

§ 1943.67

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

(C) The acquisition of water supply or right, and the land on which it is presently being used, when the water supply or right cannot be purchased without the land, provided:

(1) The value of the land without the water supply or right is only an incidental part of the title price, and

(2) The water supply will be transferred to, and used more effectively on, other land owned or operated by the applicant.

(vii) Purchase land or an interest therein for sites or rights-of-way and easements upon which a water or drainage facility will be located.

(viii) Pay that part of the cost of facilities, improvements, and "practices" which will be paid for in connection with participation in programs administered by agencies such as the Agricultural Stabilization and Conservation Service (ASCS) or the Soil Conservation Service (SCS) only when such costs cannot be covered by purchase orders or assignments to material suppliers or contractors. If loan funds are advanced and the portion of the payment for which the funds were advanced is likely to exceed \$1,000, the applicant will assign the payment to the FmHA or its successor agency under Public Law 103-354.

(ix) Provide water supply facilities for dwellings and farm buildings, including such facilities as wells, pumps, farmstead distribution systems, and home plumbing.

(x) Pay costs of land and water development, use, and conservation essential to the applicant's farm, subject to the following:

(A) Such a loan may be made on land with defective title owned by the applicant or on land in which the applicant owns an undivided interest providing:

(1) The amount of funds used on such land is limited to \$25,000,

(2) There is adequate security for the loan, and

(3) The tract is not included in the appraisal report.

(B) Such a loan may be made on land leased by the applicant providing:

(1) The terms of the lease are such that there is reasonable assurance the applicant will have use of the improvement over its useful life,

(2) A written lease provides for payment to the tenant or assignee for any remaining value of the improvement if the lease is terminated, and

(3) There is adequate security for the loan.

(b) Pay the costs of meeting Federal, State, or local requirements for agricultural, animal, or poultry waste pollution abatement and control facilities, including construction, modification, or relocation of the farm or farm structures, if necessary, to comply with such pollution abatement requirements.

[58 FR 15073, Mar. 19, 1993]

§ 1943.67 Loan limitations.

An SW loan will not be approved if:

(a) The loan being made exceeds the lesser of the value of the farm or other security for the loan, or \$50,000.

(b) The total outstanding insured SW, Farm Ownership (FO) or Recreation (RL) loan principal balance including the new loan owned by the applicant will exceed the lesser of \$200,000, or the market value of the farm or other security.

(c) The noncontiguous character of a farm containing two or more tracts is such that an efficient farming operation and nonfarm enterprise cannot be conducted due to the distance between tracts or due to inadequate rights-of-way or public records between tracts.

(d) The limitation found in § 1943.79 (c) of this subpart is exceeded.

(e) The loan is 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. Refer to FmHA Instruction 2000-LL (available in any FmHA or its successor agency under Public Law 103-354 Office) for assistance in implementation.

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 15074, Mar. 19, 1993]

§ 1943.68 Rates and terms.

(a) *Terms of loan.* 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 terms. In any case, there must be an interest payment scheduled at least annually in accordance with the FMI for FmHA 1940-17, "Promissory Note." Loans may have reduced annual installments scheduled, of least partial interest, for the first five years.

(b) *Reamortization.* When the loan approval official determines that reamortization will assist in the orderly collection of any SW loan, the loan approval official may take such action under subpart S of part 1951 of this chapter.

(c) *Interest rate.* Upon request of the applicant, the interest rate charged by FmFA 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 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 may be established in this exhibit for a limited resource applicant when loan funds are being used for soil and water conservation and protection purposes denoted in §1943.66 (a)(1) through (a)(5) of this subpart, subject to the following:

(1) The applicant meets the conditions of the definition for a limited resource applicant set forth in §1943.54 of this subpart.

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

[53 FR 35706, Sept. 15, 1988, as amended at 58 FR 15074, Mar. 19, 1993]

§1943.69 Security.

Each SW loan will be secured by real estate, chattels, leaseholds, or a combination of these. Chattels and/or leaseholds, however, will only be taken as security as set forth in paragraphs (c) and (d) 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. The specific items of 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 §1943.75 of this subpart. 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. 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 refinanced or improved with SW 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