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**APPROVED**

**NOV 4 - 1975**

*Signed ✓  
11/4*

**THE WHITE HOUSE  
WASHINGTON  
November 4, 1975**

**ACTION  
Last Day: November 5**

*Posted  
11/5  
To archive  
11/5*

**MEMORANDUM FOR  
FROM:  
SUBJECT:**

**THE PRESIDENT  
JIM CANNON  
H.R. 4799 - Rural Electrification  
Act Amendments**

Attached for your consideration is H.R. 4799, sponsored by Representative Poage, which amends the Rural Electrification Act to:

- Expressly authorize the assignment of REA-guaranteed loans;
- Clarify the conditions under which the REA guarantee is incontestable; and
- Require the Secretary of Agriculture to testify before Congressional Agriculture Committees concerning the REA budget.

Additional discussion of the bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 4799 at Tab B.



**APPROVED**  
NOV 4 - 1975



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OCT 30 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 4799 - Rural Electrification  
Act Amendments  
Sponsor - Rep. Poage (D) Texas

Last Day for Action

November 5, 1975 - Wednesday

Purpose

Amends the Rural Electrification Act to (1) expressly authorize the assignment of REA-guaranteed loans, (2) clarify the conditions under which the REA guarantee is incontestable, and (3) require the Secretary of Agriculture to testify before Congressional Agriculture Committees concerning the REA budget.

Agency Recommendations

Office of Management and Budget

Approval

Department of Agriculture

Approval

Department of Justice

Defers to Agriculture (Informally)

Department of the Treasury

No recommendation

Discussion

Under present law, the Administrator of the Rural Electrification Administration is authorized to guarantee loans made to rural telephone and electric systems by lenders other than REA. These are either private loans outside of the budget or "off-budget" loans and the guarantee is incontestable except for fraud or misrepresentation "of which the holder has actual knowledge."

However, the present law does not specifically authorize the assignment of (1) a lender's REA guarantee, along

with the guaranteed loans, to a trustee as security for their bonds, or (2) these guarantees to holders of securities representing beneficial ownership in the guaranteed loans. Moreover, doubts have arisen concerning the incontestability of REA loan guarantees in cases where the holder learns of fraud or misrepresentation after the holder has obtained the guarantee in good faith. This situation reportedly has made it difficult, if not impossible, for certain lenders to borrow at favorable rates in the capital market. To date, all loans guaranteed by REA have been made by the Federal Financing Bank making them effectively "off-budget" direct loans.

H.R. 4799 would amend the Rural Electrification Act of 1936 by:

First, expressly authorizing the assignment of REA-guaranteed loans to the extent provided for in the contract of guarantee executed by the REA Administrator.

Second, clarifying that the holder is vulnerable to loss of the loan guarantee only if he had actual knowledge of fraud or misrepresentation at the time he became a holder.

Third, requiring the Secretary of Agriculture, on or before February 15 of each calendar year beginning in 1976, or such other date as may be specified by the appropriate committee, to testify before the Congressional Agriculture Committees with respect to the Administration's subsequent fiscal year budget request.

In reporting to the Agriculture Committees on H.R. 4799 before the provision concerning the Secretary's REA budget testimony was added, Agriculture supported the bill but expressed opposition to any interpretation of the legislation under which certain loan transactions would be allowed to provide unwarranted tax benefits to some holders of assigned REA loan guarantees. In this regard, the reports of both the House and Senate Committee on the bill state that there is no intention to change REA's existing policy against such transactions. Finally, we have no objection to the requirement for the Secretary to testify on REA's



budget, as it is simply a reflection of the desire of the two legislative committees for better oversight of REA.

*James M. Frey*  
Assistant Director for  
Legislative Reference

Enclosures



THE GENERAL COUNSEL OF THE TREASURY

WASHINGTON, D. C. 20220

OCT 24 1975

Director, Office of Management and Budget  
Executive Office of the President  
Washington, D. C. 20503

Attention: Assistant Director for Legislative  
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 4799, "To amend sections 6, 306, and 308 of the Rural Electrification Act of 1936, as amended."

The enrolled bill, inter alia, would amend section 306 of the Rural Electrification Act of 1936 to provide that a loan guaranteed by the Administrator under that section may be assigned. It would amend section 308 of the Act with regard to the assignability and uncontestability of the REA guarantees.

In a June 9, 1975 report to your office, the Department opposed the clearance of a proposed Agriculture report recommending enactment of H.R. 4799. The Department's report stated that H.R. 4799 is intended to facilitate market financing of the REA guarantee program, and that the amendments were unnecessary and inappropriate because the program is being financed through the Federal Financing Bank. However, your office cleared an Agriculture report dated June 17, 1975 on H.R. 4799 substantially similar to the report opposed by this Department.

In the circumstances, the Department has no recommendation concerning the enrolled enactment.

Sincerely yours,

General Counsel

Richard R. Albrecht



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

October 24, 1975

Honorable James T. Lynn  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Dear Mr. Lynn:

In reply to the request from your office, the following report is submitted on the enrolled enactment H.R. 4799, "To amend sections 6, 306 and 308 of the Rural Electrification Act of 1936, as amended."

This Department recommends that the President approve the bill.

The amendment to section 6 would require the Secretary of Agriculture to testify before the Senate Committee on Agriculture and Forestry and the House Committee on Agriculture and provide justification in detail of the amount of money requested in the budget to be appropriated for the next fiscal year. This is to be on or before February 15 of each calendar year or such other date specified by the appropriate committee.

The amendments to section 306 provide that an REA loan guarantee may be assigned by the lender to the extent provided in the contract of guarantee executed by the Administrator of REA. The absence from Section 306 of the Rural Electrification Act of express provision for pledging or assigning guarantees had raised legal doubts in the financial community whether either pledging or other assignment was authorized. These doubts arose primarily from the definition of a guaranteed loan under Section 306 as "one which is made, held, and serviced by a legally organized lending agency and which is guaranteed by the Administrator hereunder." The question was raised by some lawyers whether the requirement that a guaranteed loan be "held" as well as "made" by the lender foreclosed anyone other than the lender from "holding" a guaranteed loan. While not all attorneys may agree with this restrictive interpretation, provision for agreement concerning assignability of guarantees is clearly desirable if the loan guarantee program is to operate effectively in the capital markets. This specific provision gives REA better control over the assignability of these guarantees.

The amendment to section 308, the incontestability provision, would merely make clear that the fraud or misrepresentation which would bar a holder from enforcing the guarantee must have been known to the holder at the time he acquired the loan. It would do this by substituting for the words

The Honorable James T. Lynn  
October 24, 1975  
Page Two

"of which the holder has actual knowledge," the words "of which the holder had actual knowledge at the time it became a holder." The need for clarifying Section 308 arises from the fact that attorneys for investment bankers and other organizations in the financial community, which are expected to purchase securities issued by REA-guaranteed lenders in reliance on the incontestability provision, have raised doubts concerning the proper interpretation of Section 308. These doubts would be laid to rest by the proposed change in the incontestability provision.

This Department does not believe that enactment of this enrolled bill would have any measurable direct effect on the costs of carrying out the provisions of the Rural Electrification Act of 1936, as amended.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard L. Feltner", with a long horizontal flourish extending to the right.

Richard L. Feltner  
Assistant Secretary

**Department of Justice**  
**Washington, D. C. 20530**

October 30, 1975

Honorable James T. Lynn  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill (H.R. 4799), "To amend sections 6, 306, and 308 of the Rural Electrification Act of 1936, as amended".

H.R. 4799 would expressly authorize assignments of REA loan guarantees thus permitting such lenders to utilize such guarantees to obtain for the rural systems reasonable interest rates. In addition, the bill provides for incontestability of the Government guarantee except for fraud or misrepresentation "of which the holder had actual knowledge at the time it became a holder". Furthermore, H.R. 4799 would require an annual authorization from Congress for each fiscal year beginning after September 30, 1976 of appropriations needed for administration of the Act. This annual authorization would apply to administrative expenses and not to the loan funds used in the operation of the program.

The Department of Justice defers to the Department of Agriculture concerning whether this bill should receive Executive approval.

Sincerely,



Michael M. Uhlmann

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 31

Time: 400pm

FOR ACTION: Paul Leach *pk*  
Max Friedersdorf  
Ken Lazarus *pk*

cc (for information): Jim Cavanaugh  
Jack Marsh

FROM THE STAFF SECRETARY

---

DUE: Date: November 3

Time: noon

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SUBJECT:

H.R. 4799-Rural Electrification Act Amendments

ACTION REQUESTED:

\_\_\_ For Necessary Action

\_\_\_ For Your Recommendations

\_\_\_ Prepare Agenda and Brief

\_\_\_ Draft Reply

For Your Comments

\_\_\_ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

---

K. R. COLE, JR.  
For the President

Date: October 31

Time: 400pm

FOR ACTION: Paul Leach  
Max Friedersdorf  
Ken Lazarus

cc (for information): Jim Cavanaugh  
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: November 24

Time: noon

SUBJECT:

H.R. 4799-Rural Electrification Act Amendments

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection. -- Ken Lazarus 11/4/75

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James H. [Signature] \_\_\_\_\_  
For the President

THE WHITE HOUSE

WASHINGTON

November 4, 1975

MEMORANDUM FOR: JIM CAVANAUGH  
FROM: MAX L. FRIEDERSDORF *M. L.*  
SUBJECT: H. R. 4799 - Rural Electrification Act Amendments

The Office of Legislative Affairs concurs with the agencies  
that the subject bill be signed.

Attachments



RURAL ELECTRIFICATION LOAN PROGRAM  
AMENDMENTS

JULY 14, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FOLEY, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H.R. 4799]

The Committee on Agriculture, to whom was referred the bill (H.R. 4799), to amend sections 306 and 308 of the Rural Electrification Act of 1936, as amended; having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Page 2, at the end of line 8, add the following new section:

SEC. 3. Section 6 of the Rural Electrification Act of 1936, as amended, is amended by striking the period at the end of said section and adding the following: "*Provided*, That the amounts authorized to be appropriated for the purposes specified in this section for each fiscal year ending after September 30, 1976, shall be the sums provided annually by law." and amend the title to read as follows: "To amend sections 6, 306, and 308 of the Rural Electrification Act of 1936, as amended."

PURPOSE AND NEED FOR THE LEGISLATION

H.R. 4799 amends sections 6, 306 and 308 of the Rural Electrification Act of 1936, as amended. The amendments to sections 306 and 308 (1) add statutory language which expressly authorizes the assignment of REA guarantees; and (2) clarify the provision of section 308 which provides for incontestability of the Government guarantee "except for fraud or misrepresentation of which the holder has actual knowledge."

The 1973 amendments to the Rural Electrification Act (Public Law 93-32) vested in the Administrator of REA the authority to guarantee loans made to rural electric and telephone systems by lenders other than REA. The Committee believes that the amendments proposed by this bill would contribute significantly to the efficient implementation of the guaranteed loan program by permitting such lenders to utilize REA guarantees to obtain for the rural systems the reasonable interest rates which they require.

The change made by H.R. 4799 in section 306 adds language to expressly authorize the assignment of REA guarantees so as to eliminate questions which have arisen concerning the assignability and incontestability of REA loan guarantees. The assignment or pledge of guarantees is essential if REA-approved lenders are to be able to utilize guarantees to obtain funds at the lowest possible interest rates for the benefit of the rural systems. To achieve this end, lenders must be able effectively to assign or pledge their REA guarantees, along with the guaranteed loans, to a trustee as security for their bonds, or assign these guarantees to holders of securities representing beneficial ownership in the guaranteed loans.

The absence from section 306 of express provision for assigning or pledging guarantees has caused doubts whether any such assignment or pledge is authorized. Should such doubts ultimately prevail in the financial community, it may prove impossible for REA-approved lenders to borrow in the capital market at the favorable rates contemplated by the guarantee provision of the Rural Electrification Act. The bill furnishes the assignability language required to erase these doubts. It would also leave in the complete control of the REA Administrator the extent of permissible assignments. Such commitment of assignability authority to Government agency discretion would be consistent with the handling of guarantee assignments in other Federal statutes.

The second technical amendment of the bill would clarify in an important respect section 308, which provides for REA contracts of insurance and guarantee to be supported by the full faith and credit of the United States. Section 308 now stipulates that the Government's full faith and credit obligation shall be "incontestable except for fraud or misrepresentation of which the holder has actual knowledge." Questions have been raised whether this language might be construed to bar enforcement of an REA guarantee held by an assignee, pledgee or other holder who first learned of fraud or misrepresentation on the part of the original lender after the holder had acquired the guarantee in good faith. The proposed amendment merely makes clear the applicability of the equitable rule that an assignee's vulnerability to defenses of fraud or misrepresentation arises only if the assignee had actual knowledge of the fraud or misrepresentation at the time it became a holder of the guarantee.

Finally, the bill contains an amendment to the Rural Electrification Act which would enable the Committee to exercise more effective oversight concerning the operations of the program. The amendment would require an annual authorization from the Congress for each fiscal year beginning after September 30, 1976, of appropriations needed for administration of the Act. The requirement would apply to

salaries and expenses, investigations, publications, and reports, but not to the loan funds used in the operation of the program such as funds used for insured and guaranteed loans.

#### SECTION-BY-SECTION ANALYSIS OF H.R. 4799

Section 1 of the bill amends section 306 of the Rural Electrification Act of 1936, as amended, by expressly authorizing assignment of REA-guaranteed loans, including the related guarantee, to the extent permitted by the REA Administrator.

Section 2 of the bill clarifies section 308 of the Rural Electrification Act, which provides for REA contracts of insurance and guarantee to be supported by the full faith and credit of the United States, to assure that such contracts shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

Section 3 of the bill amends section 6 of the Rural Electrification Act to require that there must be an annual authorization from the Congress for each fiscal year ending after September 30, 1976, before appropriations can be made for administrative expenses, and the cost of studies, investigations, publications and reports. The requirement would not be a prerequisite, however, to the use of funds for the making of loans under the program.

#### COMMITTEE CONSIDERATION

H.R. 4799 was introduced on March 12, 1975, and referred to the Conservation and Credit Subcommittee. Since this bill contains primarily technical and clarifying amendments, the Subcommittee held one day of hearing and an open business meeting on June 12, 1975. Testimony was heard from the Department of Agriculture and the National Rural Electrical Cooperative Association; both were in strong support of H.R. 4799.

In an open business meeting, following the hearing, in the presence of a quorum, the Subcommittee voted unanimously that the bill be reported to the full Committee.

In the Subcommittee consideration of H.R. 4799, Mr. de la Garza proposed an amendment to provide that for each fiscal year beginning after September 30, 1976, an authorization is required from the Congress before funds may be appropriated for the purposes of section 6 of the Act, namely, for administrative and related expenses. The amendment was adopted unanimously.

The amendment was offered to assure that the Committee would be able to exercise effective oversight concerning the program and is similar to amendments being proposed to other agricultural legislation.

The letter from the U.S. Department of Agriculture containing the official Administration position was not received until H.R. 4799 had been reported to the full Committee. The letter contained a statement regarding leverage leasing, a matter which was not the subject of the bill and was not considered in the hearing before the Subcommittee.

The Committee notes that the Department of Agriculture addresses itself in its report on H.R. 4799 to the use of REA loan guarantees in leveraged lease transactions. The Department specifically states that



its position on this bill is predicated on the assumption that the intent of the legislation is not to permit the assignment of guaranteed loans or loan guarantees to lessors in leveraged leases." The Committee in recommending approval of this legislation does not in any way seek to prohibit or approve the use of REA guarantees in leveraged lease financing.

In an open business meeting on June 24, 1975, H.R. 4799 was reported, as amended, and recommended to pass by a unanimous voice vote in the presence of a quorum.

#### ADMINISTRATION POSITION

The following letter forwarded to the Chairman by William Erwin, Assistant Secretary, dated June 17, 1975, sets forth the position of the Department of Agriculture on H.R. 4799:

DEPARTMENT OF AGRICULTURE,  
OFFICE OF THE SECRETARY,  
Washington, D.C., June 17, 1975.

HON. THOMAS S. FOLEY,  
Chairman, Committee on Agriculture,  
House of Representatives.

DEAR MR. CHAIRMAN: This is in response to your letter of April 10, 1975, requesting a report on H.R. 4799, a bill "To amend sections 306 and 308 of the Rural Electrification Act of 1936, as amended."

This Department recommends that the bill be enacted.

H.R. 4799 would in general: (1) add statutory language which would expressly authorize the assignment of REA guarantees; and (2) clarify the provision of section 308 which provides for incontestability of the Government guarantee "except for fraud or misrepresentation of which the holder has actual knowledge."

This Department does not believe enactment of H.R. 4799 would have any measurable direct effect on the costs of carrying out the provisions of the Rural Electrification Act of 1936, as amended.

This Department believes that enactment of this bill would clarify the guarantee provision in the Act and facilitate the obtaining of funds in the money market for bulk power facility financing under the REA "guarantee program."

The Department's position on this bill is predicated on the assumption that the intent of the legislation is not to permit the assignment of guaranteed loans or loan guarantees to lessors in leveraged leases. If such were the intent the Department would oppose enactment of the bill.

The Office of Management and Budget advises that there is no objection to the presentation of this report.

Sincerely,

WILLIAM ERWIN,  
Assistant Secretary.

#### CURRENT AND FIVE SUBSEQUENT FISCAL YEAR COST ESTIMATE

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee estimates that no measurable cost

would be incurred by the Federal Government during the current and the five subsequent fiscal years as a result of the enactment of this legislation. The Committee estimates that only minimal administrative expenses would be incurred in carrying out the provisions of this bill.

The same cost estimate was submitted to the Committee by the Department of Agriculture.

#### INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4), rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 4799 will have no inflationary impact on the national economy.

#### BUDGET ACT COMPLIANCE (SECTION 208 AND SECTION 403)

The provisions of clause 1(3)(B) and clause 1(3)(C) of rule XI of the House of Representatives and section 308(a) and section 403 of the Congressional Budget Act of 1974 (relating to estimates of new budget authority or new or increased tax expenditures and the estimate and comparison prepared by the Director of the Congressional Budget Office), are not considered applicable because the bill should have no effect on existing spending estimates for fiscal year 1976.

#### OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of Rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by S. 435.

No specific oversight activities, other than the hearings accompanying the Committee's consideration of H.R. 4799, were made by the Committee, within the definition of Rule XI of the House of Representatives.

#### CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

#### RURAL ELECTRIFICATION ACT OF 1936, AS AMENDED

\* \* \* \* \*

SEC. 6. For the purpose of administering this Act and for the purpose of making the studies, investigations, publications, and reports herein provided for, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as shall be necessary [.] *Provided, That the amounts authorized to be appropriated for the purposes specified in this section for each fiscal*

year ending after September 30, 1976, shall be the sums provided annually by law.

\* \* \* \* \*

SEC. 306. GUARANTEED LOANS; ACCOMMODATION AND SUBORDINATION OF LIENS.—The Administrator may provide financial assistance to borrowers for purposes provided in the Rural Electrification Act of 1936, as amended, by guaranteeing loans, in the full amount thereof, made by the Rural Telephone Bank, National Rural Utilities Cooperative Finance Corporation, and any other legally organized lending agency, or by accommodating or subordinating liens or mortgages in the fund held by the Administrator as owner or as trustee or custodian for purchasers of notes from the fund, or by any combination of such guarantee, accommodation, or subordination. No fees or charges shall be assessed for any such guarantee, accommodation, or subordination. Guaranteed loans shall bear interest at the rate agreed upon by the borrower and the lender. Guaranteed loans, and accommodation and subordination of liens or mortgages, may be made concurrently with a loan insured at the standard rate. The amount of guaranteed loans shall be subject only to such limitations as to amounts as may be authorized from time to time by the Congress of the United States: *Provided*, That any amounts guaranteed hereunder shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitation imposed by statute on expenditures and net lending (budget outlays) of the United States. As used in this title, a guaranteed loan is one which is *initially* made, held, and serviced by a legally organized lending agency and which is guaranteed by the Administrator hereunder. *A guaranteed loan, including the related guarantee, may be assigned to the extent provided in the contract of guarantee executed by the Administrator under this title; the assignability of such loan and guarantee shall be governed exclusively by said contract of guarantee.*

\* \* \* \* \*

SEC. 308. FULL FAITH AND CREDIT OF THE UNITED STATES.—Any contract of insurance or guarantee executed by the Administrator under this title shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation [of which the holder has actual knowledge] of which the holder had actual knowledge at the time it became a holder.



RURAL ELECTRIFICATION LOAN PROGRAM  
AMENDMENTS

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OCTOBER 9 (legislative day, SEPTEMBER 11), 1975.—Ordered to be printed

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Mr. McGOVERN, from the Committee on Agriculture and Forestry, submitted the following

## REPORT

[To accompany H.R. 4799]

The Committee on Agriculture and Forestry, to which was referred the bill (H.R. 4799) to amend sections 6, 306, and 308 of the Rural Electrification Act of 1936, as amended, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

## SHORT EXPLANATION

H.R. 4799, as amended by the Committee, amends the Rural Electrification Act of 1936 to (1) authorize expressly assignment of REA-guaranteed loans, and (2) clarify the Act by providing that a person's vulnerability to the defenses of fraud or misrepresentation arises only if he had actual knowledge of the fraud or misrepresentation at the time he became a holder of an REA guarantee. The bill also requires that the Secretary of Agriculture appear annually before the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry and provide justification for the amount requested to be appropriated in the President's budget for necessary administrative expenses in carrying out the Rural Electrification Act.

## COMMITTEE AMENDMENT

## I.

The Committee amendment (1) strikes the requirement in section 3 of the bill that there must be an annual authorization from the Congress for each fiscal year ending after September 30, 1976, before appropriations could be made for REA administrative expenses and (2)



substitutes therefor a requirement that the Secretary of Agriculture testify annually before the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry and provide justification in detail of the amount requested in the budget to be appropriated for administrative expenses for the next fiscal year.

## II.

The appearance of the Secretary of Agriculture before the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry, as required by the Committee amendment to H.R. 4799, should result in more efficient and effective oversight of REA programs. The appearance of the Secretary will serve to facilitate the work of the Committees under the Congressional Budget and Impoundment Control Act of 1974. The Act establishes a Congressional budget process through which all spending decisions of the Federal Government are to be related to each other and to revenues. New and expanded responsibilities are vested in all standing committees by the 1974 Act.

As part of the budget process, the Act requires that reports concerning the budget be prepared by each standing committee of both Houses by March 15. The reports are to be submitted to the Committees on the Budget of both Houses and include the standing committee's views and estimates with respect to the contents of the first concurrent resolution on the budget (including the appropriate level of total budget outlays and of total new budget authority) as it relates to matters within the committee's jurisdiction.

### BACKGROUND AND PURPOSE

H.R. 4799 adds clarifying language to section 306 of the Rural Electrification Act of 1936 to authorize expressly the assignment of REA guarantees. The assignability of guarantees is essential if REA-approved lenders are to be able to obtain funds—at the lowest possible interest rates—for the benefit of the rural electric and telephone systems.

The absence from section 306 of express provision for assigning or pledging guarantees has caused doubts whether such assignment is authorized. The bill furnishes the language required to erase these doubts. It also leaves at the discretion of the REA Administrator the extent and incidents of permissible assignments. (The intent of the bill is to make no change with respect to the assignment of guaranteed loans or loan guarantees to lessors in leveraged leases.)

The bill clarifies section 308 of the Rural Electrification Act of 1936, which provides that REA contracts of insurance and guarantee are obligations supported by the full faith and credit of the United States. Section 308 now provides that the Government's full faith and credit obligation shall be "incontestable except for fraud or misrepresentation of which the holder has actual knowledge." Questions have been raised whether this language might be construed to bar enforcement of an REA guarantee held by an assignee, pledgee, or other holder who first learned of fraud or misrepresentation on the part of the original lender after the holder had acquired the guarantee in good faith. The amendment merely makes clear the applicability of

the equitable rule that an assignee's vulnerability to the defenses of fraud or misrepresentation arises only if the assignee had actual knowledge of the fraud or misrepresentation at the time it became a holder of the guarantee.

### SECTION-BY-SECTION ANALYSIS

#### *Section 1. Assignability*

Section 1 of the bill amends section 306 of the Rural Electrification Act of 1936 to authorize expressly the assignment of REA-guaranteed loans, including the related guarantee, to the extent permitted by the Administrator of the Rural Electrification Administration.

In addition, section 1 inserts the word "initially" in the sixth sentence of section 306 of the Rural Electrification Act of 1936 so as to provide that a guaranteed loan under Title III of the Act is one which is "initially" made, held, and serviced by a legally organized lending agency and which is guaranteed by the Administrator.

#### *Section 2. Full Faith and Credit*

Section 2 amends section 308 of the Rural Electrification Act of 1936. Section 308 provides that REA contracts of insurance or guarantee are obligations supported by the full faith and credit of the United States. Section 2 clarifies section 308 to assure that such contracts are incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

#### *Section 3. Appearance by the Secretary*

Section 3 amends section 6 of the Rural Electrification Act of 1936 to require that the Secretary of Agriculture testify annually before the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry and provide justification in detail of the amount requested in the budget to be appropriated for the next fiscal year for the purpose of administering the Rural Electrification Act. The Secretary is to appear on or before February 15 of each calendar year beginning with calendar year 1976, or such other date as may be specified by the appropriate committee.

### DEPARTMENTAL VIEWS

The Committee has received no report from the Department of Agriculture on H.R. 4799. However, in a letter to Chairman Foley of the House Committee on Agriculture dated June 17, 1975, the Department recommended the enactment of the legislation as introduced. The letter reads as follows:

DEPARTMENT OF AGRICULTURE,  
OFFICE OF THE SECRETARY,  
Washington, D.C., June 17, 1975.

HON. THOMAS S. FOLEY,  
Chairman, Committee on Agriculture,  
House of Representatives.

DEAR MR. CHAIRMAN: This is in response to your letter of April 10, 1975, requesting a report on H.R. 4799, a bill "To amend sections 306 and 308 of the Rural Electrification Act of 1936, as amended."

This Department recommends that the bill be enacted.

H.R. 4799 would in general: (1) add statutory language which would expressly authorize the assignment of REA guarantees; and (2) clarify the provision of section 308 which provides for incontestability of the Government guarantee "except for fraud or misrepresentation of which the holder has actual knowledge."

This Department does not believe enactment of H.R. 4799 would have any measurable direct effect on the costs of carrying out the provisions of the Rural Electrification Act of 1936, as amended.

This Department believes that enactment of this bill would clarify the guarantee provision in the Act and facilitate the obtaining of funds in the money market for bulk power facility financing under the REA "guarantee program."

The Department's position on this bill is predicated on the assumption that the intent of the legislation is not to permit the assignment of guaranteed loans or loan guarantees to lessors in leveraged leases. If such were the intent the Department would oppose enactment of the bill.

The Office of Management and Budget advises that there is no objection to the presentation of this report.

Sincerely,

WILLIAM ERWIN,  
Assistant Secretary.

#### COST ESTIMATE

In accordance with section 252 of the Legislative Reorganization Act of 1970, the Committee estimates that no measurable cost would be incurred by the Federal Government during the current and the five subsequent fiscal years as a result of the enactment of H.R. 4799. The Committee estimates that only minimal administrative expenses would be incurred in carrying out the provisions of the bill.

No estimate of costs was submitted to the Committee by any Federal agency. However, the Committee's cost estimate is in accord with the estimate made by the Department of Agriculture. In a letter dated June 17, 1975, to Chairman Foley of the House Committee on Agriculture, Assistant Secretary of Agriculture William Erwin stated that "this Department does not believe enactment of H.R. 4799 would have any measurable effect on the costs of carrying out the provisions of the Rural Electrification Act of 1936, as amended."

#### CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### RURAL ELECTRIFICATION ACT OF 1936, AS AMENDED

SEC. 6. For the purpose of administering this Act and for the purpose of making the studies, investigations, publications, and re-

ports herein provided for, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as shall be necessary. *On or before February 15 of each calendar year beginning with calendar year 1976, or such other date as may be specified by the appropriate committee, the Secretary of Agriculture shall testify before the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry and provide justification in detail of the amount requested in the budget to be appropriated for the next fiscal year for the purpose of administering this Act and for the purpose of making the studies, investigations, publications, and reports herein authorized.*

\* \* \* \* \*

SEC. 306. GUARANTEED LOANS; ACCOMMODATION AND SUBORDINATION OF LIENS.—The Administrator may provide financial assistance to borrowers for purposes provided in the Rural Electrification Act of 1936, as amended, by guaranteeing loans, in the full amount thereof, made by the Rural Telephone Bank, National Rural Utilities Cooperative Finance Corporation, and any other legally organized lending agency, or by accommodating or subordinating liens or mortgages in the fund held by the Administrator as owner or as trustee or custodian for purchasers of notes from the fund, or by any combination of such guarantee, accommodation, or subordination. No fees or charges shall be assessed for any such guarantee, accommodation, or subordination. Guaranteed loans shall bear interest at the rate agreed upon by the borrower and the lender. Guaranteed loans, and accommodation and subordination of liens or mortgages, may be made concurrently with a loan insured at the standard rate. The amount of guaranteed loans shall be subject only to such limitations as to amounts as may be authorized from time to time by the Congress of the United States: *Provided*, That any amounts guaranteed hereunder shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitation imposed by statute on expenditures and net lending (budget outlays) of the United States. As used in this title, a guaranteed loan is one which is *initially* made, held, and serviced by a legally organized lending agency and which is guaranteed by the Administrator hereunder. *A guaranteed loan, including the related guarantee, may be assigned to the extent provided in the contract of guarantee executed by the Administrator under this title; the assignability of such loan and guarantee shall be governed exclusively by said contract of guarantee.*

\* \* \* \* \*

SEC. 308. FULL FAITH AND CREDIT OF THE UNITED STATES.—Any contract of insurance or guarantee executed by the Administrator under this title shall be an obligation supported by the full faith and credit of the United States and incontestable except for fraud or misrepresentation [of which the holder has actual knowledge] *of which the holder had actual knowledge at the time it became a holder.*



# Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Tuesday, the fourteenth day of January,  
one thousand nine hundred and seventy-five*

## An Act

To amend sections 6, 306, and 308 of the Rural Electrification Act of 1936,  
as amended.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 306 of the Rural Electrification Act of 1936, as amended, is amended—*

(a) by adding at the end of said section 306 the following: "A guaranteed loan, including the related guarantee, may be assigned to the extent provided in the contract of guarantee executed by the Administrator under this title; the assignability of such loan and guarantee shall be governed exclusively by said contract of guarantee."; and

(b) by inserting the word "initially" before the words "made, held, and serviced" in the sixth sentence of said section 306.

SEC. 2. Section 308 of the Rural Electrification Act of 1936, as amended, is amended by striking therefrom the words "of which the holder has actual knowledge" and substituting in lieu thereof the words "of which the holder had actual knowledge at the time it became a holder".

SEC. 3. Section 6 of the Rural Electrification Act of 1936, as amended, is amended by adding at the end thereof the following new sentence: "On or before February 15 of each calendar year beginning with calendar year 1976, or such other date as may be specified by the appropriate committee, the Secretary of Agriculture shall testify before the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry and provide justification in detail of the amount requested in the budget to be appropriated for the next fiscal year for the purpose of administering this Act and for the purpose of making the studies, investigations, publications, and reports herein authorized."

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*



October 24, 1975

Dear Mr. Director:

The following bill was received at the White House on October 24th:

H.R. 4799

Please let the President have reports and recommendations as to the approval of this bill as soon as possible.

Sincerely,

Robert D. Linder  
Chief Executive Clerk

The Honorable James T. Lynn  
Director  
Office of Management and Budget  
Washington, D. C.