

§ 1944.214

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

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

the loan will be adequately secured, taking into account the probable depreciation of the security. The payment period will not exceed 30 years; however, if necessary to ensure affordability, the loan may be amortized for a period not to exceed 50 years.

[53 FR 2159, Jan. 26, 1988, as amended at 62 FR 67222, Dec. 23, 1997]

§ 1944.215 Special conditions.

(a) *Cost containment.* To achieve affordable rents and occupancy rates (not considering rental assistance or similar subsidies), all development costs will be economical in nature and not include costs for unnecessary or elaborate design features. Cost containment is not to be interpreted as accepting poor design or cheap construction. Projects must provide the features and amenities necessary for the lifestyles of the tenants and members. Consideration must be given to the cost/benefit ratio when evaluating, recommending, or requiring specific design features or construction techniques. Life cycle cost analysis will be employed to determine the types of materials which will reduce operation/maintenance costs even though their initial costs are higher. Operation and maintenance costs factored into proposed operating budgets will be adjusted accordingly. The following guidelines are to be followed when developing projects:

(1) Each State architect/engineer (A/E) will compile and maintain data on costs of all projects. Total project estimates will be compared with estimates available through the Marshall & Swift computer program. These estimates, along with the line item costs recorded in FmHA or its successor agency under Public Law 103-354's Automated Multi-Housing Accounting System (AMAS) cost tracking system, will be used to establish a benchmark for future project costs. Any proposal that exceeds these costs must be carefully evaluated for possible cost reductions. The borrower will be responsible for resolving the differences in cost to bring the project into line with the lesser of the cost tracking system or Marshall & Swift estimates. Final determinations must be realistic, interrelated to maintenance and operation costs, and based upon local conditions and common

sense. The State will consider circumstances such as high land costs, remote rural areas, etc., which could present a problem in achieving such an alignment of costs. The AMAS cost tracking system will be used to record both estimates and actual line item costs. At the time the estimates are being examined by FmHA or its successor agency under Public Law 103-354, the percentages for builder's profit, general overhead, and general requirements will be calculated to determine if they are within the allowable percentages established in accordance with §1944.213(a)(1)(iii) and (a)(1)(iv). They will again be calculated at the time the final estimates are submitted to FmHA or its successor agency under Public Law 103-354. Estimated amounts in excess of the allowable percentages will be reduced to the appropriate percentage. Once the final estimates are approved by FmHA or its successor agency under Public Law 103-354, payment of builder's profit, general overhead, and general requirements will not exceed the estimated amounts.

(2) The elimination or reduction of unnecessary delays in application processing can contribute to cost containment through lower interest and other business expenses on land, inventory, tests, design studies, etc. When reasonable processing timeframes are established, known and followed, appropriate time can be planned for preparing quality application and construction documents. This can result in better instructions to the builder, fewer errors and lower construction costs.

(3) Most materials and systems are available in a range of qualities and prices. The construction documents will be carefully reviewed for specifications that require qualities or grades higher than necessary. These specifications will be accepted only if fully justified and no reasonable alternatives are available.

(4) Designs which employ standard building material dimensions and reduce waste will be used.

(5) Sites will require a minimum amount of site development work. The State Director may authorize a site requiring higher than normal site development costs only if: