

(2) A lien will not be taken on property that cannot be made subject to a valid lien.

(3) A lien will not be taken on the applicant's personal residence and appurtenances, when the residence is located on a separate parcel and the farm tract being financed, improved, or otherwise used for collateral provides primary security for the loan(s).

(4) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary family living expenses; all types of retirement accounts; personal vehicles necessary for family living or farm operating purposes; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(5) A lien will not be taken on marginal land, including timber, when a softwood timber (ST) loan is secured by such land.

(e) *State supplements.* Each State will supplement this section to provide instructions on forms and other requirements to be met in order to obtain the required security. In each State where loans will be made to Indians holding title to land in trust or restricted status, FmHA or its successor agency under Public Law 103-354 and BIA will decide on a way to exchange necessary information, and the procedure to be followed will be set out in a State supplement.

(f) *Special security requirements.* When FO loans are made to eligible *entities* that consist of members who are presently indebted for an FO loan(s) as individual(s) or when FO loans are made to eligible *individuals* who are members of an entity which is presently indebted for an FO loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to FmHA or its successor agency under Public Law 103-354 for any other farmer program direct or guaranteed loans.

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

(g) *Same security.* Except as provided in paragraph (f) of this section, when an FO loan (direct or guaranteed) is made to a borrower who has other FmHA or its successor agency under Public Law 103-354 loans, the same real estate collateral may secure more than one loan so long as the outstanding loan amount does not exceed the total value of the security.

[53 FR 35692, Sept. 15, 1988, as amended at 57 FR 18677, Apr. 30, 1992; 59 FR 22961, May 4, 1994; 59 FR 25800, May 18, 1994; 62 FR 9356, Mar. 3, 1997]

§§ 1943.20-1943.22 [Reserved]

§ 1943.23 General provisions.

(a) *Flood or mudslide hazard areas.* Flood or mudslide hazards will be evaluated whenever the farm to be financed is located in special flood or mudslide prone areas as designated by the Federal Emergency Management Agency (FEMA). Subpart B of part 1806 of this chapter (FmHA Instruction 426.2) as well as subpart G of part 1940 of this chapter will be complied with when loan funds are used to construct or improve buildings located in such areas. This will not prevent making loans on farms if the farmstead is located in a flood or mudslide prone area and funds are not included for building improvements. However, buildings will need to meet the standards set out in §1943.24 of this subpart. The flood or mudslide hazard will be recognized in the appraisal report. When land development or improvements such as dikes, terraces, fences, and intake structures are planned to be located in special flood or mudslide prone areas, loan funds may be used subject to the following:

(1) The Corps of Engineers or the Soil Conservation Service (SCS) will be consulted concerning:

(i) Likelihood of flooding.

(ii) Probability of flood damage.

(iii) Recommendation on special design and specifications needed to minimize flood and mudslide hazards.

(2) FmHA or its successor agency under Public Law 103-354 representatives will evaluate the proposal and record the decision in the loan docket

§ 1943.24

in accordance with subpart G of part 1940 of this chapter.

(b) *Civil rights.* The provisions of subpart E of part 1901 of this chapter will be complied with on all loans made which involve:

(1) Funds used to finance nonfarm enterprises and recreation enterprises. Applicants will sign Form FmHA or its successor agency under Public Law 103-354 400-4, "Nondiscrimination Agreement," in these cases.

(2) Any development financed by FmHA or its successor agency under Public Law 103-354 that will be performed by a contract or subcontract of more than \$10,000.

(c) *Protection of historical and archaeological properties.* If there is any evidence to indicate the property to be financed has historical or archaeological value, the provisions of subpart F of part 1901 of this chapter apply.

(d) *Environmental requirements.* See subpart G of part 1940 of this chapter for applicable environmental requirements including subpart LL of part 2000 of this chapter for assistance in implementation.

(e) *Real Estate Settlement Procedures Act.* The provisions of the Real Estate Settlement Procedures Act outlined in § 1940.406 of subpart I of part 1940 apply when FO funds are used involving tracts of less than 25 acres, if:

(1) Any part of the loan is used to purchase all or part of the land to be mortgaged, and

(2) The loan is secured by a first lien on the property where a dwelling is located.

(f) *Equal Credit Opportunity Act.* In accordance with title V of Pub. L. 93-495, the Equal Credit Opportunity Act, the FmHA or its successor agency under Public Law 103-354 will not discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

(g) *Compliance with special laws and regulations.* (1) Applicants will be required to comply with applicable Federal, State and local laws and regulations governing building construction, diverting, appropriating, and using water, including use for domestic purposes; installing facilities for draining land; and making changes in the use of the land affected by zoning regulations.

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

(2) State Directors and Farmer Programs Staff members will consult with SCS, U.S. Geological Survey, State Geologist or Engineer, or any board having official functions relating to water use or farm drainage requirements and restrictions for water and drainage development. State supplements will be issued to provide guidelines which:

(i) State all requirements to be met, including the acquisition of water rights.

(ii) Define areas where development of ground water for irrigation is not recommended.

(iii) Define areas where land drainage is restricted.

[53 FR 35692, Sept. 15, 1988, as amended at 62 FR 9356, Mar. 3, 1997]

§ 1943.24 Special requirements.

(a) *Determining whether a farm will permit a feasible plan.* The County Supervisor is responsible for making a preliminary determination as to whether a loan should be made on the farm. This determination will be based on a personal inspection of the farm and an evaluation of such factors as productivity of the land; location, conditions, and adequacy of the buildings; approximate value of the farm, roads, schools, markets, or other community facilities; tax rates; and adequacy of the water supply. A decision also will be made on the suitability of the farm for a specialized farm operation, and development needed to make it acceptable for the planned operation of the farm.

(b) *Dwellings and other essential buildings.* (1) Buildings adequate for the planned operation of the farm must be available for the applicant's use after the loan is made. The necessary buildings will be located on the applicant's farm. Exceptions of this requirement are when:

(i) The applicant already owns an adequate, decent, safe, and sanitary dwelling, suitable for the family's needs, and located close enough to the farm so the farm may be operated successfully, it will not be necessary to provide a dwelling on the farm.

(ii) The applicant has a long-term lease on acceptable rented buildings that are adjacent to or near the farm, or the applicant occupies suitable