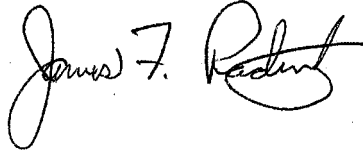


**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

<b>Direct Loanmaking 3-FLP (Revision 2)</b>	<b>Amendment 17</b>
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**Approved by:** Acting Deputy Administrator, Farm Loan Programs



**Amendment Transmittal**

**A Reasons for Amendment**

Subparagraph 74 D has been amended to clarify guidance for highly erodible soils and wetland conversion.

Subparagraph 351 E has been amended to provide:

- consistent HEL and wetland compliance guidance
- guidance for identifying wetlands.

Subparagraph 356 A has been amended to provide guidance about notifying applicants when wetland indicators are present.

<b>Page Control Chart</b>		
<b>TC</b>	<b>Text</b>	<b>Exhibit</b>
	4-19, 4-20 15-3, 15-4 15-15, 15-16	



**73 Final Eligibility Determination (Continued)****B Ineligible Applicants**

If the authorized agency official determines the applicant ineligible, the authorized agency official must:

- document in FBP and DLS the specific reasons for denial
- cite CFR references as applicable
- notify the applicant in writing, within 5 calendar days, of the determination providing appeal rights according to 1-APP and ECOA and nondiscrimination statements according to 1-FLP, paragraph 41.

**Note:** See paragraph 356 for further guidance on actions to be taken when an application is denied.

If the unfavorable decision is the result of a determination that the applicant is not creditworthy, the authorized agency official will meet with the applicant before sending a rejection letter to:

- discuss the credit report information in detail
- explain the reasons for the adverse decision
- provide the applicant with a copy of the credit report including the name and address of the credit reporting company and any other nonconfidential information used to make the creditworthiness decision
- inform the applicant that any dispute about the accuracy of the information in the credit report must be resolved between the credit reporting company and the applicant.

If the applicant fails to attend the meeting, a rejection letter will immediately be sent and the fact that the applicant failed to attend the meeting will be documented in the case file.

**Note:** If denial is based on information obtained from a source other than a credit reporting company, the applicant will be advised that the information can only be disclosed upon written request.

74 **Limitations****A Program Limitations**

**[7 CFR 764.102(a)]** Limitations specific to each loan program are contained in subparts D through I of this part (Parts 7 through 10).

**B Maximum Loan Limits**

**[7 CFR 764.102 (b)]** The total principal balance owed to the Agency at any one time by the applicant, or anyone who will sign the promissory note, cannot exceed the limits established in § 761.8 of this chapter (1-FLP, paragraph 29).

**C Loan Funds Used in the United States**

**[7 CFR 764.102(c)]** The funds from the FLP loan must be used for farming operations located in the United States.

**D Highly Erodible Soil and Wetlands Conversion**

**[7 CFR 764.102(d)]** The Agency will not make a loan if the proceeds will be used:

**(1) For any purpose that contributes to excessive erosion of highly erodible land, or to the conversion of wetlands;**

**\* \* \***

**(2) To drain, dredge, fill, level, or otherwise manipulate a wetland; or**

**(3) To engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands as defined in the Food Security Act of 1985.**

**\*--Notes:** The above includes HEL and wetland provisions administered by NRCS and the Army Corp of Engineers. The Corp may issue permits for specific agriculture and related wetland activities which they determine to be permissible.

See RD Instruction 1940 G, Exhibit M for guidance if NRCS has determined that the applicant committed any of the above violations.--\*

**E Construction**

**[7 CFR 764.102(e)]** Any construction financed by the Agency must comply with the standards established in § 761.10 of this chapter (1-FLP, Part 5).

**F Non-eligible Enterprise**

**[7 CFR 764.102(f)]** Loan funds will not be used to establish or support a non-eligible enterprise, even if the non-eligible enterprise contributes to the farm. Notwithstanding this limitation, an EM loan may cover qualified equine losses as specified in subpart I of this part.

See Exhibit 2 for the definition of noneligible enterprise.

**75-90 (Reserved)**

## 351 Reviewing and Evaluating Applications (Continued)

### E Environmental

The applicant has complied with or has plans in place for the proposed operation, which  
 \*--cover all the environmental requirements of 1-EQ and RD Instruction 1940-G and will not violate CONACT, Section 363; the Food, Security Act of 1985 (Sodbuster, Swampbuster); Executive Order 11990; or the Clean Water Acts.

See 1-FLP, subparagraph 222 C for guidance to identify potential wetlands that may be impacted by the proposed action.

The authorized loan official must ensure the applicant has certified that he or she will not violate HEL or WC provisions and that loan funds will not be used for a purpose that will contribute to a violation of HEL or WC provisions.

According to 6-CP, applicants must certify that they will not violate HEL and WC provisions by completing and executing AD-1026 for each farming interest. If, on AD-1026, question 6, 7A, 7B, or 7C is answered “yes” by the applicant, then AD-1026 will be referred to NRCS for a HEL or wetland determination, as appropriate.

A conservation plan may be required if the property contains HEL. If a conservation plan is required, NRCS should be contacted to:

- determine what the conservation plan will contain
- evaluate if the applicant has the resources to carry out the plan.

The authorized agency official should consider the proposed use of loan funds; the contents of the conservation plan, if a conservation plan exists; and changes in land use when determining whether an applicant is likely to violate HEL and WC provisions.--\*

### F Loan Narrative

The authorized agency official shall document each item considered under subparagraphs B through E to support the final loan decision. The documentation shall be added to the FBP’s Credit Presentation to document the decision making process.

**Note:** If repayment ability is used as security according to subparagraph 246 B, documentation of the requirements of that section shall be included in the narrative.

## 352 Loan Approval

### A Assessment

The authorized agency official must confirm and document in the case file that the loan assessment is complete or updated, when required, and necessary supervision is planned.

### B Establishing Loan Approval Conditions

**[7 CFR 764.401(a)(2)] The Agency will place conditions upon loan approval it determines necessary to protect its interest and maximize the applicant's potential for success.**

Authorized agency officials shall not make any written or oral commitments or in any way imply that a loan will be made to any individual or entity before the closing of a loan.

The authorized agency official must specify on FSA-2313, or an attachment if necessary, any conditions that must be met including, but not limited to, the following:

- borrower training requirements as established in subparagraph 472 C
- all security requirements, including required lien position
- any agreements needed with prior lienholders
- supervised bank account according to 1-FLP, Part 4
- obtaining an appraisal that demonstrates that the security requirements can be met if the loan was approved subject to obtaining an appraisal
- any actions required of the applicant before loan closing, such as:
  - insurance and indemnity requirements
  - assignments from sale proceeds or income
  - reduction of outstanding indebtedness to meet maximum loan limits.

When a loan is approved for which funds are available and a title search is necessary, check (✓) the following statement on FSA-2313:

“Loan funds will be made available to you within 15 business days of loan approval. However, you agree that in certain circumstances the 15 business days may be exceeded when additional information, such as a lien and/or title search, an appraisal, subordination, etc. is needed prior to loan closing.”

**\*--Note:** FSA-2313 will be sent by regular mail or hand delivered.--\*

## 356 Loan Denial

## A Denial

**[7 CFR 764.401(b)] The Agency will not approve a loan if it determines that:**

**[7 CFR 764.401(b)(1)] The applicant's farm operating plan does not reflect a feasible plan;**

Streamlined CL's meet feasibility requirements when all requirements in subparagraph 191 B are met.

**[7 CFR 764.401(b)(2)] The proposed use of loan funds is not authorized for the type of loan requested;**

**[7 CFR 764.401(b)(3)] The applicant does not meet the eligibility requirements for the type of loan requested;**

**[7 CFR 764.401(b)(4)] There is inadequate security for the type of loan requested;**

**[7 CFR 764.401(b)(5)] Approval of the loan would cause the applicant's total indebtedness to the Agency to exceed the maximum limits established in § 761.8 of this chapter (1-FLP);**

**[7 CFR 764.401(b)(6)] The applicant's circumstances may not permit continuous operation and management of the farm; or**

**[7 CFR 764.401(b)(7)] The applicant, the farming operation, or other circumstances surrounding the loan are inconsistent with the authorizing statutes, other Federal laws, or Federal credit policies.**

**Notes:** This includes determinations by \* \* \* other Federal agencies, that the applicant is not in compliance with applicable environmental regulations.

\*--See 1-FLP, Exhibit 27.5 for information to be included when notifying the applicant that wetland indicators were determined to be present, as provided in 1-FLP, subparagraph 222 C.--\*

## B Notification of Loan Denial

The authorized agency official notifies the applicant of loan denial by letter according to 1-APP. The letter must provide:

- clear, specific reasons for the denial
- citations of requirements from CFR and handbook sections that are not met by the applicant
- appeal or review rights according to 1-APP
- ECOA and nondiscrimination statement according to 1-FLP, paragraph 41.

**356 Loan Denial (Continued)****C Actions After Denial**

Once the loan application is denied, the authorized agency official will:

- input data into DLS
- close the loan application process.

FSA must maintain applications that have been rejected. See 25-AS for maintaining loan files.

See 1-APP for information on reconsideration if the applicant requests FSA reconsider the loan application for approval.

**D Counseling**

When discussing a denial decision, the authorized agency official will advise the applicant of potential actions or alternatives that might resolve or help resolve the issues that resulted in the denial of the loan request. Examples include, but are not limited to, obtaining necessary experience or training, restructuring debts, liquidating assets and paying down debts, repaying debt forgiveness, and changing the size or scope of the farm operation.

The authorized agency official should not tell the applicant what actions to take, and make it clear that what is being discussed are options; it is up to the applicant to decide what course of action to take.

Authorized agency officials shall not guarantee that loan approval is certain, especially when that guarantee is based upon an applicant taking a specific action.

\* \* \*