

## § 1944.213

successor agency under Public Law 103-354 issued a letter such as that shown in exhibit B to this subpart for the construction of the project.

(3) The project is substantially complete (see §1944.235(c)(1)(vi) of this subpart), all work has been satisfactorily completed in a workmanlike manner in accordance with the originally approved drawings, specifications and contract documents, and is in compliance with subparts A and C of part 1924 of this chapter.

(4) There are no unpaid obligations outstanding in connection with the project.

(5) All other requirements of this subpart have been met.

(n) Pay for related costs incurred in compliance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and in accordance with §1944.215(t) of this subpart.

(o) Construct demonstration projects involving innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies, but do meet the intent of providing decent, safe, and sanitary rural housing. Only the Administrator may authorize loan funds to be used for this purpose.

(p) Finance the conversion of section 502 units in inventory to a section 515 project, in accordance with requirements of this subpart and subpart C of part 1955 of this chapter. Loans for this purpose can be made only to public agencies and private nonprofit organizations. Units should be repaired or rehabilitated prior to conversion to section 515 housing. To facilitate a cooperative's self-maintenance plan, the use of 502 inventory houses will be considered only if the units are located in the same subdivision and in a clustered configuration.

(q) Grants for advances to nonprofit corporations or public agencies for costs to develop an application package or close a loan to purchase a project to avert prepayment. Such grants shall not exceed \$10,000 and shall be administered in accordance

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with §1965.217 (d) of subpart E of part 1965 of this chapter.

[53 FR 2159, Jan. 26, 1988, as amended at 54 FR 14336, Apr. 11, 1989; 55 FR 26644, June 29, 1990; 55 FR 29560, July 20, 1990; 56 FR 2235, Jan. 22, 1991; 56 FR 66960, Dec. 27, 1991; 58 FR 38924, July 21, 1993; 59 FR 6887, 6897, Feb. 14, 1994; 62 FR 25074, May 7, 1997]

### § 1944.213 Limitations.

(a) *Loan limits.* The Agency must certify that assistance provided any housing project is not more than is necessary to make the project affordable to potential tenants and the Government. The applicant must disclose, during each stage of the process, all other assistance proposed for the project, including all other government assistance as defined in §1944.205.

(1) *Fee norms.* RHS has established the fee norms below for purposes of analysis. The total of the three fees may not exceed 21 percent.

(i) Builder's profit: up to 10% of the construction contract.

(ii) General overhead: up to 4% of the construction contract.

(iii) General requirements: up to 7 % of the construction contract.

(2) *Other fee norms.* (i) RHS has established the new construction and rehabilitation fee norm for a developer's fee at up to 15% of the total development cost authorized for tax credit purposes. (A developer's fee is not an authorized Section 515 loan purpose.)

(ii) For transfer proposals that include acquisition costs, RHS has established the developer's fee on the acquisition costs at up to 8% of the acquisition costs only when authorized by the state agency and only for tax credit purposes. (A developer's fee is not an authorized Section 515 loan purpose.)

(3) *Analysis of loan requests to determine the minimum amount of assistance.*

(i) The fee structure of the state agency administering low-income housing tax credits will be used in the RHS analysis of the amount of assistance that is necessary for a proposal.

(ii) In all cases where the results of an analysis indicate that there will be excess assistance (defined as more than the lesser of \$25,000 or 1 percent of the total development cost as authorized by the state agency), RHS will consult with the applicant, as well as with the

state agency, to strive to reach an agreement for reducing the excess assistance.

(iii) In the event that excess assistance is not reduced through an agreement with the applicant and state agency, RHS will adjust the amount of equity contribution by the amount of excess assistance (through the reduction of the loan) to ensure that assistance provided is not more than is necessary to provide affordable housing after taking into account assistance from all Federal, state and local sources.

(b) *State Director's loan limitation.* The amount of the RRH loan(s) on each project (including principal and interest on all existing and proposed loans) is limited to the maximum amount of the State Director's loan approval authority unless the National Office provides prior written authorization. To request authorization, the State Director must submit the loan request and all information required in §1944.231(h) of this subpart to the National Office, Attention: Multi-Family Housing Processing Division (MFHPD). This must be done before notice is given to the applicant indicating that the loan has been determined eligible and/or feasible. Each loan will also be subject to the following additional requirements:

(1) For all applicants, including its members, who will be receiving any benefits from Low Income Housing Tax Credits (LIHTC), the amount of the RRH loan(s) will be limited to no more than 95 percent of the development cost or 95 percent of the security value, whichever is less.

(2) For all applicants, including its members, not receiving any benefits from LIHTC, who are comprised solely of nonprofits, consumer cooperatives, State or local public agencies, the amount of the loan(s) will be limited to the development cost or the security value of each project, whichever is less, plus the 2 percent initial operating capital and/or the relocation costs incurred as indicated in §1944.215(v) of this subpart. Grants made in accordance with §1944.212(q) of this subpart are not included in the preceding limitations.

(3) For all other applicants, including its members, not receiving any benefits

from LIHTC, the amount of the RRH loan(s) will be limited to no more than 97 percent of the development cost or 97 percent of the security value, whichever is less.

(4) The examples set forth in exhibit A-13 of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office) provide clarity in determining the proper loan amount for various types of loans.

(5) For equity loans to avert prepayment, the amount of the RRH equity loan will be limited to no more than the difference between 90 percent of current value of the project as appraised as conventional unsubsidized housing and current unpaid balance(s).

(6) For all applicants, the amount of the loan after capitalized construction interest is considered will not exceed the loan limits in paragraphs (b)(1), (2), and (3) of this section. However, Pre-determined Amortization Schedule System (PASS) loans closed with multiple advances may exceed that amount when an additional amount is permitted to allow interest to be capitalized to the first of the following month.

(7) All applicants must agree in writing to provide funds from their own resources to pay any cost for completing planned construction after the MDL is reached.

(c) *Limitations on use of loan funds.* Loans will not be made for:

(1) Specialized equipment for training and therapy.

(2) Commercial facilities except essential service-type facilities for tenants or members when such facilities are not conveniently available.

(3) Housing to serve primarily temporary and transient residents.

(4) Nursing homes, special care facilities, or institutional-type homes.

(5) Operating capital for a central dining facility or any items which do not become affixed to the real estate security, such as special portable equipment, furnishings, kitchen ware, dining ware, eating utensils, movable tables, and chairs, etc.

(6) Facilities contrary to cost containment measures defined in §1944.215 (a) of this subpart.

(7) Refinancing debts of the applicant except:

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(i) As authorized in §§1944.235(c) and 1944.213(d)(1) of this subpart; or

(ii) When a nonprofit organization or a State or local public agency applicant already owns land on which a lien exists and a subordination or release cannot be obtained and the applicant does not have the financial resources necessary to obtain a release of the existing lien(s). In this situation, loan funds may be used to obtain a release of the land needed for the site of the proposed project. The amount of funds used for such purposes will be limited to the amount necessary to obtain the release but will not exceed this "as is" value of the land as determined in accordance with FmHA Instruction 1922-B (available in any FmHA or its successor agency under Public Law 103-354 office).

(8) Payment of any fee, charge or commission to any broker, negotiator or other person for the referral of a prospective applicant or solicitation of a loan.

(9) Payment of any fee, salary, commission, profit, or compensation to an applicant or to any officer, director, trustee, stockholder, member, or agent of an applicant except as provided in §1944.212(j) of this subpart.

(10) Land which the applicant or a member of an applicant/organization owns or land which is owned by any other organization in which any member of the applicant/organization has an interest, or has had an interest within the last 3 years, including any commission due on the sale thereof, except as authorized in §1944.212(c)(2) of this subpart.

(11) Compensation to an applicant for value of land contributed in excess of the initial contribution as required by paragraph (b) of this section.

(d) *Obligations incurred before loan closing.* When an applicant files a loan request, the servicing official will advise the applicant not to start construction or incur any indebtedness until the loan is closed, except for those cases involving interim financing; the guidelines outlined in §1944.235(c)(1) of this subpart and the environmental requirements of part 1940, subpart G, of this chapter will then apply. During the period of review and processing, applicants will not

take any actions with respect to their applications which would have an adverse impact on the environment or limit the choice of reasonable alternatives. This requirement does not preclude the applicant from developing preliminary plans or designs or performing other work necessary to support an application for Federal, State, or local permits or assistance. If the applicant incurs debts for work, materials, land purchase, or other authorized fees and charges before the loan is closed, the State Director may authorize the use of loan funds to pay the debts when all of the following conditions exist and debts were authorized in writing by FmHA or its successor agency under Public Law 103-354 prior to their being incurred (market studies will be exempt from this requirement):

(1) The debts were incurred:

(i) After the applicant filed a written loan request for a loan with FmHA or its successor agency under Public Law 103-354;

(ii) Prior to the date of loan request as part of a predevelopment loan specifically intended as temporary financing from a public agency or nonprofit organization and the State Director secures prior concurrence from the National Office; or

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

(2) The applicant is unable to pay the debts from its own resources or to obtain credit from other sources and failure to authorize the use of loan funds to pay the debts would impair the applicant's financial position.

(3) The debts were incurred for eligible loan purposes.

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

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

(e) *Limitations on cost increases.* After loan approval of a project involving

new construction or major rehabilitation:

(1) No increase in per unit development cost will be approved, whether the circumstance causing the cost increase occurs before, during, or after the construction period, unless these conditions were unforeseen factors beyond the owner's control and the increase in cost was approved by FmHA or its successor agency under Public Law 103-354 in writing before the expense was incurred. (In case of an emergency, the requirement that the cost be approved by FmHA or its successor agency under Public Law 103-354 in writing before the expense is incurred is waived as long as the servicing official is notified by the next working day.) Such costs are:

(i) Design changes required by FmHA or its successor agency under Public Law 103-354 or State or local government having jurisdiction over the development of the project; or

(ii) Changes in financing approved by FmHA or its successor agency under Public Law 103-354.

(2) Any cost increase which cannot be approved for funding by FmHA or its successor agency under Public Law 103-354 must be satisfied by the owner from its own resources. Whenever there is doubt as to the resulting effect of a cost increase upon per unit development cost, the cost increase request may be conditionally approved provided:

(i) The owner agrees in writing to provide any funds necessary in excess of its initial contribution and the loan amount to complete the project; and

(ii) The owner furnishes surety that guarantees payment under the assurance agreement in the form of a surety bond, unconditional and irrevocable letter of credit or cash which is put into an interest or noninterest bearing supervised bank account. Such funds will not result in a lien on the project or its operating income.

(3) Under no circumstances will a cost increase request be approved without concurrent agreement between FmHA or its successor agency under Public Law 103-354 and the applicant/borrower as to how the cost increase will be funded.

(f) *New loans in areas with RHS, the Department of Housing and Urban Development (HUD), or similar type rental housing assistance.* (1) *Definitions.* As used in this paragraph only.

(i) *Similar type rental housing assistance.* Housing assistance provided by a Federal, State or local agency or other entity which provides very-low or low income housing assistance. Vouchers or tenant-based Section 8 assistance are not considered similar rental housing assistance. The State Director will determine if similar type rental housing assistance is available within his/her jurisdiction and will coordinate efforts under this paragraph.

(ii) *Market area.* See exhibit A-8 of this subpart. When a difference in opinion exists in the market area determined by FmHA or its successor agency under Public Law 103-354 personnel, the applicant, market analyst, HUD, or similar type rental housing provider, for the purposes of this paragraph, the market area established by FmHA or its successor agency under Public Law 103-354 personnel will prevail.

(2) *Applicability.* A request for an RRH/RCH loan to develop additional housing units (regardless of type) in the same market area with an FmHA or its successor agency under Public Law 103-354, HUD, LIHTC or similar rental housing assistance project will *not* be determined eligible/feasible, authorized, or approved when any of the following conditions exist:

(i) Another RRH or RCH loan request in the same market area has been selected for further processing; or

(ii) A previously authorized/approved FmHA or its successor agency under Public Law 103-354, HUD, LIHTC or similar type rental housing assistance project in the same market area has not been completed or reached its projected occupancy level. For example, a recently completed FmHA or its successor agency under Public Law 103-354 project is 85 percent occupied, reflecting a 15 percent vacancy. The Form FmHA or its successor agency under Public Law 103-354 1930-7, "Multiple Family Housing Project Budget," approved when this loan was obligated indicated a proposed vacancy rate of 10 percent. In this case, another project

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could not be authorized until the recently completed project reached and sustained a 90 percent occupancy level; or

(iii) An existing FmHA or its successor agency under Public Law 103-354, HUD, LIHTC or similar type rental housing assistance project in the same market area is experiencing high vacancies. The State Director, without authority to redelegate, will determine a reasonable vacancy rate for this purpose on a state, district or regional basis. Generally, a high vacancy rate would be in the 5 to 10 percent range. For the purpose of this paragraph, a high vacancy rate due to documented mismanagement will not be considered as a reason to defer processing a viable loan request provided there is an adequate market for the existing and proposed units. In addition, substandard units or excessive nonmarketable efficiency apartments would not be a reason to defer a viable loan request; or

(iv) A request for a Servicing Market Rate Rent (SMR), or similar servicing tool, as defined in subpart C of part 1930 of this chapter in the same market is pending, or in effect and still needed; or

(v) The need in the market area is for additional rental assistance (RA) or similar subsidy and not for additional housing units. This can be evidenced by similar rental housing in the market area in which tenants are experiencing rent overburden; existing projects in the market area which are experiencing vacancies due to lack of RA, Section 8 or similar subsidy; high vacancies in conventionally financed apartments or other circumstances where the market needs affordable housing but not additional housing.

(3) *Status.* When a loan proposal or project exists in the market area which meets any of the criteria in paragraph (f)(2) of this section, loan requests in the same market area will be returned to the applicant in accordance with §1944.231. This does not affect the processing of loan requests in other market areas.

(4) *Exceptions*—(i) *Categorical.* A group home for persons with disabilities is exempt from the provisions of paragraph (f)(2) of this section when existing housing in the market area is not

available or insufficient for their needs.

(ii) *Other.* In unusual circumstances where there is a compelling need for additional housing in a market area, the State Director may request an exception to the provisions of paragraph (f)(2) of this section, to the Assistant Administrator, Housing. Circumstances in which an exception would be considered include, but are not limited to: A colonia, or market area which is located within a county, designated under the Rural Housing Targeted Set Aside (RHTSA) defined in exhibit C to subpart L to part 1940 of this chapter; a market area where an applicant/borrower is only constructing a small fraction of the units (generally less than 25 percent) proposed by the original market analysis; or a market area which is in need of housing as the result of a natural disaster which destroyed existing similar rental housing units. The State Director will submit a request for exception to the Assistant Administrator, Housing, with clear documentation to support the request. The Assistant Administrator, Housing, may authorize an exception at the request of the State Director or Director, MFH/PD.

[53 FR 2159, Jan. 26, 1988, as amended at 53 FR 7491, Mar. 9, 1988; 54 FR 14337, Apr. 11, 1989; 55 FR 26644, June 29, 1990; 55 FR 29558 and 29561, July 20, 1990; 56 FR 2236, Jan. 22, 1991; 56 FR 66960, Dec. 27, 1991; 58 FR 44263, Aug. 20, 1993; 59 FR 6887, Feb. 14, 1994; 62 FR 25065, 25066, May 7, 1997; 62 FR 67222, Dec. 23, 1997]

§ 1944.214 Rates and terms.

(a) *Interest.* Upon request of the borrower, 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 an applicant does not indicate a choice at the time of loan approval, 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).

(b) *Amortization period.* Each loan will be scheduled for payment within a period that is necessary to assure that