

## PREPAYMENT OF GUARANTEED LOANS; RESTRICTIONS

Pub. L. 100-202, §101(k) [title VI, §633], Dec. 22, 1987, 101 Stat. 1329-322, 1329-356, provided that: "Hereafter, notwithstanding section 306A(c), (d), and (e) of the Rural Electrification Act of 1936, as amended [7 U.S.C. 936a(c), (d), (e)], a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of such Act (7 U.S.C. 936) may, at the option of the borrower, prepay such loan (or any loan advance thereunder) in accordance with section 306A(a) and (b) of such Act: *Provided*, That any prepayment in excess of \$2,500,000,000 shall be subject to the approval of the Secretary of the Treasury."

Pub. L. 100-71, title I, July 11, 1987, 101 Stat. 429, provided in part that: "Hereafter, notwithstanding section 306A(d) of the Rural Electrification Act of 1936 (7 U.S.C. 936a(d)), a borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 of such Act (7 U.S.C. 936) may, at the option of the borrower, prepay such loan (or any loan advance thereunder) in accordance with section 306A of such Act."

## REGULATIONS

Pub. L. 99-509, title I, §1011(c), Oct. 21, 1986, 100 Stat. 1876, provided that: "The Secretary of Agriculture shall issue regulations to implement this section [enacting sections 936a and 936b of this title and repealing provisions set out as a note under section 936 of this title] within 60 days after the date of enactment of this Act [Oct. 21, 1986]. Such regulations—

"(1) shall facilitate prepayment of loans under section 306A of the Rural Electrification Act of 1936 [this section], as added by subsection (a); and

"(2) may not require any rural utility that is a borrower of loans subject to section 306A to make unreasonable reductions in rates to its customers as a condition of such prepayment."

**§ 936b. Sale or prepayment of direct or insured loans****(a) Discounted prepayment by borrowers of electric loans****(1) In general**

Except as provided in paragraph (2), a direct or insured loan made under this chapter shall not be sold or prepaid at a value that is less than the outstanding principal balance on the loan.

**(2) Exception**

On request of the borrower, an electric loan made under this chapter, or a portion of such a loan, that was advanced before May 1, 1992, or has been advanced for not less than 2 years, shall be sold to or prepaid by the borrower at the lesser of—

(A) the outstanding principal balance on the loan; or

(B) the present value of the loan discounted from the face value at maturity at the rate established by the Secretary.

**(3) Discount rate**

The discount rate applicable to the prepayment under this subsection of a loan or loan advance shall be the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the remaining term of the loan.

**(4) Tax exempt financing**

If a borrower prepays a loan under this subsection using tax exempt financing, the discount shall be adjusted to ensure that the bor-

rower receives a benefit that is equal to the benefit the borrower would receive if the borrower used fully taxable financing. The borrower shall certify in writing whether the financing will be tax exempt and shall comply with such other terms and conditions as the Secretary may establish that are reasonable and necessary to carry out this subsection.

**(5) Eligibility****(A) In general**

A borrower that has prepaid an insured or direct loan shall remain eligible for assistance under this chapter in the same manner as other borrowers, except that—

(i) a borrower that has prepaid a loan, either before or after October 21, 1992, at a discount rate as provided by paragraph (3), shall not be eligible, except at the discretion of the Secretary, to apply for or receive direct or insured loans under this chapter during the 120-month period beginning on the date of the prepayment; and

(ii) a borrower that prepaid a loan before October 21, 1992, at a discount rate greater than that provided by paragraph (3), shall not be eligible—

(I) except at the discretion of the Secretary, to apply for or receive direct or insured loans described in clause (i) during the 180-month period beginning on the date of the prepayment; or

(II) to apply for or receive direct or insured loans described in clause (i) until the borrower has repaid to the Federal Government the sum of—

(aa) the amount (if any) by which the discount the borrower received by reason of the prepayment exceeds the discount the borrower would have received had the discount been based on the cost of funds to the Department of the Treasury at the time of the prepayment; and

(bb) interest on the amount described in item (aa), for the period beginning on the date of the prepayment and ending on the date of the repayment, at a rate equal to the average annual cost of borrowing by the Department of the Treasury.

**(B) Effect on existing agreements**

If a borrower and the Secretary have entered into an agreement with respect to a prepayment occurring before October 21, 1992, this paragraph shall supersede any provision in the agreement relating to the restoration of eligibility for loans under this chapter.

**(C) Distribution borrowers**

A distribution borrower not in default on the repayment of loans made or insured under this chapter shall be eligible for discounted prepayment as provided in this subsection. For the purpose of determining eligibility for discounted prepayment under this subsection or eligibility for assistance under this chapter, a default by a borrower from which a distribution borrower purchases wholesale power shall not be considered a default by the distribution borrower.

**(6) Definitions**

As used in this subsection:

**(A) Direct loan**

The term “direct loan” means a loan made under section 904 of this title.

**(B) Insured loan**

The term “insured loan” means a loan made under section 935 of this title.

**(b) Mergers of electric borrowers**

Notwithstanding subsection (a), a direct or insured loan may be prepaid by an electric borrower at the lesser of the outstanding principal balance due thereon or the present value thereof discounted from the face value at maturity at the rate set by the Secretary if the borrower is an electrical organization which resulted from a merger or consolidation between a borrower and an organization which, prior to October 1, 1987, prepaid its direct or insured loans pursuant to this section. Prepayments by a borrower hereunder shall be made not later than one year after the effective date of the merger, consolidation, or other transaction. The discount rate to be set by the Secretary for direct or insured loans prepayments hereunder shall be based on the current cost of funds to the Department of the Treasury for obligations of comparable maturity to those being prepaid. If a borrower pre-pays using tax exempt financing, the discount shall be adjusted to make the discount equivalent to fully taxable financing. The borrower shall certify in writing whether the financing will be tax exempt and shall comply with such other terms and conditions as the Secretary may establish which are reasonable and necessary to implement this provision. As used in this section, the term “direct loan” means a loan made under section 904 of this title.

(May 20, 1936, ch. 432, title III, §306B, as added Pub. L. 99-509, title I, §1011(a), Oct. 21, 1986, 100 Stat. 1876; amended Pub. L. 101-624, title XXIII, §2387, Nov. 28, 1990, 104 Stat. 4051; Pub. L. 102-428, §2, Oct. 21, 1992, 106 Stat. 2183; Pub. L. 103-354, title II, §235(a)(13), Oct. 13, 1994, 108 Stat. 3221.)

**Editorial Notes****CODIFICATION**

October 21, 1992, referred to in subsec. (a)(5)(A), (B), was in the original “the date of enactment of this subsection”, which was translated as meaning the date of enactment of Pub. L. 102-428, which amended subsec. (a) generally, to reflect the probable intent of Congress.

**AMENDMENTS**

1994—Pub. L. 103-354 substituted “Secretary” for “Administrator” wherever appearing.

1992—Subsec. (a). Pub. L. 102-428, §2(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “A direct or insured loan made under this chapter shall not be sold or prepaid at a value less than the face value of any outstanding principal balance on such loan, except when sold to or prepaid by the borrower at the lesser of the outstanding principal balance due on the loan or the loan’s present value discounted from the face value at maturity at the rate set by the Administrator. The exception contained in the preceding sentence shall be effective for the period ending September 30, 1987.”

Subsec. (b). Pub. L. 102-428, §2(b), inserted heading.

1990—Pub. L. 101-624 designated existing provisions as subsec. (a) and added subsec. (b).

**§ 936c. Refinancing and prepayment of FFB loans****(a) In general**

A borrower of a loan made by the Federal Financing Bank and guaranteed under section 936 of this title may, at the option of the borrower, refinance or prepay the loan or an advance on the loan, or any portion of the loan or advance.

**(b) Penalty****(1) Determination of penalty**

A penalty shall be assessed against a borrower that refinances or prepays a loan or loan advance, or any portion of a loan or advance, under this section. Except as provided in paragraph (2), the penalty shall be equal to the lesser of—

(A) the difference between the outstanding principal balance of the loan being refinanced and the present value of the loan discounted at a rate equal to the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the loan being refinanced or prepaid;

(B) 100 percent of the amount of interest for 1 year on the outstanding principal balance of the loan or loan advance, or any portion of the loan or advance, being refinanced, multiplied by the ratio that—

(i) the number of quarterly payment dates between the date of the refinancing or prepayment and the maturity date for the loan advance; bears to

(ii) the number of quarterly payment dates between the first quarterly payment date that occurs 12 years after the end of the year in which the amount being refinanced was advanced and the maturity date of the loan advance; and

(C)(i) the present value of 100 percent of the amount of interest for 1 year on the outstanding principal balance of the loan or loan advance, or any portion of the loan or advance, being refinanced or prepaid; plus

(ii) the interval between the date of the refinancing or prepayment and the first quarterly payment date that occurs 12 years after the end of the year in which the amount being refinanced or prepaid was advanced, the present value of the difference between—

(I) each payment scheduled for the interval on the loan amount being refinanced or prepaid; and

(II) the payment amounts that would be required during the interval on the amounts being refinanced or prepaid if the interest rate on the loan were equal to the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the loan being refinanced or prepaid.

**(2) Limitation****(A) In general**

Except as provided in subparagraph (B), the penalty provided by paragraph (1)(A)