

For: State and County Offices

Implementing Farm Bill Provisions That Affect Direct Loan Making

Approved by: Deputy Administrator, Farm Loan Programs



1 Overview

A

Background

The Farm Bill, officially titled the Farm Security and Rural Investment Act of 2002 (the Act) includes several provisions that change requirements for making FSA direct farm loans.

Provisions of the Act became effective when signed by the President on May 13, 2002.

B

Purpose

This notice provides information on some of the provisions of the Act which modify direct Farm Ownership (FO) and Operating (OL) loan requirements and procedures. Some provisions will be implemented through the rulemaking process.

Notes: Provisions of the Act shall be implemented immediately unless otherwise noted.

Code of Federal Regulations and FmHA Instructions 1941-A and 1943-A will be amended as soon as possible to reflect these changes.

Guaranteed loan making issues will be addressed in revisions to 2-FLP. Emergency loan issues were addressed in 3-FLP, Amend. 3. The associated regulations will be amended as soon as possible.

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<p>Disposal Date</p> <p>June 1, 2003</p>	<p>Distribution</p> <p>State Offices; State Offices relay to County Offices</p>
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1 Overview (Continued)

C

Contact

State Offices shall direct questions about this notice to James Radintz or Mike Hinton, LMD at 202-720-1632.

2 Implementing Provisions of the Act

A

FO Eligibility Requirements

FmHA Instruction 1943-A, section 1943.12 (a)(8) provides that an applicant must have operated a farm or ranch for at least 3 years to be eligible for a direct FO loan. The Act changes this requirement to make it somewhat easier to qualify. Under the revised requirement, an applicant must have participated in the business operations of a farm or ranch for at least 3 years, but need not have been the primary operator.

Factors to determine participation in the business operations of a farm or ranch are similar to those for determining adequate farming experience necessary to ensure a reasonable prospect of success in the operation.

Applicants who meet **any** of the following criteria have participated in the business operations of a farm or a ranch. The applicant:

- owned, managed, or operated a farm business for at least 3 years as evidenced by tax returns, FSA farm records, or similar documentation
- has been employed as a farm manager or farm management consultant for at least 3 year's complete production and marketing cycle
- participated in the operation of a farm by virtue of being raised on a farm or worked on a farm with significant responsibility for the day-to-day decisions for at least 3 years. Significant responsibilities include, but are not limited to:
 - decisions to cull livestock
 - selection of seed varieties and weed control programs
 - determination of whether equipment should be repaired or replaced
 - selection of input suppliers
 - selection of feeding programs or strategies.

Compliance with the participation requirement through the second or third bulleted items must be thoroughly documented to verify that the applicant participated in the business operation of a farm or ranch and did not function solely as a laborer.

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2 Implementing Provisions of the Act (Continued)

B

Loan Purposes

FmHA Instruction 1943-A, section 1943.16 addresses loan purposes. The Act adds refinancing a temporary bridge loan as an authorized loan purpose provided all of the following requirements have been met.

- The loan was made by a commercial or cooperative lender for acquisition of land for a farm or ranch.
- The applicant obtained the loan to be refinanced **after** a direct FO loan was approved for acquisition of the land.
- Direct FO funds were not available to fund the applicant's loan at the time of approval.
- The loan to be refinanced was intended to be temporary and was not permanent financing.

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

C

Down Payment Loans

FO loan purposes contained in FmHA Instruction 1943-A, section 1943.14(c) limit down payment loans for beginning farmers and ranchers to 30 percent of the purchase price or appraised value, whichever is less, of the farm or ranch to be acquired. The Act increases the loans to 40 percent of the purchase price or appraised value, whichever is less, unless the applicant requests a lesser amount.

Loan limitations contained in FmHA Instruction 1943-A, section 1943.14(d)(4) prohibit a balloon payment on financing obtained from other lenders in conjunction with a downpayment FO loan, within 10 years of the date of the down payment loan. Under the provisions of the Act, the limit is now 15 years rather than 10.

FmHA Instruction 1943-A, section 1943.14 (e)(2) limits the loan term of an FO down payment loan to 10 years or less. The Act increases the maximum amortization period to 15 years or less.

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2 Implementing Provisions of the Act (Continued)

D

Definition of Beginning Farmer or Rancher

The definition of beginning farmer or rancher contained in FmHA Instruction 1941-A, section 1941.4(e), and FmHA Instruction 1943-A, section 1943.4(e), limits the acreage an applicant can own to 25 percent of the average farm or ranch size in the county where the property is located. The Act increases the limit to 30 percent.

E

Eligibility of Entity Applicants

FmHA Instruction 1941-A, section 1941.12, and FmHA Instruction 1943-A, section 1943.12, limit eligible entity applicants to cooperatives, corporations, partnerships, or joint operations. Certain 2 or more member limited liability companies (LLC's) and trusts have been eligible as joint operations. The Act specifically adds trusts and LLC's, including those with only 1 member, to the list of entities which may be eligible applicants.

When processing loan applications from LLC's or trusts, the applicant will be treated like other entity applicants.

LLC's and trusts must meet all eligibility criteria applying to entities. Members holding a majority interest will be those beneficiaries holding over 50 percent interest in the trust property.

- The members of LLC's and trusts must sign the debt instruments for the entities and as individuals to evidence personal liability for the debt. Trust members include all trustors, trustees, and beneficiaries (except minors).
- The applicant must provide evidence that their organization is recognized as LLC or trust under the laws of the States in which the entity will operate the farm or ranch.

State Offices shall:

- **issue a State supplement** as necessary after consulting with their regional OGC about any special requirements when lending to LLC's or trusts, such as signatures on promissory notes or security instruments, and any unique characteristics of State LLC or trust statutes
- obtain regional OGC opinion on whether submitted trust documents demonstrate valid organization under State law and whether the trustee has authority to mortgage trust property for the planned farming purposes.

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2 Implementing Provisions of the Act (Continued)

F

Term Limits

The Act does not continue the suspension of direct OL term limits, but does provide very limited exceptions. Term limit provisions will go back into effect on January 1, 2003. Additional guidance will be issued before that date. Until additional guidance is received, FSA staff shall continue to follow Notice FLP-137.

G

Eligibility for Borrowers With Prior Debt Forgiveness

The Act excepts certain borrowers who received debt forgiveness after April 4, 1996, as the result of a Presidentially declared disaster from the automatic prohibition on additional loans. **This provision will not be implemented by this notice; Field Offices shall continue to operate under existing procedures until further notice.** Implementation of this provision requires publication of a proposed rule allowing for submission of public comments and a final rule addressing all public comments in the Federal Register.
