

## § 1782.14

(2) A loan may be made in connection with a transfer if the transferee meets all eligibility and other requirements for the kind of loan being made. Such a loan will be considered as a separate loan and must be evidenced by a separate debt instrument. However, it is permissible to have one authorizing loan resolution or ordinance if permitted by State statutes.

(3) Any development funds remaining in a bank account that are not refunded to the Agency will be transferred to a bank account for the transferee. This will occur simultaneously with the closing of the transfer, and the funds will be used in completing planned development.

(c) *Release from liability.* Transferors may be released from liability when their debt is paid in full or when the debt is settled in accordance with § 1782.20 of this part.

(d) *Transfer of facility financed with Agency grants.* The requirements for the sale or disposition of assets financed with Agency grants are determined by the terms of the grant agreement, 7 CFR parts 3015, 3016, and 3019, and E.O. 12803, as applicable.

## § 1782.14 Protection of service areas—7 U.S.C. 1926(b).

(a) 7 U.S.C. 1926(b) was enacted to protect the service area of Agency borrowers with outstanding loans, or those loans sold in the sale of assets authorized by the “Joint Resolution Making Continuing Appropriations for the Fiscal Year 1987, Pub. L. 99-591, 100 Stat. 3341 (1986),” from loss of users due to actions or activities of other entities in the service area of the Agency financed system. Without this protection, other entities could extend service to users within the service area, and thereby undermine the purpose of the congressionally mandated water and waste loan and grant programs and jeopardize the borrower’s ability to repay its Agency debt.

(b) Responsibility for initiating action in response to those actions prohibited by 7 U.S.C. 1926(b) rests with the borrower.

## § 1782.15 Mergers and consolidations.

Mergers and consolidations will be processed the same as a transfer and

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assumption, although approvals by the Agency will give consideration to the differences under the applicable law regarding the type of transaction under consideration and the unique facts involved in each transaction. Mergers occur when two or more entities combine in such a manner that only one remains in existence. Consolidations occur when two or more entities combine to form a new consolidated entity, and the original entities cease to exist. In both mergers and consolidations, the surviving or emerging entity acquires the assets and assumes the liabilities of the entity or entities that ceased to exist.

## § 1782.16 Defeasance of Agency indebtedness.

Defeasance, or amending outstanding loan instruments and agreements to permit defeasance of Agency debt instruments, is prohibited.

## § 1782.17 Parity lien.

In order for the Agency to agree to a parity lien position, the borrower must submit a written request to the servicing office.

(a) The written request for parity must contain the following items:

(1) An explanation of the purpose of the request for parity; amount of loan for which parity is requested; description of security property; type of security instrument; name and address of financial institution requesting the transaction; and other information determined necessary by the servicing official to evaluate the request.

(2) Current financial statements or an audit, if available or determined necessary by the servicing official.

(3) An annual operating budget which projects income and expenses for a typical year’s operation. If construction is involved, the budget must be projected through the first full year of operation following completion of the planned improvements.

(4) A copy of the proposed security instrument.

(5) A certification from the borrower that the Agency debt cannot be refinanced at reasonable rates and terms.

(6) An appraisal, when the primary security is real estate or determined necessary by the servicing official in

order to determine the adequacy of loan security or repayment ability.

(7) A certification that any development work will comply with subpart C of part 1780 of this chapter.

(b) Requests for parity must comply with requirements of paragraph (a) of this section, requirements as specified in the bond or loan documents, the requirements as specified in 7 CFR part 1780, subpart D, and as provided in applicable State law.

(c) If the borrower has met all of the requirements in paragraphs (a) and (b) of this section and the proposal is determined to be in the Government's interest, the Agency will then grant approval of the borrower's request for parity. The following factors will be considered in assessing whether the request is in the Government's interest:

(1) The value of the added assets compared with the amount of new debt to be secured;

(2) The value of the assets already pledged under the security documents, and any effects of the proposed transaction on the value of those assets;

(3) The ratio of the total outstanding debt secured under the security documents to the value of all assets pledged as security under the security documents;

(4) The borrower's ability to repay its debt owed to the Government;

(5) The overall financial viability of the borrower;

(6) The borrower's current relationship with the Agency (i.e. no defaults under the loan documents);

(7) Such other factors that may be relevant in individual cases, as determined by the Agency.

#### § 1782.18 [Reserved]

#### § 1782.19 Third party agreements.

The State Director may authorize third party operation, maintenance, and management of an Agency financed facility. The borrower's attorney must review the contract, management agreement, written lease, or other third party agreement and issue an opinion to the Agency as to their legal sufficiency. The borrower shall retain the legal authority necessary for owning, constructing, operating, and maintaining the facility.

#### § 1782.20 Debt Settlement.

Pursuant to 7 U.S.C. 1981, this section prescribes policies for debt settlement of Water and Waste Disposal loans; Watershed loans and advances; Resource Conservation and Development loans; and 306 (c) Water and Waste Facility loans. Within the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134) is the Debt Collection Improvement Act of 1996. This law provides that any non-tax debt or claim owed to the United States that has been delinquent for a period of 180 days shall be turned over to the Secretary of the Treasury for appropriate action to collect or terminate collection actions on the debt or claim. Debt that is in litigation or foreclosure, with a collection agency or designated Federal debt collection center, or that will be disposed of under an asset sales program, is exempt from transfer to the Secretary.

(a) *General requirements for debt settlement.* (1) The debt or any extension thereof on which settlement is requested must be due and payable. The debt will be due and payable either under the terms of the note or other instrument, or by acceleration, unless the debt is to be cancelled without application under paragraph (e)(2) of this section or charged off under paragraph (f) of this section.

(2) Normally, all security will be disposed of prior to the date of application for debt settlement unless it is necessary to abandon security through the debt settlement process. In such cases, debt settlement may proceed if the servicing official determines that further collection efforts would be ineffective, uneconomical, and not in the best interests of the Government.

(3) Debtors will not be permitted to sell security and use the proceeds as part or all of a compromise/adjustment debt settlement offer.

(4) Requests for debt settlement will consist of Form RD 1956-1 "Application For Settlement of Indebtedness," current financial information, description and estimated market value of collateral, and status of operation (i.e., number of users, compliance with environmental issues, etc.).

(5) Office of General Counsel (OGC) advice on compliance with State or