

**Before the
DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE
Washington, DC 20250**

SPECIAL SERVICING OF)	
TELECOMMUNICATIONS PROGRAMS)	RUS-19-Telecom 0021
LOANS FOR FINANCIALLY)	RIN 0572-AC41
DISTRESSED BORROWERS)	

COMMENTS OF

NTCA-THE RURAL BROADBAND ASSOCIATION

I. INTRODUCTION

NTCA-The Rural Broadband Association (NTCA) hereby submits comments in the above-captioned docket.¹ In this proceeding, the Rural Utilities Service (RUS) seeks comment on general policies for servicing actions associated with financially distressed borrowers from the Telecommunications Infrastructure Loan Program, the Rural Broadband Program, the Distance Learning and Telemedicine Program (DLT), the Broadband Incentives Program (BIP), and the Rural e-Connectivity Pilot Program.² Although rules discussed herein were effective February 25, 2020, RUS now seeks comment on aspects relating to the implementation of the

¹ NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

² *Special Servicing of Telecommunications Programs Loans for Financially Distressed Borrowers*, Rural Utilities Service, USDA, RUS-19-Telecom-0021, 85 Fed. Reg. 10555 (Feb. 25, 2020) (RUS Notice).

new regulations.³ These include improvements to the review process, including document submission; alternative servicing options not enumerated by RUS; and timing for review of servicing applications.

As described by RUS, promulgation of the new rules will ensure that servicing requests for distressed borrowers can be addressed “in-house” by RUS, rather than being administered, variously, by RUS and the Department of Justice (DOJ). This will save both time and money. In the first instance, RUS notes a recommendation it made for a debt settlement that was then transferred to DOJ before being pursued by the Government four years later.⁴ Moreover, DOJ assesses a fee of three percent (3%) of the recovered debt.⁵ NTCA supports efforts that enable RUS, the loan administering agency, to solely manage servicing requests for distressed borrowers. As the expert agency of jurisdiction, RUS is deeply familiar with the borrowers and the various circumstances that may compel them to seek special servicing. Similarly, borrowers are familiar with RUS processes and therefore can be expected to navigate more effectively servicing requests that arise during and because of trying circumstances. For these reasons, the insight demonstrated by RUS in bringing these servicing processes in-house warrants appreciation and commendation. As described more fully below, NTCA:

Recommends the creation of an interface to guide staff and borrowers to the selection of the most appropriate loan servicing option;

Commends the agency to consider historic repayment performance of borrowers (both individually and in the respective programs) in reservicing proceedings;

³ The Administrative Procedures Act exempts from prior notice rules any actions “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.” 5 U.S.C. § 553(b)(A).

⁴ *Servicing Regulation for RUS Telecommunications Programs: Regulatory Impact Analysis*, 7 C.F.R. Part 1752, Rural Utilities Service, Rural Development, USDA, at 11 (RIA).

⁵ *Id.*

Utilize waivers to avoid unnecessary or onerous filings; and,
Conclude reservicing requests within a reasonable timeframe.

II. DISCUSSION

A. RUS RLEC BORROWERS HAVE A REMARKABLE RECORD OF LOAN REPAYMENT

Recent months have illustrated need for robust future proof broadband to support education, health care, economic activity and public safety. RUS has played a critical role mitigating the difficulties of low population densities and high per-mile costs to support broadband deployment in rural areas. In fact, since 1995, RUS-financed networks must be broadband capable.⁶ RUS, as any other lender, maintains an interest in ensuring that it services its borrowers in a manner that meets their needs throughout the term of the loan, including needs that may be informed and affected by exogenous events. The current RUS telecommunications loan portfolio totals \$5.6 billion, with 346 loan and loan/grant combinations approved.⁷ And, yet, the industry, irrespective of current coronavirus impacts, has evidenced change. RUS explains that the advent of competition, new technologies and impacts of Federal Communications Commission (FCC) rulemaking increase the usefulness of in-house handling of distressed borrower servicing.

RUS recognizes the reliability of traditional borrowers with decades of industry operational and borrowing experience. RUS recognizes the rural communications industry operated historically with a largely predictable revenue stream, creating low-risk loan opportunities for the Federal government. In fact, prior to FCC overhauls of high-cost support

⁶ RIA at 2.

⁷ RIA at 4.

programs, RUS loan delinquencies were “effectively zero.”⁸ During a period of substantial uncertainty in these FCC programs from 2010 to 2018, however, Traditional Telecom Program (TTP) loans decreased dramatically, from 2,257 loans (\$3.8 billion outstanding principal) to 753 loans (\$2.5 billion principal). Even with the substantial uncertainty created by the FCC’s “regulatory tinkering” over these several years, loan delinquencies during this period, with the highest numbers in 2014-2016, still only averaged 1.26%.⁹ RUS observes, “. . . TTP dates back over 60 years and the borrowers in that program have been in operation for decades. These entities have a strong historical track record coupled with years of experience in providing service in the communities where our projects are being deployed.”¹⁰ In contrast, RUS Broadband Programs, generally, are witnessing loan delinquencies at rates more than 600% higher than those exhibited in the TTP. The instant RUS proceeding is timely and offers opportunities to discern thoughtfully among programs and types of borrowers, engage efficiencies and lower costs.

B. SUMMARY OF SERVICE OPTIONS

While it can be predicted that no RUS borrower would seek circumstances that compel the type of servicing as contemplated by the new rules, the backstop of an efficient and economical process by which distressed borrowers can reservice loans is reassuring as broadband providers serving rural America meet increased demand to support broadband-enabled

⁸ RIA at 7.

⁹ RIA at 7. TTP delinquencies in 2014, 2015 and 2016 were 2.00%, 1.97%, and 2.05%, respectively. Delinquencies fell to less than 1.5% in 2017 and 2018, but never achieved the near zero rates recorded in 2010-2013. *Id.*

¹⁰ RIA at 7, 8. Current delinquencies include loans made under the Infrastructure Program, Broadband Program, DLT and BIP (RIA at 8).

education, health care, telework and other vital public functions. RUS provides nine options for servicing distressed loans.¹¹ For all options, a defined set of information must be submitted with the request. Each of the nine options requires the submission of additional information.

For all requests, the following must be provided:

- A detailed explanation of the request and why it is needed;
- Most recent audited financial statements;
- Pro forma 5-year forecast including income statement, balance sheet, statement of cash flows, two-years historical data, current year data and 5-year forecast with detailed supporting assumptions, with a showing that that the account is delinquent and cannot be brought current within one year or that the borrower will become delinquent within 24 months;
- Existed and projected subscription rates per service tier and pricing for each tier, and a certified forecast of FCC support;
- Organization chart of borrower, subsidiaries and affiliates, including ownership information; and,
- Complete list of collateral and all steps the borrower is taking to preserve collateral.

RUS also enumerates additional items it may request, including but not limited to appraisals, liquidation expenses, legal opinions.

As noted above, each of the nine servicing options requires the submission of additional unique documentation.

C. RECOMMENDATIONS FOR EFFICIENT PROCESSING

NTCA represents numerous RUS borrowers. NTCA supports comprehensive review of borrower circumstances to both (a) protect Government funds and (b) design equitable solutions

¹¹ These include consent to additional, unsecured debt; parity lien; reamortization or rescheduling of debt payments; deferment of principal and/or interest; interest rate adjustment; transfer of collateral and assumption of debt; sale or exchange of loan collateral; sale of the note; and, debt settlement.

for distressed borrowers, especially when exogenous events such as regulatory change or, for example, the current COVID 19 pandemic, wreak unforeseen impacts on a borrower's ability to adhere to the original terms of the loan agreement.¹² At the same time, NTCA appreciates RUS recognition that the agency seeks guidance to “avoid placing unnecessary burden[s] or duplicative requirements on borrowers.”¹³ While this goal presumably attends all regulatory processes, it is especially important when the regulated entity is in some stage of existing distress.

NTCA recognizes the importance of suitable information collections. As noted by RUS, “Failure to collect proper information from borrowers could result in improper determinations of servicing assistance, hinder the government's recovery of such loans, increase legal costs to the borrower as well as encumber customer service.”¹⁴ At the same time, NTCA notes that the basic submissions to accompany all loan serving requests (setting aside the additional documents required for each option) contemplate the same level of information that would be ordinarily be required for a new loan application. Therefore, and as an overall proposition, NTCA suggests that RUS approach servicing requests with recognition that (i) waivers, whether *sua sponte* or as requested by the borrower, may be appropriate where less onerous measures will serve agency interests, and (ii) borrowers' good faith as evidenced by their historic fidelity to agency loan

¹² Indeed, options that could be sought, and as recognized by RUS, include refinancing or interest rate adjustments. *See*, RUS Notice at 10558, enumerating as special servicing actions consent to additional, unsecured debt; parity lien; reamortization or rescheduling of debt payments; deferment of principal and/or interest; interest rate adjustment; transfer of collateral and assumption of debt; sale or exchange of loan collateral; sale of note; and, debt settlement.

¹³ RUS Notice at 10555.

¹⁴ RIA at 14.

programs support maximum flexibility in formulating servicing options that at once maintain the borrower *and* ensure the continued provision of vital broadband services in rural areas.

As an overarching recommendation, NTCA suggests that RUS create a user-friendly interface that identifies filing requirements for all servicing options and which indicates which requirements are common to multiple options. This type of guide can assist both staff and borrowers that may be exploring alternative options with staff and would be consistent with the agency's interest in avoiding duplicative efforts.¹⁵ Toward this end, NTCA suggests that, where requested by the borrower, an application for servicing can include a request for agency recommendation of the most appropriate of the nine different options. This could avoid an instance in which a distressed borrower submits information for a particular request (which includes the half-dozen categories required for all requests) only to have the agency identify a different servicing option and then request an additional, different set of documents. Inasmuch as RUS identifies 34 collection instruments (*i.e.*, written information and forms) used to collect information from servicing borrowers,¹⁶ this measure could preempt unnecessary data collections and delay.

This user interface could also illustrate the relative austerity of the reservicing options. Inasmuch as certain remediation paths are more difficult than others, a user guide and concomitant agency process would assist distressed borrowers, through either a question/answer format or mathematical guidance, to identify the least severe reservicing option. Under this approach, the agency and borrower would be able to defer more onerous measures and focus in the first instance on the least restrictive approach and, correspondingly, the least onerous burden

¹⁵ *See*, RIA at 9-11.

¹⁶ RIA at 14.

for distressed borrowers. RUS notes that some loans may be subject to various servicing actions on one borrower over the course of multiple years.¹⁷ To the extent a single borrower seeks alternative remedies, borrower submissions should be recycled across the range of various remedies. For example, if the agency relied on a filing to support deferment of interest, during a period of reasonable duration it should rely on that same filing for other relief extended toward the same or another loan.

Another aspect that NTCA proposes for consideration is appropriate use of *sua sponte* waivers where enumerated filing requirements are either not necessary or could be substituted with less-onerous collections; the same inclination would be applied to motions for waiver made by borrowers. RUS notes that “[m]ost of the information is readily available because the borrower has already prepared the information, as required by the regulations of the program, when they applied for a loan.”¹⁸ It is conceivable, however, that certain of the information prepared for a loan application may be outdated when applying to reservice a loan. In those instances, NTCA submits that RUS be inclined to waive requirements that could be fulfilled by equivalent data gathered through less onerous measures. For example, where an existing five-year forecast is no longer sufficiently current, the applicant would be permitted to provide a current snapshot that offers a substantively equivalent image of the borrower’s condition; in many instances, a quarterly financial report may as effectively provide RUS with a sufficient impression of the company’s current condition.¹⁹ Moreover, costs not apparently recognized by

¹⁷ RIA at 9.

¹⁸ RIA at 14, 15.

¹⁹ By way of example, the times interest earned ratio (TIER) and the current ratio may be considered. The current ratio measures a company’s assets to its liabilities, and a current ratio over 1.2 is a good tool to use as a “snapshot” for financial viability. To the extent RUS relies upon these tools currently, these could

rules should be contemplated by the agency. For example, the agency includes the salary hours of borrower executives in estimating the cost of servicing,²⁰ but it is not clear that there is a presumptive consideration of the cost of management and/or financial consultants.

Overall, agency policy must be aimed at protecting Government funds. At the same time, implementation practices should endeavor to take full advantage of the institutional knowledge and understanding shared by RUS and its borrowers. Borrowers that have a strong repayment history with the agency should benefit from their past commitments and NTCA supports concomitant flexibility that may be extended when servicing such loans. In all respects, servicing for distressed borrowers must, to borrow vintage FCC phraseology, be “fast, fair and efficient.” Borrowers with good records should enjoy consideration for their past performance; turnaround times on applications should endeavor to be completed fully within 60 days, including “fast track” disposition of waiver requests; standards to guide agency staff and distressed borrowers to work together effectively will promote efficiency.

III. CONCLUSION

NTCA supports a transition to service distressed borrowers fully within RUS, as opposed to periodically sharing administration with DOJ. This change should reduce both time and cost of servicing. At the same time, NTCA commends RUS to recognize past performance of distressed borrowers who have long-term records of compliance. In those instances, NTCA recommends that RUS offer flexibility and permit, where appropriate, alternative document

be invoked where appropriate. Moreover, cash ratios, generally, can be a good predictor to allow lenders to determine financial health and viability.

²⁰ RIA at 15.

production or other data submissions where those differentiated productions will meet the stated needs and goals of the RUS while visiting a reduced burden on distressed borrowers. Together, these efforts should both protect Government assets while assuring efficient disposition of distressed accounts.

Respectfully submitted,

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