

(c) *Tribal*. The term “tribal” refers to an Indian tribe or Alaskan community described in paragraph (b) of this section, and “tribal members” refers to the members of such a tribe or community.

(d) *Reservation*. The term “reservation” means the lands or interests therein within the tribe’s reservation as determined by the Secretary of the Interior, or within a community in Alaska incorporated by the Secretary of the Interior pursuant to the Indian Reorganization Act.

(e) *Mortgage*. The term “mortgage” includes deeds of trust and other liens on land.

§ 1823.403 Eligibility.

To be eligible for a loan, the tribe must:

(a) Be without adequate uncommitted funds to acquire needed land within the reservation.

(b) Be unable to obtain sufficient credit elsewhere at reasonable rates and terms to finance the proposed land acquisition.

(c) Show reasonable prospects of repaying the loan as determined by:

(1) A feasible plan for the use of the tribe’s land.

(2) Satisfactory evidence of financial ability to develop and operate the land.

(3) A satisfactory management and repayment plan.

§ 1823.404 Loan purposes.

Loan funds may be used by the tribe to:

(a) Acquire land within the reservation for use of the tribe or its members. The land acquisition may be made for purposes such as elimination of fractional heirships and rounding out farming and ranching units.

(b) Pay costs incidental to land acquisition, such as those for appraisals, title clearance, legal services, land surveys, and loan closing.

§ 1823.405 Ineligible loan purposes.

Loan funds may not be used for any improvement or development purposes, acquisition or repair of buildings or personal property, payment of operating costs, refinancing of debts, payment of finder’s fees, or similar costs. Loans also may not be made for any

purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in exhibit M of subpart G of part 1940 of this chapter.

[53 FR 7332, Mar. 8, 1988]

§ 1823.406 Rates and terms.

Each loan will be amortized over a period not to exceed 40 years. Upon request of the applicant, the interest rate charged by FmHA or its successor agency under Public Law 103-354 will be the lower of the interest rates in effect at the time of loan approval or loan closing. If an applicant does not indicate a choice, the loan will be closed at the interest rate in effect at the time of loan approval. Interest rates are specified in exhibit B of FmHA or its successor agency under Public Law 103-354 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office) for the type assistance involved.

[39 FR 3662, Jan. 29, 1974, as amended at 51 FR 6733, Feb. 26, 1986]

§ 1823.407 Use of acquired land.

The land acquired with the FmHA or its successor agency under Public Law 103-354 loan may be leased or sold to tribal members for dwelling, farming, grazing, recreational, and other purposes approved by the National Office as beneficial to the tribe or its members. The plan for use of the land must have the approval of the tribal council or other authorized governing body, and should be in accordance with the recommendations of appropriate Bureau of Indian Affairs (BIA) officials. It should also be consistent with the land use in the area unless other uses are justified. The plan should make maximum use of cost sharing and technical assistance of Federal and State programs.

§ 1823.408 Special requirements.

(a) *Loan authorization*. The tribe will take appropriate action to authorize obtaining and giving security for the loan, using exhibit B of this subpart N, Tribal Council Resolution, as a guide.

(b) *Right to mortgage*. If a mortgage is to be obtained on trust or restricted

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property and the tribe's constitution or charter does not specifically authorize a mortgage of such property, the mortgage must be authorized by tribal referendum.

(c) *Waiver of immunity.* The appropriate tribal official(s) will execute on behalf of the tribe and in favor of FmHA or its successor agency under Public Law 103-354 a waiver of any immunity from suit or liability which it possesses. The waiver will be approved by the Secretary of the Interior or his authorized representative.

(d) *Mortgages or assignments to third parties.* At the time of loan closing an agreement will be obtained from the tribe that as long as any indebtedness on the loan is outstanding it will not, without the written consent of FmHA or its successor agency under Public Law 103-354;

(1) Give assignments or pledges to other parties of income, revenue, or other property assigned or pledged to FmHA or its successor agency under Public Law 103-354.

(2) Mortgage, sell, or otherwise dispose of any land (except sales to tribal members for market value) regardless of whether it is or is not mortgaged to FmHA or its successor agency under Public Law 103-354.

(3) This agreement will be submitted to the Office of the General Counsel (OGC) for review as to content and validity. For trust lands, a copy will be forwarded to the BIA. For other than trust lands, it will be recorded in the land records if OGC advises that such recordation is legally necessary.

(e) *Land acquisition, debt service, and reserve accounts.* The following accounts will be established at the time of loan closing. A properly bonded official of the tribe will receive the monies for each account and issue receipts therefor. The bonded official will deposit all such monies in the appropriate trust or counter-signature accounts. As a basis for withdrawals, the deposit agreement for each account will require the signatures of appropriate tribal official(s) and the FmHA or its successor agency under Public Law 103-354 County Supervisor or a BIA official, depending on whether the account is a BIA trust account or an FmHA or its successor agency under

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Public Law 103-354 supervised account in a commercial bank.

(1) *Land acquisition account.* The loan funds will be deposited in this account which will be established as a "Supervised Bank Account." If funds in this account exceed \$100,000, it shall be secured by the financial institution in advance in accordance with U.S. Treasury Department Circular No. 176.

(2) *Debt service account.* A debt service account will be established at the time of loan closing for deposit of income assigned to FmHA or its successor agency under Public Law 103-354 to be used in making repayments on the loan and payments to the reserve account.

(3) *Reserve account.* This account will be established for debt service reserve purposes. On or before the first installment due date, an amount equal to one-tenth ($\frac{1}{10}$) of the amount to be paid annually on the loan will be deposited in this reserve account. An equal amount will be deposited in the account during each succeeding year until a full annual payment is accumulated.

(i) Funds in the reserve account may be used to make repayments on the loan when the tribe cannot meet the installments from other sources as they fall due. Any funds used for that purpose will be replaced as soon as possible before the next installment due date.

(ii) The reserve fund may be invested in short-term investments that are issued, guaranteed, or insured by the Federal or a State Government and name FmHA or its successor agency under Public Law 103-354 as co-owner.

[39 FR 3662, Jan. 29, 1974, as amended at 46 FR 36106, July 14, 1981]

§ 1823.409 Security.

All loans will be secured in a manner that will adequately protect the interests of FmHA or its successor agency under Public Law 103-354. Ordinarily, the security will include a lien on land acquired with loan funds plus assignment(s) of income. However, the security may consist only of assignments of income if the State Director determines that it will provide as good or better security than the land acquired with loan funds. Such security may be supplemented by security interests in