

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Direct Loan Making 3-FLP (Revision 2)	Amendment 40
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Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 135 B has been amended to update Farm Ownership loan term and security requirements.

Subparagraph 245 F has been amended to clarify Emergency Loan repayment terms.

Exhibit 2 has been amended to update a grammar error in the definition of Family Farm.

Page Control Chart		
TC	Text	Exhibit
	7-11, 7-12 10-25, 10-26	2, pages 9, 10

135 Rates, Terms, Payments, and Security (Continued)

B Terms (Continued)

*--The loan term must be the minimum period of time to achieve a TDCLCR of 1.10, if possible, in a typical year plan, but shall never exceed the useful life of the security. Loan terms are considered in 5-year increments. A loan term of 40 years will only be considered if a TDCLCR of 1.10 cannot be achieved in a typical year plan using a shorter term.

Example: If a proposed loan term will not result in a TDCLCR of 1.10 in a typical year plan, the next 5-year term will be considered, and so on, until the projected installment results in a TDCLCR of 1.10, if possible. If a 35-year term results in a TDCLCR less than 1.10 in a typical year plan, the FO will be placed on a 40-year term provided this term does not exceed the useful life of the security.

Exceptions to this policy are authorized to be made on a case-by-case basis by the Farm Loan Chief. When considering exception requests, the Farm Loan Chief will ensure repayment terms are reasonable and equitable.--*

Repayment terms that include balloon installments are prohibited.

Note: Balloon installments result when scheduled payments are insufficient to pay the loan without requiring a final installment that exceeds twice the amount of a regularly amortized installment.

C Payment Frequency

All notes are scheduled with annual payments. Assignments or FSA-2027 can be put in place to collect payments that correspond with the income stream of the applicant's operation.

The first installment for all FO loans must be scheduled within 12 months from the date of loan closing.

The minimum scheduled annual payment for the first 5 years must be the interest accrued on the principal balance. The applicant must be informed that no reduction will be made in principal when an interest only payment is scheduled. FSA typically considers such payments when a farming operation is new and not fully developed but will have a future income stream. One example of such an operation is establishing a new orchard.

D Security

[7 CFR 764.155] An FO loan must be secured:

- (a) In accordance with §§ 764.103 through 764.106 (paragraphs 91 through 94);
- (b) At a minimum, by the real estate being purchased or improved.

135 Rates, Terms, Payments, and Security (Continued)**D Security (Continued)**

(c) In accordance with §§764.103(c) and 764.101(e), ML's are exempted from the requirements of obtaining 150% security and taking a lien on non-essential assets. Therefore, an ML made for FO purposes, while following the applicable provisions of 764.103 through 764.106, may be secured only by the real estate being purchased or improved, as long as it meets the 100% security requirement.

***--Note:** The purchase price of a property may exceed the appraised value, providing adequate security is available to satisfy all security requirements.--*

136 Subsequent Loans**A General**

A subsequent FO is a loan made to an applicant who is currently in debt for an FO.

A subsequent loan may be made for the same purpose, under the same conditions, and processed in the same manner as an initial loan.

A new real estate mortgage will not be necessary provided:

- a new mortgage is not required by State law
- that all the land which will serve as security for the subsequent loan is described on the present real estate mortgage
- the real estate mortgage has a future advance clause and a State supplement provides authority for using such a clause
- the required lien priority is obtained with the existing mortgage and future advance clause.

SED shall issue a State supplement about when to obtain a new mortgage for a subsequent loan.

245 Rates, Terms, and Repayment (Continued)

F Repayment of Loans for Physical Losses to Real Estate

[7 CFR 764.354(b)(5)] The repayment schedule for EM loans for physical losses to real estate is based on the applicant's repayment ability and the useful life of the security, but in no case will the term exceed 40 years.

The specific term of a loan is determined by the applicant's projected ability to repay based on the farm operating plan.

*--The loan term must be the minimum period of time to achieve a TDCLCR of 1.10, if possible, in a typical year plan, but shall never exceed the useful life of the security. Loan terms are considered in 5-year increments. A loan term of 40 years will only be considered if a TDCLCR of 1.10 cannot be achieved in a typical year plan using a shorter term.

Example: If a proposed loan term will not result in a TDCLCR of 1.10 in a typical year plan, the next 5-year term will be considered, and so on, until the projected installment results in a TDCLCR of 1.10, if possible. If a 35-year term results in a TDCLCR less than 1.10 in a typical year plan, the FO will be placed on a 40-year term, provided this term does not exceed the useful life of the security.

Exceptions to this policy are authorized to be made on a case-by-case basis by the Farm Loan Chief. When considering exception requests, the Farm Loan Chief will ensure repayment terms are reasonable and equitable.--*

The first installment will be scheduled within 12 months of loan closing.

Repayment terms that include balloon installments are prohibited.

Note: Balloon installments result when scheduled payments are insufficient to pay the loan without requiring a final installment that exceeds twice the amount of a regularly amortized installment.

246 Security Requirements

A General

[7 CFR 764.355(a)] EM loans made under § 764.351(a)(1) (subparagraph 241 A) must comply with the general security requirements established at §§ 764.103 (paragraph 91), 764.104 (paragraph 92) and 764.155(b) (subparagraph 135 D).

[7 CFR 764.355(b)] EM loans made under § 764.351(a)(2) (subparagraph 241 B) and (b) (subparagraph 241 C) must generally comply with the general security requirements established at §§ 764.103 (paragraph 91), 764.104 (paragraph 92) and 764.255(b) *--(subparagraph 205 A). These general security requirements, however, do not apply to equine loss loans to the extent that a lien is not obtainable or obtaining a lien may prevent the applicant from carrying on the normal course of business. Other security may be considered for an equine loss loan in the order of priority as follows:

- (1) Real estate,**
- (2) Chattels and crops, other than horses,**
- (3) Other assets owned by the applicant,**
- (4) Third party pledges of property not owned by the applicant,**
- (5) Repayment ability under paragraph (c) of this section.--***

FSA may take the following as security.

- In the case of an entity, personal assets held by individual members when all the security held by the entity do not meet the requirement for additional security up to 150 percent of the loan amount. The entity will select and notify FSA which assets will be offered as security for the loan.
- A lien on all nonessential assets held by the applicant and any individual entity members, with an aggregate value exceeding \$5,000, if the assets cannot be sold to reduce the amount of the loan request before loan closing.

Note: The value of nonessential assets taken as security according to subparagraph 91 E cannot be used to meet the 150 percent requirement of this section.

See Exhibit 2 for the definition of nonessential assets.

See Exhibit 21 for security requirements for loans made for reestablishing fruit, nut bearing, and income producing trees and plants.

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Essential Family Living and Farm Operating Expenses

Essential family living and farm operating expenses:

- (1) Are those that are basic, crucial, or indispensable.
- (2) Are determined by the Agency based on the following considerations:
 - (i) The specific borrower's operation;
 - (ii) What is typical for that type of operation in the area; and
 - (iii) What is an efficient method of production considering the borrower's resources.
- (3) Include, but are not limited to essential: household operating expenses; food, including lunches; clothing and personal care; health and medical expenses, including medical insurance; house repair and sanitation; school and religious expenses; transportation; hired labor; machinery repair; farm building and fence repair; interest on loans and credit or purchase agreement; rent on equipment, land, and buildings; feed for animals; seed, fertilizer, pesticides, herbicides, spray materials and other necessary farm supplies; livestock expenses, including medical supplies, artificial insemination, and veterinarian bills; machinery hire; fuel and oil; taxes; water charges; personal, property and crop insurance; auto and truck expenses; and utility payments.

Established Farmer

Established farmer means a farmer who operates the farm (in the case of an entity, its members as a group) who meets all the following conditions:

- (1) Actively participated in the operation and the management, including but not limited to, exercising control over, making decisions regarding, and establishing the direction of, the farming operation at the time of the disaster;
- (2) Spends a substantial portion of time in carrying out the farming operation;
- (3) Planted the crop, or purchased or produced the livestock on the farming operation;
- (4) In the case of an entity, is primarily engaged in farming and has over 50 percent of its gross income from all sources from its farming operation based on the operation's projected cash flow for the next crop year or the next 12-month period, as mutually determined;
- (5) Is not an integrated livestock, poultry, or fish processor who operates primarily and directly as a commercial business through contracts or business arrangements with farmers, except a grower under contract with an integrator or processor may be considered an established farmer, provided the farming operation is not managed by an outside full-time manager or management service and Agency loans shall be based on the applicant's share of the agricultural production as set forth in the contract; and
- (6) Does not employ a full time farm manager.

Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)**False Information**

False information means **information provided by an applicant, borrower, or other source to the Agency that the applicant or borrower knows to be incorrect.**

Family Farm

Family Farm means **a business operation * * * that:**

- (1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence;**
- (2) Has both physical labor and management provided as follows:**
 - (i) The majority of day-to-day, operational decisions, and all strategic management decisions are made by:**
 - (A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or**
 - (B) The members responsible for operating the farm, in the case of an entity.**
 - (ii) A substantial amount of labor to operate the farm is provided by:**
 - (A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or**
 - (B) The members responsible for operating the farm, in the case of an entity.**
- (3) May use full-time hired labor in amounts only to supplement family labor.**
- (4) May use reasonable amounts of temporary labor for seasonal peak workload periods or intermittently for labor intensive activities.**

Family Living Expenses

Family living expenses means **the costs of providing for the needs of family members and those for whom the borrower has a financial obligation, such as alimony, child support, and care expenses of an elderly parent.**

Family Members

Family members mean **the immediate members of the family residing in the same household with the individual borrower.**