

§ 1941.18

7 CFR Ch. XVIII (1-1-05 Edition)

Refer to subpart LL of part 2000 of this chapter, "Memorandum of Understanding Between FmHA or its successor agency under Public Law 103-354 and the U.S. Fish and Wildlife Service," for assistance in implementation.

(e) If the purpose of the loan is to finance a nonfarm enterprise.

[53 FR 35684, Sept. 14, 1988, as amended at 58 FR 48286, Sept. 15, 1993; 62 FR 9354, Mar. 3, 1997; 68 FR 62224, Nov. 3, 2003]

§ 1941.18 Rates and terms.

(a) *Rates.* Upon request of the applicant, the interest rate charged by the Agency 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 the Agency Instruction 440.1 (available in the Agency or its successor agency under Public Law 103-354 office) for the type of assistance involved. A lower rate may be established for a limited resource applicant subject to the following:

(1) An applicant will receive the lower rate provided:

(i) The applicant meets the conditions of the definition for a limited resource applicant set forth in §1941.4 of this subpart.

(ii) The Farm and Home Plan and/or Nonagricultural Enterprise Analysis, when appropriate, indicates that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(2) A borrower with Limited Resource interest rates will be reviewed each year at the time the analysis is conducted (see §1924.55 of subpart B of part 1924 of this chapter) and at any time a servicing action such as consolidation, rescheduling or deferral is taken to determine what interest rate should be charged. The rate may be increased in increments of whole numbers until it reaches the current regular interest rate for the loan at the time of the rate increase. (See §1951.25 of subpart A of part 1951 of this chapter.)

(b) *Terms.* (1) The final maturity date for each loan cannot exceed 7 years from the date of the promissory note.

The first installment must be scheduled for payment within 18 months of loan closing.

(2) Loan funds used to pay annual operating expenses or bills incurred for such purposes for the crop year being financed will normally be scheduled for payment within 12 months, but no later than 18 months, from the date the loan is closed when marketing plans extend beyond 12 months. When an OL loan for annual production purposes is scheduled for repayment in one installment, the installment must fall due no later than 18 months from the date of loan closing. Individual marketing circumstance may warrant repayment schedules which are longer than 18 months. Such factors as establishing a new enterprise, developing a farm, purchasing feed while feed crops are being established, marketing plans, or during recovery from a disaster or economic reverses, can be considered as reasons for a longer repayment period on loans for annual operating purposes. When longer than normal repayment terms are used for annual operating purposes, crops and/or livestock produced for sale will not be considered sufficient security. The County Supervisor may use Form FmHA or its successor agency under Public Law 103-354 440-9, "Supplementary Payment Agreement," for borrowers who receive substantial income from which payment is to be made before their installment due date.

(3) Advances for purposes other than annual operating expenses will be scheduled for payment over the minimum period necessary considering the applicant's ability to pay and the useful life of the security, but not in excess of 7 years.

(4) When conditions warrant, installment scheduled in accordance with paragraph (b)(3) of this section may include equal, unequal, or balloon installments. In each case warranting balloon installments, there must be adequate collateral for the loan at the time the balloon payment is due. Circumstances which warrant balloon installments are factors such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established or during recovery from a disaster, or economic reverses.

In *no case* will annual crops be used as the sole collateral securing a balloon installment. A loan with a balloon installment must be adequately secured by hard security, which may include foundation stock, farm equipment and/or real estate. The amount of the balloon installment should not exceed that which the borrower could reasonably expect to pay during a maximum additional 7-year period.

[53 FR 35684, Sept. 14, 1988, as amended at 55 FR 21527, May 25, 1990; 57 FR 18676, Apr. 30, 1992; 57 FR 37400, Aug. 19, 1992; 61 FR 35925, July 9, 1996; 68 FR 62224, Nov. 3, 2003]

§ 1941.19 Security.

Primary security must be available for the loan. Any additional security available up to and including 150 percent of the loan amount also will be taken. Security in excess of 150 percent of the loan amount will only be taken when it is not practical to separate the property, i.e., same type of livestock (dairy cows, brood sows). In cases when a loan is being made in conjunction with a servicing action, the security requirements as stated in subpart S of part 1951 of this chapter will prevail. In unusual cases, the loan approval official may require a cosigner in accordance with §1910.3 (d) of subpart A of part 1910 of this chapter or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(a) *Chattels.* (1) The loan must be secured by a first lien on all property or products acquired, produced, or refinanced with loan funds.

(2) If the security for the loan under paragraph (a)(1) of this section is not at least equal to 150 percent of the loan amount, the best lien obtainable will be taken on other chattel security owned by the applicant, if available, up to the point that security for the loan at least equals 150 percent of the loan amount.

(i) When there are several alternatives available (cattle, machinery), any one of which will meet the security requirements of this section, the approval official generally has the discretion to select the best alternative for obtaining security.

(ii) When alternatives exist and the applicant has a preference as to the property to be taken for security, how-

ever, the approval official will honor the preference so long as the requirements of paragraphs (a)(1) and (2) of this section are met.

(3) To comply with the 150 percent requirement, security values will be established as follows:

(i) For the purposes of loan making only, the security value of the crop and/or livestock production is presumed to be 100 percent of the amount loaned for annual operating and family living expenses listed on Form FmHA or its successor agency under Public Law 103-354 431-2, "Farm and Home Plan," or other acceptable plan of operation.

(ii) The specific livestock and/or equipment to be taken as security, along with the value of the security, will be documented in the case file. This information will be obtained from values established in accordance with §1941.25 of this subpart.

(b) *Real estate.* The loan approval official will require a lien on all or part of the applicant's real estate as security when chattel security alone is not at least equal to 150 percent of the amount of the loan. Different lien positions on real estate are considered separate and identifiable collateral. Real estate taken as security, along with its value established in accordance with §1941.25 of this subpart, will be documented in the case file. If the applicant disagrees with the values established, FmHA or its successor agency under Public Law 103-354 will accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FmHA or its successor agency under Public Law 103-354 requirements.

(1) Security may also include assignments of leases or leasehold interests having mortgageable value, revenues, royalties from mineral rights, patents and copyrights, and pledges of security by third parties.

(2) Advice on obtaining security will be received from OGC when necessary.

(c) *Exceptions.* The County Supervisor will clearly document in the file when security is not taken for any of the following reasons:

(1) A lien will not be taken on property when it will prevent the applicant, or members of an entity applicant,