

§ 1436.9

7 CFR Ch. XIV (1-1-07 Edition)

interest in such collateral except for prior liens on the underlying realty that by operation of law attach to the collateral if it is or will become a fixture. If any such prior lien on the realty will attach to the collateral, a severance agreement must be obtained in writing from each holder of such a lien, including all government or USDA agencies. No additional liens or encumbrances may be placed on the storage facility after the loan is approved unless CCC approves otherwise in writing.

(b) For loan amounts exceeding \$50,000, or where the aggregate outstanding loan balance will exceed \$50,000 or for loans where the approving committee determines as a result of financial analysis that additional security is required, a lien on the real estate parcel on which the farm storage facility is located will be required in the form of a real estate mortgage, deed of trust, or other security instrument approved by the United States Department of Agriculture's Office of General Counsel. CCC's interest in the real estate shall be superior to all other liens and is the first lien that secures the amount of the loan. A loan will be considered to be adequately secured when the real estate security for the loan is at least equal to the loan amount. If the real estate is covered by a prior lien, a lien waiver may be obtained by means of a subordination agreement approved for use in the State by USDA's Office of General Counsel. CCC will not require such an agreement from any agency of the Department of Agriculture. Loans may be secured by a junior lien on real estate when the loan is adequately secured and a severance agreement is obtained from prior lien holders.

(c) Title insurance or a title opinion is required for loans secured by real estate.

(d) Real estate liens may cover land separate from the collateral if a lien on the underlying real estate is not feasible and if:

(1) The borrower owns the separate acreage; and

(2) the acreage has sufficient value based on the fair market value of the acreage at the time of the application as determined by the county com-

mittee, to insure repayment of the loan.

(e) Notwithstanding the preceding subsections of this section, a borrower, in lieu of such liens as are otherwise required by those subsections, may provide a letter of credit, bond, or other form of security, as approved by CCC.

(f) If an existing structure is remodeled and an addition becomes an attached, integral part of the existing storage structure, CCC's security interest shall include the existing storage structure.

(g) The cost of loan closings by attorneys, title opinions, title insurance, title searches, filing and recording all real estate liens, fixture filings and later subordinations will be paid by the borrower. CCC shall pay such costs relating to credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

(h) For sugar-related facility loans, in addition to the above requirements, additional security, including real estate, chattels, crops in storage, and other assets owned by the applicant, is required if necessary to adequately secure the loan. A sugar-related loan will be considered to be adequately secured when the CCC determined value of security for the loan is at least equal to 125 percent of the loan amount.

(i) For sugar-related facility loans, paragraph (g) is not applicable. The borrower shall pay all loan making fees and closing costs. This includes, but is not limited to, attorney fees for loan closings, environmental assessments and studies, chattel and real estate appraisals, title opinions, title insurance, title searches, filing and recording all real estate liens, fixture filings, subordinations, credit reports, collateral lien searches, and filing and recording financing statements for the collateral.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54939, Aug. 26, 2002]

§ 1436.9 Loan amount and loan application approvals.

(a) The cost on which the loan shall be based is the net cost of the eligible facility, accessories, and services to the applicant after discounts and rebates, not to exceed a maximum per-

bushel cost established by the FSA State committee.

(b) The net cost for storage facilities and handling equipment may include the following: all real estate lien related fees paid by the borrower, including attorney fees, except for filing fees, environmental and historic review fees including archaeological study fees, the facility purchase price, sales tax, shipping, delivery charges, site preparation costs, installation cost, material and labor for concrete pads and foundations, material and labor for electrical wiring, electrical motors, off-farm paid labor, on farm site preparation and construction equipment costs not to exceed commercial rates approved by the county committee, and new on-farm material approved by the county committee. The net cost shall not include secondhand material or any other item that is determined by the approving authority to be ineligible for loan.

(c) The maximum principal amount of any farm storage facility loan shall be 85 percent of the net cost of the applicant's needed storage or handling equipment not to exceed \$100,000 for each borrower signing the note and security agreement. Unless otherwise approved by CCC, borrowers shall be considered to be separate persons or borrowers for purposes of applying the preceding sentence only to the extent that they would normally be considered a separate person under the rules set out in 7 CFR part 1400.

(d) The aggregate outstanding balance of all facility loans for any one borrower signing the note and security agreement may not exceed \$100,000.

(e) When a storage structure has a larger capacity than the applicant's needed capacity, as determined by CCC, the net cost eligible for a loan shall be prorated. Only costs associated with the applicant's needed storage capacity will be considered eligible for loan under this part.

(f) When a flat storage structure has space that is not used primarily for facility loan commodity storage, such as office space, the loan amount shall be adjusted for the ineligible space as determined by CCC.

(g) The FSA county committee may approve applications, if loan funds are

available, up to the maximum approval amount unless the FSA State committee establishes a lower limit for county committee approval authority.

(h) Farm storage facility loan approvals will expire in 4 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee. Sugar storage facility loan approvals will expire in 8 months after the date of approval unless extended in writing for an additional 4 months by the FSA State Committee.

(i) CCC may at any time refuse to make new loans.

(j) For sugar-related facility loans, paragraphs (c) and (d) and (g) do not apply.

(k) For sugar-related facility loans, the Agency approval officials may only approve loans, subject to available funds.

[66 FR 4612, Jan. 18, 2001, as amended at 67 FR 54939, Aug. 26, 2002]

§ 1436.10 Down payment.

(a) A minimum down payment representing the difference between the net cost of the storage facility and the amount of the loan determined in accordance with § 1436.9 shall be made by the loan applicant to the supplier or contractor before the loan is disbursed.

(b) The down payment shall be in cash unless some other form of payment is approved by CCC. The down payment may be obtained by the borrower from another lending source.

(c) The down payment may not include any trade-in, discount, rebate, credit, deferred payment, post-dated check, or promissory note to the supplier or contractor.

§ 1436.11 Disbursement and assignments.

(a) Disbursement of the loan by CCC will be made after the farm storage facility has been delivered, erected, constructed, assembled, or installed and a CCC representative has inspected and approved such facility.

(b) Disbursement will be made only if the borrower furnishes satisfactory evidence of the total cost of the facility and payment of all debts on the facility in excess of the amount of the loan.