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The Honorable Quentin N. Burdick Chairman, Subcommittee on Agriculture, Rural Development and Related Agencies Committee on Appropriations United States Senate

Dear Mr. Chairman:

This responds to your September 18, 1987, letter regarding the failure of the Rural Electrification Administration (REA) to achieve statutory minimum lending levels in two REA loan programs, insured telephone loans and direct loans made from the Rural Telephone Bank. REA, which had failed to meet tile fiscal year 1986 minimum lending levels in both of these programs, indicated to you that it did not expect to meet the fiscal year 1987 level for insured telephone loans. In fact, although REA exceeded the statutory minimum For direct loans in fiscal year 1987, its insured loans fell short by approximately $9 million.

You suggest that REA's actions may have constituted an impoundment which should have been reported under the terms of the Impoundment Control Act. For the reasons given below, we found that REAPS failure to reach the minimum levels was the result of programmatic factors--a combination of the time routinely needed to process an application, together with. the receipt of complete applications relatively late in the fiscal year-and therefore did not constitute an impoundment required to be reported under the Impoundment Control Act.

REA is authorized to make direct and insured loans to eligible borrowers for the purpose of providing and improving telephone service to persons in rura1 areas. 7 U.S.C. Secs. 921 et seq. Direct telephone loans are financed by REA's Rural Telephone Bank, 7 U.S.C. Sec. 948; insured loans are made from the Rural Electrification and Telephone Resolving Fund., 7 U.S.C. Sec. 931.

REA's annual appropriation sets minimum and maximum lendings levels for each type of loan. For fiscal year 1936, the Congress established a minimum lending level for insured telephone loans of $239.25 million, and a maximum level of $311.025 million; the minimum level for direct Rural Telephone Bank loans was $177.045 million, and the maximum level was $210.54 million. (Pub. L. No. 99-190, Sec. 101(a), 99 Stat. 1185, as amended by Pub. L. No. 99-366, 100 Stat. 773.) REA told us that insured loans for fiscal year 1986 totaled $183.34 million, which was $55.91 million below the statutory minimum, and that the fiscal year 1986 Rural Telephone Bank loans amounted to approximately $127.897 million, or $49.148 million below the statutory minimum for such loans. The fiscal year 1987 minimum and maximum lending levels for both insured and Rural Telephone Bank loans were the same as the 1986 levels: a minimum of $239.25

million and a maximum of $311.025 million for insured loans, and a minimum of $177.045 million and a maximum of $210.54 million for Rural Telephone Bank loans. (Pub. L. No. 99-591, 100 Stat. 3341, 3341-16, -17.) According to REA, fiscal year 1987 insured loans amounted to $229.787 million, missing the minimum level by $9.463 million; however, 1987 Rural Telephone Bank loans totaled $185.115 million, exceeding the statutory minimum by $8.07 million. /1/

REA requires three documents of potential borrowers a Form 490 ("Application For Telephone Loan Or Loan Guarantee"), a system design, and a loan proposal. Borrowers typically submit the Form 490 in advance of the other two documents.

The Form 490 notifies REA of the borrower' s intent to seek a loan. On the Form 490, an applicant provides REA with preliminary information the applicant states why he needs a loan and the amount he estimates he will need. /2/ After submission of the Form 490, the applicant, with REA assistance, develops the concrete data REA will need to evaluate the application (financial data, toll data, etc.), and prepares the system design (an engineering plan) and the loan proposal.

REA considers an application complete upon receipt of the entire package. It is only when REA has all three documents before it that REA has the information it believes it needs to evaluate the application. Although some utilities submit their system design and loan proposal soon after having submitted the Form 490, others are not as prompt. For example, one utility submitted its Form 490 to REA on July 25, 1985, but did not submit the system design and loan proposal for another 2 years, on July 7, 1987. REA has on file another Form 490 which was submitted in April 1983, but for which the utility has not yet submitted a system design and loan proposal.

Although REA assists applicants in preparing these three documents, the responsibility for preparing them and submitting them to REA lies with the applicant. Consequently, the amount of time taken in completing the loan application package is primarily under the applicant's, not REA's, contro1.

During the period from receipt of the complete application to loan award, REA undertakes an engineering study of the applicant's system design to assure that it meets REA design criteria, and that the cost of the design is reasonable.

REA also conducts a feasibility study in which a loan specialist, in order to determine the viability of the applicant's project, analyzes the applicant's financial position, prepares a toll projection forecasting the applicant's revenues, and develops a budget for the project.

In addition, conditions are imposed both by statute and regulation, and REA must assure itself that these conditions are met. For example, unless the Governor of the Telephone Bank grants a waiver, he must find and certify that the borrower has the capability of producing net income or margins before interest of at least 150 percent of the interest on all its outstanding and proposed loans. 7 U.S.C. Sec. 4B(b)(5)(1982).

Upon completion of these studies, and upon a determination that the responsible REA Area Office is processing the loan consistent with REA's procedures, REA delivers to the applicant a Characteristics letter". With this letter, REA includes a draft loan agreement outlining loan amount and purpose, interest rate, and other terms and conditions. The applicant is given an opportunity to

review the draft agreement; upon the applicant's concurrence, REA approves the loan.

Applications take longer to process, when, for example, REA needs additional information before it can approve the system design, or before it can determine the feasibility of the project as proposed by the applicant. According to REA officials, REA staff, in such instances, work with the applicant to develop the data, or to revise the design or loan proposal to meet REA's objections. The approval of loans can be delayed while the applicant reviews REA's characteristics letter, or pending the outcome of negotiations between REA and the applicant regarding loan terms and conditions.

The Office of Financial Management (OFM) of the Department of Agriculture recently reviewed the REA Telephone Program organizational structure and loan-making process. of a sample of loans approved between April 1986 and March 1987, OFM estimated that applicants were responsible for approximately 76 percent of the average of 684 days from the date of receipt by REA of the Form 490 until loan approval. Looking only at the period beginning when the applicant had submitted all three required documents, and thus when REA begins processing, which in this sample averaged 269 days, the borrowers were considered responsible for an average of 102 days, or approximately 38 percent.

OFM believes that its analysis of a more recent group of approved loans shows an improvement in processing time. REA has calculated, for loans approved in fiscal year 1987, that, after receipt of a complete loan application package (the Form 490, the system design and the applicant's loan proposal), 155 days is required, on average, to evaluate and process a loan, compared to the earlier average of 269 days.

In our review of REA's fiscal year 1387 loan applications, we found that, with two exceptions, all applicants who completed their loan applications before May 1, 1987, received loans from REA in fiscal year 1987. (May 1 was approximately 150 clays before the end of fiscal year 1987.)

The two exceptions are applications which were completed on April 13 and April 16, and which requested a total of $3,236,350. According to REA officials, one of these two applicants has questioned REA's projections of its tolls, and the REA loan specialist has been working with the applicant to resolve the applicant's concerns. REA sent a characteristics letter to the other applicant 1 month after the application was completed; the applicant, however, did not respond to the characteristics letter until late September, too late for REA to complete loan processing before the end of the fiscal year.

We found that, during fiscal year 1987, a total of 39 applicants completed their applications after May 1, 1987. Of those 39 applicants, 23 received loans before the end of the fiscal year. The remaining 16 applications, eight of which were not completed until August or September, were in various stages of processing at tile end of the fiscal year. REA officials anticipate that these 16 applicants, as well as the two applicants who completed their applications in April 1987, will receive loans during fiscal year 1988.

We found no indication that REA, for policy reasons, delayed processing any of these applications. In fact, REA officials told us that they took steps towards achieving the minimum lending levels by meeting, in early May 1937, with staff in each REA Area office to review the status of applications on hand and to

anticipate the action and resources that would be needed to process enough applications by the end of the fiscal year to achieve the minimum level.

It appears that REA simply ran out of time. In both 1936 and 1987, by the time REA had before it a sufficient number of completed applications, there was not enough time remaining in the fiscal year to complete the necessary review and to determine whether to award loans and, if so, in what amounts. As we indicated in our opinion of September 17, 1988, with 2 weeks remaining in fiscal year 1986, REA did not expect to achieve the lending level for insured telephone loans. Because of this, we there monitoring REA to ensure that the actions it took on the applications it had received comported with the Impoundment Control Act.

Interviews we had with REA officials for this purpose persuaded us that REA was not delaying applications for policy reasons, such as the general funds policy. The fiscal year 1986 appropriation act provided that REA could not deny or reduce fiscal year 1986 loans on the basis of an applicant's level of general funds. We found that REA complied with this prohibition, and that with two exceptions, was conscientiously processing all applications completed during fiscal year 1986. In those two instances, REA was in the position of having to wait for additional information from the applicants.

REA actions in these two years are distinguishable from its actions in fiscal years 1984 and 1985. REA's failure in 1984 and 1985 to achieve the statutory lending levels for insured loans constituted an unreported impoundment, because those failures resulted not from programmatic considerations, but from REA's application of its general funds policy. In applying the general funds policy, REA administratively disqualified otherwise eligible applicants, thereby substituting its policy judgment for that of the Congress. REA's failure in 1986 and 1987 resulted, however, from programmatic considerations.

While a failure to obligate budget authority raises the question of whether an impoundment exists, not all such failures constitute impoundments within the meaning of the Impoundment Control Act, 2 U.S.C. Sec. 681. When "programmatic" considerations (operational factors which, despite an agency's good faith efforts, impede the obligation of budget authority), rather than policy decisions, result in the failure to obligate budget authority, the failure is not required by the Act to be reported . In our opinion, REA's failure to meet the statutory minimums in fiscal years 1986 and 1987 resulted from programmatic factors--a lack of time together with the receipt of complete loan applications relatively late in the fiscal year--not from policy considerations, and was not required to be reported.

You also asked for our views on whether the Office of Management and Budget's (OMB) procedures for allocating budget authority affect REA's ability to meet the statutory lending levels. REA officials have assured us that 0MB apportions adequate budget authority to allow REA to achieve the minimum levels, assuming REA receives a sufficient number of complete loan applications. We found no evidence that contradicts this assurance. REA officials pointed out to us, however, that OMB requires the agency to request an additional apportionment if the agency wants to lend more than the minimum required by law.

Finally, you asked that we report to you the recommendations e have made to REA and/or the Administrator to bring REA into compliance with the requirements of the annual appropriations acts and the Impoundment Control Act. Although REA has failed to meet the statutory minimum, we found no evidence of an intention by

REA to thwart the will of the Congress by not making loans. The shortfalls resulted, instead, as described above, from programmatic considerations. Consequently, we made no recommendations to REA.

This is not a case where, because of a delay by an agency, funds become unavailable for obligation. The budget authority in question comes from revolving funds; loans which are not completed in one fiscal year can still be made in the next. At the end of fiscal year 1986, REA had before it 20 completed applications requesting a total of almost $118 million in telephone loans; and, at the end of fiscal year 1987, REA had on hand 18 completed loan applications requesting a total of approximately $44 million. These applications, for the most part, were not completed sufficiently early to allow IlEA to process them and award loans in the fiscal year in which the applications were received. However, according to REA officials, loans were made in fiscal year 1987 to all 20 applicants whose applications were pending at the end of fiscal year 1986, and loans will be made in fiscal year 1988 to all 18 applicants with completed applications pending at the end of fiscal year 1987.

We trust that the information we have provided in this letter has been responsive to your request and will be useful to you.

Sincerely yours,

Milton J. Socolar Acting Comptroller General of the United States

1. You noted in your letter that RXA, in its "Loan Processing Status Report," August 10, 1987, stated that it expected to make $218 million of Rural Telephone Bank (direct) loans, but that by mid-September, REA had lowered its estimates and expected to approve only $177 million of direct loans. In this regard, we reviewed the ten loans shown in the August 10 report as scheduled for completion by the end of the fiscal year. REA approved seven of those ten loans in September 1987, and two in the first quarter of fiscal year 1988; REA approval of one application is awaiting completion of an Inspector General's investigation of the borrower.

Of the seven loans approved in September, two were made as insured loans from the Rural Electrification and Telephone Revolving Fund, rather than direct loans from the Rural Telephone Bank as REA expected in August. Another loan was split: part of the loan was a direct loan from the Rural Telephone Bank, and part was an insured loan; in its August report, REA expected to issue only one loan, a direct loan. The remaining three loans were direct loans, as REA had expected, but the amounts of the loans were less than REA anticipated in August. In each of those three instances, the actual cost of the equipment which the borrowers intended to purchase with loan proceeds was less than REA had estimated in August.

2. Because of the preliminary nature of the information provided on the Form 490, REA's success or failure in achieving the statutory minimum lending levels cannot be measured against the estimated loan amounts shown on the Forms 490 which REA has on file. In order to determine the feasibility of a loan, and the type and amount of a loan, REA needs much more information than is available on the Form 490; also, the form states that the amount of loan is "subject to revision after engineering plans are completed."