

## Rural Utilities Service, USDA

## § 1782.17

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 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.