

§ 1943.17

the contract terms. The deed must be held in trust by a bonded agent until transferred to the buyer. Upon buyer's default, the seller must give the Agency written notice of the default and a reasonable opportunity to cure the default. Any sums advanced by the Agency must be repaid by the borrower.

(b) Make capital improvements. Examples of items that the Agency may authorize the use of FO funds for include, but are not limited to, the construction, purchase and improvement of farm dwellings, service buildings, and facilities that can be made fixtures to the real estate. In the case of leased property, the borrower must have a lease to ensure use of the improvement over its useful life or to ensure that the borrower receives compensation for any remaining economic life upon termination of the lease.

(c) Promote soil and water conservation and protection. Examples include the correction of well-defined, hazardous environmental conditions, and the construction or installation of tiles, terraces, and waterways.

(d) Pay closing costs.

(e) Refinance a bridge loan if the following conditions are met:

(1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;

(2) Direct FO funds were not available to fund the loan at the time of approval;

(3) The loan to be refinanced is temporary financing; and

(4) The loan was made by a commercial or cooperative lender.

[62 FR 9356, Mar. 3, 1997, as amended at 62 FR 28619, May 27, 1997; 68 FR 7698, Feb. 18, 2003]

§ 1943.17 Loan limitations.

(a) An FO loan will not be approved if:

(1) The total outstanding direct FO, Soil and Water (SW) or Recreation (RL) loan principal balance including the new loan owed by the applicant will exceed the lesser of \$200,000 or the market value of the farm or other security.

(2) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation cannot be conducted due to the distance between tracts or due to inad-

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equated rights-of-way or public roads between tracts.

(3) The limitation found in § 1943.29 (b) of this subpart is exceeded.

(b) Loans 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 to subpart G of part 1940 of this chapter. Refer to FmHA Instruction 2000-LL, "Memorandum of Understanding Between FmHA or its successor agency under Public Law 103-354 and U.S. Fish and Wildlife Service," for assistance in implementation.

(c) The purpose of the loan is to finance a nonfarm enterprise.

[53 FR 35692, Sept. 15, 1988, as amended at 58 FR 48282, 48288, Sept. 15, 1993; 59 FR 25800, May 18, 1994; 62 FR 9356, Mar. 3, 1997; 68 FR 62224, Nov. 3, 2003]

§ 1943.18 Rates and terms.

(a) *Terms of loans.* Each loan will be scheduled for repayment over a period not to exceed 40 years from the date of the note or such shorter period as may be necessary to assure the loan will be adequately secured, taking into account the probable depreciation of the security. The loan approval official will also consider the repayment ability of the applicant, as reflected in the completed Form FmHA or its successor agency under Public Law 103-354 431-2, "Farm and Home Plan," or other similar plan of operation acceptable to FmHA or its successor agency under Public Law 103-354, when setting the term. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for Form FmHA or its successor agency under Public Law 103-354 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of at least partial interest, for the first five years.

(b) *Interest rate.* 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 the 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 Instruction 440.1 (available in any FmHA or its successor agency under Public Law 103-354 office) for the type of assistance involved. A lower rate is established in this exhibit for a limited resource applicant subject to the following:

(1) The applicant meets the conditions of the definition for a limited resource applicant set forth in §1943.4 of this subpart.

(2) The farm business plan shows that installments at the higher rate, along with other debts, cannot be paid during the period of the plan.

(3) 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 reamortization 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 subpart A of part 1951 of this chapter.)

(c) *Interest rate with joint financing.* When the applicant obtains financing from a private lender equivalent to 50 percent or more of the total funds needed, the interest rate on the direct FO loan will be fixed at a rate determined by the Agency Administrator but at not less than 4 percent for the term of the loan. The current rate is available in FSA offices.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 18677, Apr. 30, 1992; 61 FR 35925, July 9, 1996; 62 FR 9356, Mar. 3, 1997]

§ 1943.19 Security.

Each FO loan will be secured by real estate. Chattels and/or other security will only be taken as security as set forth in paragraphs (b) and (c) of this section. The total amount of security required will be the lesser of either 150 percent of the loan amount, or all real estate owned by the applicant. A loan will be considered adequately secured when the real estate security for the loan is at least equal to the loan amount. 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., a tract of land. All security taken, 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 §1943.25 of this subpart. If the applicant disagrees with the real estate 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. 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) *Real estate security.* (1) A mortgage will be taken on all real estate acquired, or improved with FO funds, and by any additional real estate security needed to meet the requirements of this section.

(2) Security will also include items which are considered part of the farm and ordinarily pass with the title to the farm such as, but not limited to, assignments of leases or leasehold interests having mortgageable value, water rights, easements, rights-of-way, revenues, and royalties from mineral rights.

(3) A first lien is required on real estate, when available. In addition, loans will be secured by a junior lien on real estate provided:

(i) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the FO loan unless any such undesirable provisions are limited, modified, waived or subordinated insofar as the Government is concerned.