</sup> qualified equipment.
  - (vii) Thermostats.
  - (viii) Economizers.
  - (ix) Air handlers.
  - (x) Automated controls.
- (3) Building Envelope Improvements:
  - (i) Improved insulation—adding insulation beyond existing levels, or above existing building codes.
  - (ii) Moisture barrier improvements and air sealing.
  - (iii) Caulking and weather stripping of doors and windows.
  - (iv) Windows upgrades—Energy Star<sup>®</sup> qualified windows.
  - (v) Door upgrades—including man-doors, overhead doors with integrated insulation and energy efficient windows.
- (4) Motor Systems:
  - (i) Pumps, coupling and low-friction pipes.
  - (ii) Capacitors.
  - (iii) Variable frequency drives.
  - (iv) Induction motors repairs or replacements for energy efficiency.
  - (v) High efficiency motors—motors with a rated efficiency beyond the Energy Policy Act standards.
  - (vi) Permanent magnet motors.
  - (vii) Reluctance motors.
- (5) Waste Heat Recovery:
  - (i) Recuperators.
  - (ii) Regenerators.
  - (iii) Waste heat boilers.
  - (iv) Combined heat and power (CHP) and Waste heat to power (WHP).
- (6) Compressed Air Systems.
- (7) Water heaters.
- (8) Fuel switching.
- (9) Irrigation or water system and waste disposal system efficiency improvements.

(10) On or off-grid renewable energy systems if consistent with the statutory purpose of this section.

(11) Energy storage devices if permanently installed to reduce energy cost or usage of the Qualified consumer.

(12) Energy efficient appliance upgrades if attached to real property as fixtures.

(13) Energy audits.

(14) Necessary and incidental activities and investments directly related to the implementation of an Energy efficiency measure.

**§ 1719.10 Measurement and verification and quality control.**

(a) *General.* A RESP applicant must provide a Measurement and Verification (M&V) plan, satisfactory to the Administrator, to ensure the effectiveness of the energy efficiency loans made to its Qualified Consumers and that there is no conflict of interest in carrying out the EE Program.

(1) RUS acknowledges the broad nature of energy efficiency projects and diverse scope of EE Programs that can be carried out under RESP. A RESP applicant, and its designees, must exercise professional judgment in developing their M&V plans. The nature, scope, and complexity of the EE measures and activities will dictate the level of effort needed for quantifying and verifying the savings. The effort expended should be commensurate with the project capital investment and the risk of miscalculating the savings.

(2) A RESP applicant with an existing EE Program as of April 8, 2014, may submit for consideration the M&V plan previously established to fulfill this requirement.

(3) RUS may reject a loan application or refuse to disburse loan proceeds to a RESP borrower that fails to demonstrate that the Energy audits or M&V plan have been adequately implemented and performed by qualified individuals.

(4) The M&V plan should be based on generally accepted principles and use the best practices of the industry, reliable data, reasonable assumptions and verifiable analytical methodologies.

(5) The M&V plan must describe the organized activities that the RESP applicant will implement to facilitate the adoption of the Energy efficiency measures that will result in energy use or cost savings to the Qualified consumer.

(6) Energy savings should be determined by comparing measured energy unit values (consumption or demand) before and after the implementation of the EE measures, making appropriate adjustments for changes in conditions.

(7) The computation of the savings formula is as follow:

$$\text{Savings} = (\text{Baseline Energy—Post-Installation of EE Measures Energy}) \pm \text{Adjustments}$$

Note: \* = performance period

(b) *M&V Techniques for measuring, calculating and reporting savings.* The RESP borrower may address the M&V requirements by applying any of the following techniques recognized in the International Performance Measurement and Verification Protocol.

(1) The Retrofit Isolation with Key Parameter Measurement Option (RIKPM) alternative is based on a combination of measured and estimated factors. Measurements will be taken at the component or system level for both the baseline and the retrofit equipment and should include the key performance parameters that define the energy use of the energy conservation measure. Savings will be determined by calculating the baseline and reporting period energy use predicated on the measured and estimated values. Estimated values will have to be supported by historical or manufacturer's data.

(2) The Retrofit Isolation with All Parameter Measurement Option (RIAPM) option will be based on short-term, periodic or continuous measurements of baseline and post-retrofit energy use (or proxies of energy use) taken at the component or system level. Savings will be based on the analysis of the baseline and reporting-period energy use or proxies of energy use.

(3) The Whole Facility Measurement Option (WFMO) will be based on continuous measurement of the energy use (such as utility billing data) at the whole facility or sub-facility level during the baseline and post-retrofit periods. Savings will be established from the analysis of the baseline and reporting-period energy data.

(4) The Calibrated Simulation Option (CSO) is an alternative where computer simulations can be used to model energy performance of a whole facility (or sub-facility). Models must be calibrated with actual hourly or monthly billing data from the facility. In this option, savings will be determined by comparing a simulation of the baseline (after having calibrated the model) with either a simulation of the performance period or actual utility data.

(c) *Use of deemed savings.* A RESP applicant may elect to meet the M&V plan requirements by applying deemed savings values and calculations. If choosing this option, the RESP applicant's M&V plan must:

(1) Describe the process to stipulate with the Qualified consumer the values and assumptions for determining the energy savings.

(2) Identify the TRMs upon which the deemed savings values and assumptions are based. In the alternative, identify such other technical M&V studies reasonably applicable to the conditions of the RESP applicant's service area or such other detailed M&V studies performed by similar entities to determine deemed savings for identical or similar energy programs or energy efficiency measures.

(3) Describe the mechanism to ensure that deemed savings values and related calculations will be maintained and kept up to date.

(4) The approval by RUS of a M&V plan under this section is solely for the benefit of RUS. Approval of a plan pursuant to this section does not constitute an RUS endorsement of the M&V plan or an EE Program. RUS and its employees assume no legal liability for the accuracy, completeness or usefulness of any information, product, service, or process funded directly or indirectly with financial assistance provided under RESP.

(d) *Quality control.* The RESP borrower must produce a detailed explanation, in form and substance satisfactory to the Administrator, describing the methods and processes to verify that the installation of the EE measures for the EE program, for which those measures have been implemented were properly executed.

(1) The RESP borrower and the Qualified consumer must agree on the EE measures to be implemented based on a quantifiable and verifiable assessment of the impacts that such measures will have in reducing the Qualified consumer's energy cost or consumption.

(2) A RESP borrower may elect to engage a third-party contractor to carry out the assessments required in this Section and install the EE measures as long as there is no Conflict of interest.

(3) RESP borrower employees and third-party contractors engaged to carry out activities in the EE Program must be qualified and have adequate expertise to perform energy audits, retrofit installations, and do the quality control assessments according to the applicable industry best-practices. Individual's credentials and expertise should be accredited through one of the following options:

(i) Possessing a current Home Energy Professional Certification or a similar certification from a nationally, industry-recognized organization that is consistent with the Job Task Analyses

Guidelines issued by the US Department of Energy's National Renewable Energy Laboratory or its successor.

(ii) Possessing a current certification issued by an organization recognized by the U.S. Department of Energy in accordance with the Better Buildings Workforce Guidelines or its successor.

(iii) Producing evidence, in form and substance satisfactory to the Administrator, that the individual possesses proficiency in the knowledge, skills and abilities needed to perform the tasks and critical work functions relevant to the duties assigned in the EE Program.

(4) A RESP borrower that elects to carry out the EE Program with a contractor, must validate and document the following:

(i) The contractor has adequate capacity and resources to engage with customers, conduct whole-property assessments, performance testing, diagnostic reasoning, and fulfill all data collection and reporting requirements. This includes, but is not limited to, having access to satisfactory diagnostic equipment, tools, qualified staff, data systems and software, and administrative support.

(ii) The contractor is current and in good standing with all applicable registration and licensing requirements for their specific jurisdiction and trade.

(iii) The contractor employs individuals (either its own employees or subcontractors) that are qualified to install or physically oversee the installation of home improvements in compliance with local building codes and industry-accepted protocols.

(5) A RESP borrower is responsible for actions or omissions departing from the required standards under this Section by third party partners or contractors employed in connection with an EE Program funded under this Section.

(6) The RESP loan documents are solely for the benefit of RUS and the RESP Borrower and nothing in the loan documents between RUS and the RESP borrower will confer upon any third party any right, benefit or remedy of any nature whatsoever. Neither RUS nor its employees makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, with respect to any information, product, service, or process available from a RESP borrower or its agents.

**§ 1719.11 Compliance with USDA departmental regulations, policies and other federal laws.**

(a) *Equal opportunity and nondiscrimination.* RUS will ensure that equal opportunity and

nondiscriminatory requirements are met in accordance with the Equal Credit Opportunity Act and 7 CFR part 15. In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and 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).

(b) *Civil rights compliance.* Recipients of federal assistance hereunder must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. In general, recipients should have available the Agency racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. The Agency will conduct compliance reviews in accordance with 7 CFR part 15. Awardees will be required to complete Form RD 400-4, "Assurance Agreement," for each federal award received.

(c) *Discrimination complaints.* Persons believing, they have been subjected to discrimination prohibited by this section may file a complaint personally, or by an authorized representative with USDA, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250. A complaint must be filed no later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated officials of USDA or the Agency.

(d) *Appeal Rights.* Applicants and RESP applicants have appeal or review rights for RUS decisions made under this part.

(1) Programmatic decisions based on clear and objective statutory or regulatory requirements are not appealable; however, such decisions are reviewable for appealability by the National Appeals Division (NAD).

(2) An Applicant and a RESP applicant can appeal any RUS decision that directly and adversely impacts it. Appeals will be conducted by USDA NAD and will be handled in accordance with 7 CFR part 11.

(e) *Federal Debt and Settlement of Debt.* It is the policy of the

Administrator that, whenever possible, all debt owed to the Government shall be collected in full in accordance with the terms of the borrower's loan documents. Debt owed to RUS constitutes federal debt and is subject to collection under the Debt Collection Improvement Act. RUS can use all remedies available to it to collect the debt from the borrower, including offset in accordance with part 3 of this title. In addition, it is the intent of the Administrator, notwithstanding § 1717.1200(b) of this chapter, that debt settlements under this Part will be governed by the provisions set forth in 7 CFR part 1717, subpart Y or its successor Agency policies or regulations.

**§ 1719.12 Reporting.**

(a) *General.* RESP borrowers must file periodic performance and financial reports as provided in the loan documents.

(b) *Frequency of reporting.* Performance and financial reports will be filed semiannually for the first 10 years of the RESP loan and annually thereafter through the term of the loan. However, RUS may require additional, or more frequent, reporting when necessary to preserve the quality and integrity of the program portfolio or advance policy goals.

(c) *Reporting elements.* RUS will identify the reporting requirements, in form and substance, in the loan documents based on the RESP borrower and EE Program profile. The RESP borrower's reports to RUS will include, but will not be limited to, the following information:

(1) Number and amount of loans to qualified consumers.

(2) Types of investments in EE measures and eligible activities.

(3) EE Program portfolio performance.

(4) Evidence of compliance with Multi-Tier Action Environmental Compliance Agreement.

(5) Status and amount of Loan Loss Reserve (when applicable).

**§ 1719.13 Auditing and accounting requirements.**

(a) *Accounting requirements.* RESP borrowers must follow RUS accounting requirements as set forth in the loan documents.

(1) Existing RUS borrowers must continue recording and reporting transactions pursuant to the RUS Uniform Systems of Accounts—Electric, 7 CFR part 1767. Such borrowers will continue to follow the accounting and reporting requirements set forth in the previously executed loan documents for RUS outstanding loans.

(2) New and RESP only borrowers must adopt and follow a GAAP based system of accounts acceptable to RUS, as well as compliance with the requirements of 2 CFR part 200 (for RESP Awardees, the term “grant recipient” in 2 CFR part 200 will also mean “loan recipient.”)

(3) All RESP borrowers must promptly notify RUS should a state regulatory authority with jurisdiction over it require it to apply accounting methods or principles different from the ones specified in the loan documents.

(4) RUS will consider borrowers’ reasonable proposals to streamline reporting and accounting requirements only when such proposals afford RUS adequate mechanisms to ensure the full and timely repayment of the loan, as determined by RUS.

(5) The Administrator may modify the accounting requirements for RESP borrowers if, in his or her judgement, it is necessary to satisfy the statutory purpose of the program, streamline procedures, or advance policy goals.

(6) Nothing in this policy shall be construed as a limitation or waiver of any other federal statute or requirement or the Administrator’s authority and discretion to implement the RESP in such a way that the Government’s interest is adequately preserved.

(b) *Auditing requirements.* RESP borrowers will be required to prepare and furnish to RUS, at least once during each 12-month period, a full and complete report of its financial condition, operations, and cash flows, on a comparative basis, along with a report on internal control over financial reporting and on compliance in other matters, both reports in form and substance satisfactory to RUS, audited and certified by an independent certified public accountant, satisfactory to RUS according to the requirements set forth in 7 CFR 1773.5.

(1) Audits must follow governmental auditing standards issued by the Comptroller General of the United States (GAGAS) and the provisions of 2 CFR part 200, subpart F—Audit Requirements if applicable.

(2) RESP borrowers with outstanding RUS loans will be subject to the auditing requirements set forth in their existing RUS loan documents. RUS Policy on Audits of RUS Borrowers as provided in 7 CFR part 1773 will govern audits under this paragraph.

(3) RESP borrowers must comply with all reasonable RUS requests to support ongoing monitoring efforts. The RESP borrowers must afford RUS, through their representatives, a reasonable opportunity, at all times during business hours and upon prior notice, to have

access to and the right to inspect any or all books, records, accounts, invoices, contracts, leases, payrolls, timesheets, cancelled checks, statements, and other documents, electronic or paper of every kind belonging to or in possession of the RESP borrowers or in any way pertaining to its property or business, including its parents, affiliates, and subsidiaries, if any, and to make copies or extracts therefrom.

(4) The Administrator may modify the audit requirements for RESP borrowers if, in his or her judgement, it is necessary to satisfy the statutory purpose of the program or advance policy goals.

(5) Nothing in this policy shall be construed as a limitation or waiver of any other federal statute or requirement or the Administrator’s authority and discretion to implement the RESP in such a way that the Government’s interest is adequately preserved.

**Chad Rupe,**

*Administrator, Rural Utilities Service.*

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**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### 12 CFR Parts 225 and 238

[Regulations Y and LL; Docket No. R–1662]

RIN 7100–AF 49

#### Control and Divestiture Proceedings

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** The Board is delaying the effective date of its final rule that revises the Board’s framework for determining whether a company controls another company for purposes of the Bank Holding Company Act or the Home Owners’ Loan Act, as published on March 2, 2020.

**DATES:** The effective date for the final rule published March 2, 2020, at 85 FR 12398, is delayed from April 1, 2020, until September 30, 2020.

**FOR FURTHER INFORMATION CONTACT:** Mark Buresh, Senior Counsel, (202) 452–5270, Greg Frischmann, Senior Counsel, (202) 452–2803, and Brian Phillips, (202) 452–3221, Senior Attorney, Legal Division, Board of Governors of Federal Reserve System, 20th and C Streets, Washington, DC 20551. You may also contact any person listed in the final rule document published in 85 FR 12398, March 2, 2020. For users of Telecommunication

Device for Deaf (TDD) only, call (202) 263–4869.

#### SUPPLEMENTARY INFORMATION:

##### I. Final Rule and Delay of Effective Date

On January 30, 2020, the Board adopted a final rule to revise the Board’s regulations related to determinations of whether a company controls another company for purposes of the Bank Holding Company Act or the Home Owners’ Loan Act (*see* 85 FR 12398, March 2, 2020). The control final rule was originally to become effective April 1, 2020.

The Board recognizes that, as a result of COVID–19, there have been recent dislocations in the U.S. economy. Many companies, including regulated financial institutions, have also expressed a desire to consult with Board staff about the effect of the new control rule on various existing investments and relationships. For these reasons, the Board is delaying the effective date of the control final rule by two quarters, which should provide companies affected by the new control rule additional time to analyze the impact of the rule on existing investments and relationships, and to consult with Board staff as necessary about such matters.

##### II. Administrative Law Matters

###### A. Administrative Procedure Act

The Board is issuing the final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).<sup>1</sup> Pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”<sup>2</sup>

The Board believes that the public interest is best served by having the final rule become effective immediately upon publication in the **Federal Register**. As a result of this rule, the changes approved by the Board on January 30, 2020 to parts 225 and 238 of the Board’s regulations on control and divestiture proceedings will not be reflected in the Code of Federal Regulations until September 30, 2020. The spread of COVID–19 has disrupted economic activity in the United States. In addition, U.S. financial markets have

<sup>1</sup> 5 U.S.C. 553.

<sup>2</sup> 5 U.S.C. 553(b)(3)(B).