

efficient heating (and cooling, if applicable) systems including, but not limited to, insulation in excess of the requirements of exhibit D of subpart A of part 1924 of this chapter (FmHA Instruction 1924-A, exhibit D); active/passive solar design; building orientation; and sun control measures.

[45 FR 47655, July 16, 1980, as amended at 47 FR 28086, June 29, 1982; 52 FR 8036, Mar. 13, 1987]

§ 1944.164 Limitations and conditions.

(a) *Limitations on use of loan and grant funds.* Among the purposes for which loan and grant funds will *not* be used are the following:

(1) Providing housing for the members of the immediate family of the applicant when the applicant is an individual farmowner, family farm corporation, or partnership, or an association of farmers. (Immediate family in this instance includes mother, father, brothers, sisters, sons and daughters of applicant(s) and spouse.)

(2) Housing, related facilities, or household furnishings which are elaborate or extravagant in design or material.

(3) Refinancing debts of the applicant.

(4) Moveable-type furnishings or equipment except household furnishings as defined in §1944.153(c).

(5) Payment of any fees, charges, or commissions to any broker, negotiator, or other person for the referral of a prospective applicant or solicitation of the loan.

(6) Payment of any fee, salary, commission, profit, or compensation to an applicant, or any officer, director, trustee, stockholder, member, or agent of the applicant, except as provided in §1944.158(i).

(b) *Maximum amount of grant.* The amount of any grant may not exceed the lesser of:

(1) Ninety percent of the total development cost; or

(2) That portion of the total cash development cost which exceeds the sum of any amount the applicant can provide from its own resources plus the amount of a loan which the applicant will be able to repay, with interest, from income from rentals which low-income farmworker families can be

reasonably expected to be able to pay. The availability of rental assistance and HUD section 8 subsidies will be considered in determining the rentals that farmworkers will pay.

(c) *Advance of grant funds.* The times for requesting Treasury Checks representing LH grant funds and depositing such checks in the applicant's supervised bank account will be determined in accordance with §1944.175. When other funds to help finance the labor housing are being supplied by the applicant from its own resources or from a loan, such other funds will be used before a grant check is requested from the Treasury or deposited in or disbursed from the supervised bank account, as appropriate to comply with §1944.175.

(d) *Obligations incurred before loan or grant closing.* When the applicant files an application for a loan or grant, the Loan Official will advise the applicant that construction must not be started and obligations for work materials or land must not be incurred or made before the loan or grant is closed, and that it is the policy of RHS not to permit loan or grant funds to be used to pay such obligations or reimburse the applicant for such payments. If, nevertheless, the applicant incurs expenses or makes payments for such purposes before the loan or grant is closed, the State Director may authorize the use of loan or grant funds to pay such expenses or reimburse the applicant only when the State Director finds that all the following conditions exist:

(1) The expenses were incurred:

(i) After the applicant filed a written application for a loan with RHS; or

(ii) before the date of application as part of a predevelopment loan specifically intended as interim financing from a public agency or nonprofit organization and prior concurrence of the National Office is obtained; or

(iii) before the date of application as part of a development loan made to a State or local public agency specifically intended as temporary financing and prior concurrence of the National Office is obtained.

(2) The applicant is unable to pay such expenses from its own resources or from credit from other sources, and failure to authorize the use of loan or

grant funds to pay such expenses or reimburse the applicant would impair the applicant's financial position.

(3) The expenses were incurred or payments were made for authorized loan and grant purposes.

(4) Contracts, materials, construction and any land purchase meet FmHA or its successor agency under Public Law 103-354 standards.

(5) Payment of the expenses will remove any liens which have attached and any basis for liens that may attach to the property on account of such expenses.

(e) *Grant resolution.* A resolution will be adopted by the applicant's Board of Directors and a certified copy included in the grant docket before a grant is approved.

(1) For a grant accompanied by an LH loan, the form of resolution attached as exhibit E to this subpart will be used with any necessary changes required or approved by OGC. For a grant not accompanied by an LH loan, the form of resolution will be provided or approved by the National Office, following exhibit E as closely feasible.

(2) The form of resolution to be adopted by the applicant will contain policy and procedural requirements which should be read and be fully understood by the applicant's Board of Directors and officers. Included in the resolution will be provisions authorizing FmHA or its successor agency under Public Law 103-354 to prescribe requirements regarding the operation of the housing and related facilities and other provisions including the following:

(i) The rentals charged domestic farm labor will not exceed such amounts as are approved by FmHA or its successor agency under Public Law 103-354 after considering the income of the occupants and the necessary costs of operation, debt service, and adequate maintenance of the housing.

(ii) The housing will be maintained at all times in a safe and sanitary condition in accordance with standards prescribed by State and local law, and as required by FmHA or its successor agency under Public Law 103-354.

(iii) In granting occupancy of the housing an absolute priority will be

given at all times to domestic farm labor.

(3) The resolution will also authorize the appropriate officers of the applicant to execute a "Labor Housing Grant Agreement," in the format of exhibit F of this subpart. If changes are required in exhibit F they must be approved by OGC.

(f) *Conditional obligations to repay grants.* The obligations incurred by the applicant as a condition of the grant will be in accordance with exhibit F of this subpart.

(g) *Loan resolution or loan agreement.*

(1) An organization will have its Board of Directors adopt a loan resolution and furnish a certified copy for the loan docket before loan approval. The resolution will be substantially in the format of exhibit C of this subpart. Any necessary changes must be approved by OGC.

(2) All other loan applicants of this subpart will execute a loan agreement in substantially the same format as exhibit D of this subpart (for rental units) or exhibit K of this subpart (for non-rental units). Any necessary changes must be approved by OGC.

(h) Restrictions on conditions of occupancy. No organizational borrower, other than an association of farmers or family farm corporation or partnership will be permitted to require that an occupant work on any particular farm or for any particular owner or interest as a condition of occupancy of the housing. Tenant selection should be in accordance with exhibit B of subpart C of part 1930 of this chapter. No borrower will discriminate, or permit discrimination by any agent, lessee, or other operator in the use or occupancy of the housing or related facilities because or race, color, religion sex, age, handicap, marital or familial status or National origin. Each borrower will comply with subpart E of part 1901 of this chapter and prepare and submit HUD Form 935.2, "Affirmative Fair Housing Marketing Plan," which is available in any FmHA or its successor agency under Public Law 103-354 Office.

(i) *Supervisory assistance.* Supervision will be provided borrowers to the extent necessary to achieve the objectives of the loan and to protect the interests of the Government. The provision of subpart C of part 1930 of this chapter (FmHA Instruction 1930-C) will be followed.

(j) *Location of housing.* (1) Multifamily type housing designed for year-round occupancy will meet the location requirements as explained in exhibit A-3 of this subpart.

(2) Single family type housing designed for year-round occupancy, as explained in exhibit A-3 of this subpart, will be located:

(i) On plotted lots within a subdivision which complies with all local requirements and is developed in accordance with subpart C of part 1924 of this chapter; or

(ii) On scattered sites located to meet the location requirements of subpart C of part 1924 of this chapter and 7 CFR part 3550.

(3) Housing designed for seasonal occupancy, whether single family or multifamily type housing may be located on the farm as long as it is not located near farm service buildings and will be situated to allow for possible conversion to full-year occupancy should the need for migrant farmworkers in the area change.

(k) *International review.* Intergovernmental consultation should be carried out in accordance with 7 CFR part 3015 subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities" for 25 units or more. See FmHA Instruction 1940-J, available in any FmHA or its successor agency under Public Law 103-354 office.

(l) *Guidelines for preparing environmental assessments and environmental impact statements.* All projects shall comply with subpart G of part 1940 of this chapter.

(m) *Guidelines for projects affecting floodplains.* The provisions of the National Flood Insurance Act of 1968 as amended by the Flood Disaster Protection Act of 1973 apply to FmHA or its successor agency under Public Law 103-354 authorities permitting financing of LH now located in or to be located in special flood or mudslide prone areas as designated by the Federal Emer-

gency Management Agency. Subpart B of part 1806 of this chapter (FmHA Instruction 426.2) applies. It should be emphasized, however, that FmHA or its successor agency under Public Law 103-354's response to floodplain development is not limited to the Flood Insurance Program. Pursuant to Executive Order 11988, "Floodplain Management," FmHA or its successor agency under Public Law 103-354 shall not fund any housing projects which impact a floodplain unless there is no practicable alternative siting of the project. Applicants, therefore, should concentrate in the early planning stages of this proposal to locating sites which do not impact floodplains. See subpart G of part 1940 of this chapter for applicable environmental requirements.

(n) *LH loans to American Indians secured by trust or restricted land.* Loans to individuals will be secured by a mortgage on the leasehold interest held by the applicant. The leasehold interest must meet the conditions of 7 CFR part 3550. Loans to tribes or tribal corporations will be secured in accordance with §§1823.409 and 1823.414(a) of subpart N of part 1823 of this chapter (FmHA Instruction 442.11, paragraphs IX and XIV A).

(o) *Refinancing LH loans.* Each borrower must agree to refinance the unpaid balance of the LH loan at the request of FmHA or its successor agency under Public Law 103-354 whenever it appears to FmHA or its successor agency under Public Law 103-354 that the borrower is unable to obtain a loan from responsible cooperative or private credit sources at rates and terms which FmHA or its successor agency under Public Law 103-354 considers reasonable, and still rent the units to eligible occupants at rental rates within their payment ability. The refinancing of an LH loan must comply with the restrictions indicated in §1944.176(d)(2) of this subpart. The provisions of subpart E of part 1965 of this chapter must be followed before the State Director or other designated official can approve or accept prepayment or refinancing of the FmHA or its successor agency under Public Law 103-354 loan.

(p) *Restrictive-use provisions for LH loans.* The acceptance of a farm labor housing loan will make the borrower

subject to the restrictive-use provisions contained in exhibit A-1 of subpart E of part 1965 of this chapter.

(q) *Uniform Relocation Assistance and Real Property Acquisition Act of 1970.* Compliance with the requirements of this Act applies to public bodies and agencies which have the power of eminent domain and/or condemnation. It will be the responsibility of the applicant to provide assistance required for relocation of displaced persons from the site on which a LH project will be located. FmHA or its successor agency under Public Law 103-354 loan funds may be increased to cover costs incurred in the relocation of displaced persons from the site over and above the appraised value of the property. Until national FmHA or its successor agency under Public Law 103-354 instructions are published the Department regulations found at part 21 of this chapter should be followed and the National Office should be consulted for guidance in developing an LH loan for a project affected by this Act. However, the following should be considered:

(1) Generally, sites which will involve relocation of displaced persons should not be considered if alternative sites are available.

(2) For the purpose of determining the appraisal value of the site to be acquired in respect to LH projects which involve relocation of displaced persons, the designated FmHA or its successor agency under Public Law 103-354 multiple family housing appraiser or such other agency designated appraiser shall be used.

[45 FR 47655, July 16, 1980, as amended at 46 FR 61990, Dec. 21, 1981; 48 FR 29121, June 24, 1983; 49 FR 3762, Jan. 30, 1984; 52 FR 19301, May 22, 1987; 55 FR 6244, Feb. 22, 1990; 57 FR 59904, Dec. 17, 1992; 58 FR 38923, July 21, 1993; 64 FR 24480, May 6, 1999; 67 FR 78328, Dec. 24, 2002]

§§ 1944.165–1944.167 [Reserved]

§ 1944.168 Security requirements.

(a) *General.* Each loan will be secured to adequately protect the financial interest of the Government in the loan during its repayment period. The amount of the loan may not exceed the value of the security for the loan as determined by an appraisal, less the unpaid principal balance, plus past due

interest of any prior liens that will or will likely exist against the security after the loan is closed. If the State Director determines it necessary or advisable to encumber household furnishings purchased with loan funds, the State Director will, with the advice of OGC, issue appropriate instructions setting forth the manner in which household furnishings will be secured.

(b) *Loan to an organization or an association of farmers.* (1) A loan to an organization or association of farmers which can give a real estate mortgage will be secured by a mortgage on good and marketable title to the real estate including the housing, the related facilities, and the site, subject to any exceptions that may be waived as provided in subpart B of part 1927 of this chapter.

(2) If a first mortgage cannot be obtained, a junior mortgage may be taken provided:

(i) The prior mortgage as affected by the State law does not contain such provisions for future advances, payment schedules, forfeiture or cancellation, foreclosure without adequate notice to junior lienholders, or other matters which may jeopardize FmHA or its successor agency under Public Law 103-354's security position or the borrower's ability to pay the loan; or

(ii) Such provisions are satisfactorily limited, modified waived, or subordinated.

(3) If it is impossible for an applicant which is a public or quasi-public organization to give a real estate mortgage, the security to be taken will be determined by the National Office upon the recommendation of the State Director. The State Director should consult OGC as to whether the proposed security is legally permissible

(4) In individual cases, additional security may be advisable to ensure that the loan objectives will be carried out. For example, to provide for more effective management and operation, one or more of the following types of security may be required.

(i) A mortgage on other real estate owned by the applicant.

(ii) A pledge, assignment, mortgage, or other security interest in income from the housing.