

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Direct Loan Making 3-FLP (Revision 2)	Amendment 39
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Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 131 B has been amended to clarify Farm Ownership use of funds.

Subparagraph 132 A has been amended to clarify Farm Ownership eligibility criteria.

Subparagraph 151 A has been amended to reflect language as it appears in CFR.

Subparagraph 152 A has been amended to reflect language as it appears in CFR.

Subparagraph 372 A has been amended to remove Part 17 reference.

Subparagraph 493 E has been amended to clarify borrower training vendor renewal submission request.

Page Control Chart		
TC	Text	Exhibit
	7-1 through 7-4 7-41, 7-42 16-5, 16-6 18-43, 18-44	

Part 7 Farm Ownership Loan (FO) Programs

Section 1 FO (Regular and Microloan)

131 Uses

A General

[7 CFR 764.151] FO loan funds may only be used to:

See subparagraphs B through F for FO uses.

B Farm Purchases

FO funds may only be used to:

[7 CFR 764.151(a)] Acquire or enlarge a farm or make a down payment on a farm.

Examples include, but are not limited to, the purchase of easements, the applicant's portion of land being subdivided, purchase of cooperative stock, appraisal and survey fees, and participation in special FO programs. Tree-farming requires a timber management plan that promotes a sustainable annual harvest of trees. FSA will use a Forest Stewardship Management Plan as proof that the applicant has an approved plan.

Note: Proportionality guidance should be considered to ensure family-sized farm requirements are satisfied. See subparagraph 132 A.

Refinancing of real estate debt is not an authorized use of FO funds. When considering whether or not a request is a technical refinance, the loan approval official shall determine if the ownership structure of the property will change. Ownership changes are often signified by a change in the name of the deeded owner, but this may not always be the situation. For example, an individual buying out the interest of another entity member may constitute a *--change to the underlying ownership structure, even though the same entity name would still be reflected on the deed.

Note: When considering requests where the applicant, or one or more individual or entity members, has an existing ownership interest in the property to be purchased, FSA must make additional efforts to ensure test for credit eligibility criteria is satisfied. To fully assess test for credit requirements in these instances, FSA must consult with relevant creditors, including existing lien holders, to determine if commercial underwriting standards can be met.

Purchases of undivided interests are authorized in limited circumstances when the following criteria can be satisfied:

- all non-applicant owner(s) must pledge their property ownership interest as security by signing the FSA mortgage or deed of trust--*

131 Uses (Continued)

B Farm Purchases (Continued)

- *--all non-applicant owner(s) must have been an existing owner(s) that held interest in the property prior to the transaction (with the exception of a spouse)
- the property being purchased and pledged as primary security will be operated by the FSA applicant.

Note: County Offices shall contact the State Office for case-specific guidance on all applications for purchases of undivided interests. State Offices are encouraged to contact the National Office as needed for additional case-specific guidance.

Down payments are authorized as a loan purpose subject to the following:

- a deed is obtained, and the transaction is properly documented by debt and security instruments
- any prior liens meet the FO security requirements for FSA's junior lien position.

Note: For contract purchases, purchase contracts must properly obligate the buyer and seller to fulfill the terms of the contract, provide the buyer with possession, control, and beneficial use of the property, and entitle the buyer to marketable title upon fulfillment of the contract terms. The deed must be held in trust by a bonded agent until transferred to the buyer. Upon a buyer's default, the seller must give FSA written notice of the default and a reasonable opportunity to cure the default. The applicant must repay any sums advanced by FSA.

Acquiring farm assets by purchasing ownership interest in an entity is considered to be the same as purchasing the assets themselves. The following uses are authorized:

- individual(s) purchasing ownership interest in an existing operating entity to become the new owner(s)
- existing member(s) purchasing the shares of a withdrawing member(s).

When considering these requests:

- in all cases, the applicant must also be the operator of the farm
- all entity members must sign the promissory note providing individual liability for the debt
- the assets purchased must be an authorized FO loan purpose.--*

131 Uses (Continued)**D Soil and Water Conservation and Protection**

FO funds may only be used to:

[7 CFR 764.151(c)] Promote soil and water conservation and protection;

Examples include the correction of hazardous environmental conditions and the construction or installation of tiles, terraces, and waterways. All soil and water conservation projects are subject to the limitations in subparagraph 74 D.

E Loan Closing Costs

FO funds may only be used to:

[7 CFR 764.151(d)] Pay loan closing costs;

FO funds may not be used to pay loan packaging or consultant fees associated with applying for or obtaining a FSA loan.

F Refinance Bridge Loan

FO funds may only be used to:

[7 CFR 764.151(e)] Refinance a bridge loan if the following conditions are met:

- (1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;**
- (2) Direct FO funds were not available to fund the loan at the time of approval;**
- (3) The loan to be refinanced is temporary financing; and**
- (4) The loan was made by a commercial or cooperative lender.**

Note: Refinancing of a bridge loan is not guaranteed. The applicant and the lender must understand that the anticipated FO is subject to all conditions of loan approval and availability of funds. FSA personnel shall not make any commitments or imply that a bridge loan will be refinanced.

132 Eligibility

A General Eligibility

[7 CFR 764.152] The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101 (paragraphs 62 through 72).

FO specific eligibility is addressed in this paragraph. If different from the general eligibility in paragraphs 62 through 72, the information in this paragraph is to be substituted for those portions.

--To ensure compliance with family farm requirements as provided in subparagraph 71 A, the gross farm income generated by the operation (the applicant's entire proposed operation, including the property to be purchased or improved) associated with the purchase or improvement, must be proportionate to the purchase price. As a guide to determine if a proposal is proportionate, typical year gross farm income should normally be at least equal to the annual installments for any debts associated with the real estate purchase or improvement.--

The following are entity rule basics for direct FO:

- applicant must be the operator of the farm and match farming records in Farm Programs
- all members of the operating entity, including embedded entities and individuals, must sign the application and meet eligibility requirements as outlined in Part 4
- individual members who own the farm (real estate) must own 50 percent of the farm business (operating entity)
- if the operating entity has embedded entities, the 75 percent rule applies
- loan is made to the operating entity (FLP applicant), and all entity members (from the operating entity) must sign the promissory note
- deed and/or mortgage may be made to any person or entity (in any combination) that was a party to the application as a member of the operating entity or spouses of those individuals (who do not have to be a party to the application or FSA-2026).

Section 2 Down Payment Program**151 Uses****A General**

The following regulations and requirements will apply to both regular FO and DFO-ML.

[7 CFR 764.201] Downpayment loan funds may be used to partially finance the
--purchase of a family farm by an eligible beginning farmer or socially disadvantaged--
farmer.

Note: For Down payment loan purposes, the applicant must meet the definition of a
--beginning farmer or socially disadvantaged farmer, according to Exhibit 2, at the--
time the application is received by FSA.

152 Eligibility

A Requirements

[7 CFR 764.202] The applicant must:

(a) Comply with the general eligibility requirements established at § 764.101 (paragraphs 62 through 72) and the FO (including DFO-ML) eligibility requirements of § 764.152 (paragraph 132); and

*--(b) Be a beginning farmer or socially disadvantaged farmer.

See Exhibit 2 for the definition of a beginning farmer and SDA farmer.--*

B Farm Size for Beginning Farmers

The applicant must not own more than 30 percent of the average size farm as established under the beginning farmer definition at the time of the application. The applicant may exceed the 30 percent after the loan is closed.

The average farm acreage and 30 percent of the average acreage shall be published in a State supplement. The 30 percent of the average acreage will be rounded to the closest tenth of a percent.

Example: The average size farm for the county is 94 acres. 30 percent of the average, rounded to the nearest tenth, is 28.2 acres. Therefore, to meet the beginning farmer requirements, the applicant must own no more than 28.2 acres.

If the farm is located in more than 1 county, FSA uses the average farm acreage of the county where the applicant's residence is located.

If the applicant's residence is not located on the farm or if the applicant is an entity, FSA uses the average farm acreage of the county where the largest portion of the farm is located.

Note: Average farm size does **not** apply to SDA applicants. However, the family farm requirement under § 764.101(k) (paragraph 71) does apply.

371 Overview (Continued)

C Loan Document Signatures (Continued)

(5) All signatures needed for the Agency to acquire the required security interests will be obtained according to State law.

Signature requirements on the mortgage or deed of trust will be sufficient to obtain the required lien, and to make the property being offered as security available to satisfy the debt in the event of default.

SED shall issue a State supplement to provide requirements according to State real property law. SED will obtain the advice of the Regional OGC before issuing the State supplement.

D Waiver of Title Clearance and Legal Services

[7 CFR 764.402(d)(1)] The Agency will close a real estate loan only when it determines that the Agency requirements for the loan have been satisfied and the closing agent can issue a policy of title insurance or final title opinion as of the date of closing. The title insurance or final title opinion requirement may be waived:

--(i) For loans of \$10,000 or less;--

FSA may accept the best lien obtainable without title clearance or legal service provided the authorized agency official believes from a search of the county records that the applicant can give a mortgage on the property. This exception to title clearance will not apply when:

- the loan is made simultaneously with that of another lender
- land is being purchased
- this provision conflicts with program regulations of any other FSA loan being made simultaneously with the loan.

--(ii) As provided in 764.235 (paragraph 175) for CL's and 764.355 (paragraph 247) for EM;--

(iii) When the real estate is considered additional security by the Agency; or

(iv) When the real estate is a non-essential asset.

E Additional Security and Nonessential Assets Requirements

FSA does not require a search of public records to verify the available lien position or insurance for additional security or nonessential assets.

372 Using a Closing Agent**A Applicant's Selection of Closing Agent**

If a closing agent is required, the applicant will select the closing agent, which may be a title insurance company or an attorney. The applicant will select the closing agent by using FSA-2340.

* * *

The authorized agency official may provide the applicant with the names of agents who can be contacted to conduct the closing. Any such list must include the names of all FSA-approved agents in the relevant jurisdiction. FSA employees will not recommend using any particular closing agent or title insurance company. In addition, the authorized agency official must inform the applicant that they may not select someone with whom the applicant has a business or family relationship.

B Closing Agent Responsibilities

FSA relies on a closing agent to prepare, complete, or approve documents, including deeds, necessary for title clearance and closing of a loan where real estate serves as primary security. The authorized agency official must be assured that the applicant has, or will have, clear title to any real estate taken as security. FSA also must have the lien position necessary to adequately secure the loan. The closing agent must provide FSA with the title insurance policy or title opinion that provides the lien priority required by FSA.

C Certification of Closing Agent

The closing agent must be approved according to paragraph 373. 5 or paragraph 373.6 by using FSA-2341 or FSA-2342.

The authorized agency official will send either:

- FSA-2341 to the closing attorney
- FSA-2342 to the closing agent.

493 Vendor Approval**A Approving Vendors for a Single State**

After reviewing a vendor application, SED may approve the vendor. However, SED must submit a recommended vendor application to DAFLP for concurrence before final approval when the vendor is not an accredited college, including community college or university.

B Approving Vendors for Multiple States

Vendor shall submit a complete application to the State Office that is considered their primary base of operation. The application shall include, in addition to all required information, a list of additional States for which the vendor wants to be an approved vendor.

SED's may approve vendors for their respective State, if the vendor is an accredited college, including community college or university. However, in cases where the vendor is not an accredited college or university, SED of the State considered the primary base of operations for the vendor must submit the vendor application, along with their recommendation, to DAFLP for concurrence before final approval.

In all cases where the vendor applicant is requesting approval for multiple States, the State Office shall submit a complete copy of the vendor's application to DAFLP. For vendor applicants receiving DAFLP approval, DAFLP will then send a complete copy of the application, to any additional States requested by the applicant, with a recommendation for approval. SED's shall add that vendor to their approved vendor list, unless they provide DAFLP with a reason why they should not be added to their State list, and DAFLP concurs. Each SED will prepare the required vendor approval for their State and maintain the file as outlined in subparagraph 494 C.

C Cases of Delayed Instructor Selection

If the vendor has not selected all of the instructors at the time FSA intends to approve the vendor, the vendor may be approved with the condition that the instructors must meet the criteria of subparagraph 492 D.

D Agreement to Conduct Training

[7 CFR 764.458(a)(1)] Upon approval, the vendor must sign an agreement to conduct training for the Agency's borrowers.

[7 CFR 764.458(a)(2) The agreement to conduct training is valid for 3 years.

[7 CFR 764.458(a)(3)] Any changes in curriculum, instructor, or cost require prior approval by the Agency.

[7 CFR 764.458(a)(4)] The vendor may revoke the agreement by giving the Agency a written 30-calendar-day notice.

493 Vendor Approval (Continued)**D Agreement to Conduct Training (Continued)**

[7 CFR 764.458(a)(5)] The Agency may revoke the agreement if the vendor does not comply with the responsibilities listed in the agreement by giving the vendor a written 30-calendar-day notice.

The vendor and SED must sign FSA-2375.

E Renewing an Agreement to Conduct Training

[7 CFR 764.458(b)(1)] To renew the agreement to conduct training, the vendor must submit in writing to the Agency:

- (i) A request to renew the agreement,**
- (ii) Any changes in curricula, instructor, or cost; and**
- (iii) Documentation that the vendor is providing effective training.**

Documentation may include:

- course evaluations
- test scores
- statistics on the improvement of applicants who have completed the course.

[7 CFR 764.458(b)(2)] The Agency will review renewal requests in accordance with § 764.457 (paragraph 492).

--Vendors submit renewal requests to SED of the State where the vendor is approved. For multi-state renewal request, the vendor will send the request to the SED of the State where the vendor is headquartered. The SED will forward the multi-State vendor renewal request to DAFLP for review and distribution to appropriate States.--

F Updating Vendor Lists

SED shall update the approved vendor list annually. The list shall include:

- approved State vendors
- contact person for each vendor
- terms of the vendor agreements
- subject matter in which vendor is approved to conduct training.

State and County Offices must make this list available to applicants, such as by posting it in the office or including a list of recently added vendors in the newsletter.

A copy of the approved vendor list must be e-mailed to DAFLP, LMD Director as identified in 1-FLP.