Guaranteed Loan Making and Servicing
2-FLP (Revision 1) | Amendment 58

Approved by: Deputy Administrator, Farm Loan Programs

Amendment Transmittal

A Reasons for Amendment

Subparagraph 32 B has been amended to clarify the handling of conflicts of interest.

Subparagraph 34 A has been amended to clarify details that can be provided to potential applicants about lenders who participate in the guaranteed loan program.

Subparagraph 135 B has been amended to update a hyperlink.

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32 Conflict of Interest (7 CFR 762.110(f)) (Continued)

B FSA Employees

An FSA employee shall not participate, directly or indirectly, in deliberations on, or determination of, any matter affecting the application or servicing of a guaranteed (or direct) loan to any relative of the employee, any person residing in the employee’s household, anyone with continuing business dealings with the employee, or any entity controlled by the employee.

*--An FSA employee shall also not participate, directly or indirectly, in deliberations on, or determination of, any matter affecting the application or servicing of a guaranteed loan submitted by a lender who employs (in a lending capacity) any relative of the employee, any person residing in the employee’s household, or anyone with continuing business dealings with the employee.

Note: This provision applies when the lender’s employee in question is involved in the lending process of FSA guaranteed loans or is a member of the lender’s management team overseeing their FSA guaranteed loan portfolio. It is not considered to be a conflict of interest if the lender’s employee works in a nonmanagement, administrative capacity or has no involvement in the FSA guaranteed lending process.

FSA employees should notify their immediate supervisor of any potential conflict of interest with an applicant or an employee of a guaranteed lender.

Any processing or servicing activity conducted according to this subparagraph is subject to 3-PM provisions. When an FSA employee has a conflict of interest with an employee of a lender as outlined in this subparagraph, the same guidance from 3-PM should be followed as if the FSA employee had a conflict of interest with an applicant.--*

33 Review and Appeals (7 CFR 762.104)

A Appeal Rights

7 CFR Part 11 (the National Appeals Division regulation) stipulates that an adverse guaranteed loan approval or loan servicing decision directly affects the applicant/borrower and grants appeal rights to the applicant/borrower. The lender is defined as an “interested party”, without appeal rights.

Because an adverse decision of a liquidation plan, interest assistance claim, or loss claim directly affects the lender, the lender will be provided with appeal rights when making an adverse decision in these situations.

A decision made by the lender adverse to the borrower is not a decision by the Agency, whether or not concurred in by the Agency, and may not be appealed.

B Handling Appeals

FSA appeals will be handled in accordance with parts 11 and 780 of this title (1-APP).
Actions When a Denial Is Overturned in NAD Final Determination

1-APP, subparagraph 135 A requires that FSA implement a final determination not later than 30 calendar days after the effective date of the notice of final determination. An appeal determination is administratively final when the provisions of 1-APP, subparagraph 135 B have been met.

The borrower and lender, as appropriate, will be advised of the next steps to be taken within 5 workdays of the date the appeal decision becomes administratively final, or the date FSA determines that it will not pursue a further review of the hearing officer’s decision, whichever comes first. The contact will be by telephone or in person, with a written followup.

1-APP, subparagraph 135 D provides that, according to FSA regulations, changes in the borrower’s condition in implementing NAD’s final determination may be considered. If there have been significant changes to the borrower’s financial or farming situation since the date of the original FSA decision, only the information that has changed needs to be submitted or revised.

Note: A significant change is a change that would materially affect the feasibility of, or eligibility for, the proposed loan servicing action.

The lender or Agency may request updated information from the borrower to implement an appeal decision.

The lender or FSA may request updated financial or production information as the borrower’s circumstances may have changed during the pendency of the appeal which may adversely affect the borrower’s farming operation.

Note: Adversely affect means that a change unrelated to the issue resolved through the appeal will result in the borrower no longer being eligible for the assistance requested.

The State appeals coordinator will monitor receipt and implementation of final NAD determinations to ensure that they are properly and timely implemented. --*
A Lender List

The Agency maintains a current list of lenders who express a desire to participate in the guaranteed loan program. This list is made available to farmers upon request.

*--When discussing the guaranteed loan program with potential applicants, FSA employees should inform the producer about the lenders in the area who participate in the guaranteed loan program. However, employees should not show favoritism toward any lender or attempt to influence the customer to work with a certain lender over any others.--* 

B Classification

Lenders who participate in the Agency guaranteed loan program will be classified into one of the following categories:

- Standard Eligible Lender (paragraph 46)
- Certified Lender (paragraph 50)
- Preferred Lender (paragraph 52)
- Micro Lender (paragraph 55).
Section 3  Loan Terms, Insurance, Inspections, and Fees

135  Interest Rate Requirements (7 CFR 762.124(a))

A  Fixed and Variable Rates

The interest rate on a guaranteed loan or line of credit may be fixed or variable as agreed upon between the borrower and the lender. The lender may charge different rates on the guaranteed and the non-guaranteed portions of the note. The guaranteed portion may be fixed while the unguaranteed portion may be variable, or vice versa. If both portions are variable, different bases may be used.

If a variable rate is used, it must be tied to an index or rate specifically agreed to between the lender and borrower in the loan instruments and the rate adjustments must be in accordance with normal practices of the lender for nonguaranteed loans. Upon request, the lender must provide the Agency with copies of its written rate adjustment practices.

FSA may request copies of lender’s written rate adjustment practices if the loan approval official has reason to believe the interest rates are not in line with local lending practices. Rate adjustment practices will be maintained in lender’s operational file. See subparagraphs 48 B, 51 B, and 54 B.

*B--B  Maximum Interest Rates

At the time of loan closing or loan restructuring, the interest rate on both the guaranteed portion and the nonguaranteed portion of a fixed or variable rate CL, OL, or FO loan may not exceed the rates established and announced by the Agency on the FSA website (www.fsa.usda.gov) and as outlined below.

- For variable rate loans or fixed rate loans with rates fixed for less than five years, 675 basis points (6.75 percentage points) above the prior business day’s Secured Overnight Financing Rate (SOFR).

- For loans with rates fixed for five or more years, 550 basis points (5.5 percentage points) above the prior business day’s 5-year Treasury note rate.

The lender is not required to tie its guaranteed loan interest rates to SOFR or 5-year--* Treasury, nor is it required that the rate remain below the maximums throughout the term of the loan. This requirement only sets the maximum rate that may be charged to the customer at the time of loan closing or restructuring.

Note:  The maximum rate is not based on loan terms, purpose, or type. It is based on how long the interest rate is fixed. For variable rate loans and loans with an interest rate fixed for less than 5 years, regardless of program type (CL, OL or FO), the *--maximum rate is based on SOFR.--*
B Maximum Interest Rates (Continued)

For loans with interest rate fixed for 5 or more years, the maximum rate is based on the 5-year Treasury index.

At loan closing and the lender loan file review, the authorized agency official will verify the interest rate charged to the guaranteed customer at closing did not exceed the maximum rate, and document on applicable file review checklist.

To obtain rates for each index, the authorized agency official can access the links for the following Web pages:

- [https://www.newyorkfed.org/markets/reference-rates/sofr](https://www.newyorkfed.org/markets/reference-rates/sofr), scroll down to the table and select the rate for the appropriate date

  **Note:** If an earlier date is needed, scroll down further to enter a new date range under “Reference Rates Historical Data Search” and select “Overnight Rates”, “Secured Rates”, and “SOFR”. CLICK “SEARCH”.

- 5-year Treasury at [https://home.treasury.gov/resource-center/data-chart-center/interest-rates/TextView?type=daily_treasury_yield_curve&field_tdr_date_value=2022](https://home.treasury.gov/resource-center/data-chart-center/interest-rates/TextView?type=daily_treasury_yield_curve&field_tdr_date_value=2022), scroll down to the chart and look up the appropriate date under the “5 Yr” column.

  **Note:** The 5-year Treasury note rate may also be listed as Treasury Constant Maturities as published on the Federal Reserve website.

The following examples are provided to illustrate how to determine the maximum interest rate.

**Example 1:** Lender closes a 4-year GOL. The rate is fixed at 7.5% on the date loan closes. The prior business day’s SOFR rate on date loan closes is 2.5% and the prior business day’s 5-year Treasury rate is 2.0%.

The maximum rate would be 9.25% (SOFR rate 2.5% plus maximum spread 6.75% = 9.25%).

In this example, the lender’s rate does not exceed the maximum rate and; therefore, meets the limitation.