Amendment Transmittal

A Reasons for Amendment

The following changes are being made to implement certain provisions authorized by the Agricultural Improvement Act of 2018 (2018 Farm Bill).

Subparagraph 132 D has been amended to update the substitution of farm experience section of the general eligibility requirements and add guidance relating to mentorships.

Subparagraphs 151 A and 152 A have been amended to amend the Down Payment Program eligibility requirements to include veteran farmer.

Subparagraph 242 G has been amended to revise the eligibility requirements for prior debt forgiveness.

Subparagraph 371 D has been amended to increase the loan threshold amount for waiver of title clearance and legal services.

Exhibit 2 has been amended to add the definition of Equitable Relief and update the definition of a Veteran Farmer.

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132 Eligibility (Continued)

D Farm Experience

The applicant:

[7 CFR 764.152(d)] and in the case of an entity, one or more members constituting a majority interest, must have participated in the business operations of a farm for at least 3 years out of the 10 years prior to the date the application is submitted.

(1) The following experiences can substitute for up to 2 of the 3 years:

(i) Not less than 16 credit hours of post-secondary education in an agriculture-related field;
(ii) Successfully completion of a farm management curriculum offered by a cooperative extension service, community college, adult vocational agriculture program, non-profit organization, or land-grant college or university;
(iii) 1-year experience as a farm laborer with substantial management responsibility;
(iv) Successful completion of an internship, mentorship, or apprenticeship in day-to-day farm management;
(v) Significant business management experience;
(vi) Honorable discharge from the armed forces of the United States;
(vii) Successful repayment of an FSA financed youth loan; or
(viii) Established relationship with a counselor in the Service Corps of Retired Executives (SCORE) program who has experience in farming or ranching, or with Agency-approved local individuals or organizations that are committed to providing mentorship in farming or ranching; or

Local SCORE organizations provide confirmation that a valid mentoring relationship has been established. Loan approval officials will also consider as mentors local individuals or organizations that are not associated with SCORE. Those individuals or organizations must be committed to providing mentorship in farming or ranching. Applicants desiring to meet eligibility requirements using d(1)(iii) must submit a document signed by the mentor that describes the following:

• the mentor’s qualifications, training, and on-the-job experience as it relates to agriculture, including the number of years of related experience

• specific skills and knowledge the mentor will provide

• intended interactions with the applicant, including frequency of meetings, discussions, and oversight.--*
D Farm Experience (Continued)

*--The loan approval official will determine the adequacy of a mentor, giving specific consideration to the mentor’s history related to the applicant’s type of operation. A mentor does not need to have experience specifically as an operator of a farm or ranch. Ample experience in agribusiness-related fields is acceptable, including education, lending, marketing, consulting, and other fields related to agribusiness. Determinations will be documented in the eligibility section of the FBP credit presentation.--* 

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151 Uses

A General

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

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

Note: For down payment loan purposes, the applicant must meet the definition of a beginning farmer, socially disadvantaged farmer, or veteran 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, socially disadvantaged farmer, or veteran farmer.

See Exhibit 2 for the definition of a beginning farmer, SDA farmer, and veteran 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.
242 Eligibility (Continued)

F Availability of Credit Elsewhere (Continued)

(3) In the case of a loan of $100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit, if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit elsewhere, and based on the applicant’s circumstances credit is not likely to be available;

The authorized agency official:

- may waive the requirement for written credit denial when a review of the financial statement, credit report, and other financial information clearly indicates that other credit is not available to the applicant

- must thoroughly document this conclusion in the loan file by comparing the credit standards of local lenders that make farm loans to the applicant’s financial condition and showing how the applicant does not meet those standards.

The fact that an applicant has obtained credit for farm purposes through credit cards, finance companies, or other “sub-prime” lenders does not constitute failure to meet the test for credit unless the rates and terms for that credit are similar to the rates and terms offered on loans for the same purpose by other farm lenders in the community.

(4) Notwithstanding the applicant's submission of the required written declinations of credit, the Agency may contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant’s ability to obtain credit elsewhere;

If the authorized agency official believes, based on a review of the applicant’s financial statement, credit report, and other financial information, that other credit is available, the authorized agency official may contact lenders to determine if they are willing to extend credit to the applicant.

The following are used to verify and document the availability of other credit:

- FSA-2310
- FSA-2015
- written letters from lenders that contain all the information requested on FSA-2310.

When the applicant is an entity, all individual members must meet the requirements of this subparagraph.
G  Prior Debt Forgiveness

The applicant:

[7 CFR 764.352(f)] And all entity members in the case of an entity must not have received debt forgiveness from the Agency on more than one occasion on or before *--April 4, 1996, or any time after April 4, 1996. A write down associated with a restructuring action under Section 353 of the Act is not considered debt forgiveness for EM purposes.--*

See Exhibit 2 for the definition of debt forgiveness.

If an applicant repays the forgiven debt, this restriction does not apply.

All debt forgiveness actions that are part of 1 transaction and occur on or about the same date are normally considered 1 occasion of debt forgiveness, regardless of the number of loans involved. Since debt forgiveness on direct loans and guaranteed loans are always considered separate transactions, concurrent forgiveness on direct and guaranteed loans are separate occasions. A single loan may have debt forgiveness on more than 1 occasion, when, for example, a borrower received a writedown and the loan was later liquidated at a loss.

* * *

H  Timely Loan Application

The applicant:

[7 CFR 764.352(g)] Must submit an application to be received by the Agency no later than eight months after the date the disaster is declared or designated in the county of the applicant’s operation.

If a county has been designated or declared a disaster area, either a contiguous or primary, more than 1 time for the same disaster, applicants will have 8 months from the date of the most recent designation to submit an application.

The applicant may seek EM only with respect to a family farm that had production or physical losses as a result of a disaster in a designated or declared disaster area, either a contiguous or primary.

Note: See State supplements, which provide a list of current disaster designations and establish the timeframe during which applicants may apply for assistance. The State supplement shall provide the authorized agency official with sufficient information to determine if an applicant was operating in a designated disaster area, either a contiguous or primary, and that the application was received during the eligible period.
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 $25,000 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.
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.

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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.
Debt Forgiveness

Debt forgiveness means a reduction or termination of a debt under the Act in a manner that results in a loss to the Agency.

(1) Debt forgiveness may be through:
   (i) Writing down or writing off debt pursuant to 7 U.S.C. 2001;
   (ii) Compromising, adjusting, reducing, or charging off a debt or claim pursuant to 7 U.S.C. 1981; or
   (iii) Paying a loss pursuant to 7 U.S.C. 2005 on a FLP loan guaranteed by the Agency.

(2) Debt forgiveness does not include:
   (i) Debt reduction through a conservation contract;
   (ii) Any write down provided as part of the resolution of a discrimination complaint against the Agency;
   (iii) Prior debt forgiveness that has been repaid in its entirety; and
   (iv) Consolidation, rescheduling, reamortization, or deferral of a loan, or
   (v) Forgiveness of YL debt, due to circumstances beyond the borrower’s control.

The Agency will use the criteria in 7 CFR 766.104(a)(1) to determine if the circumstances were beyond the borrower’s control.

Debt Service Margin

Debt service margin means the difference between all of the borrower’s expected expenditures in a planning period (including farm operating expenses, capital expenses, essential family living expenses, and debt payments) and the borrower’s projected funds available to pay all expenses and payments.

Direct Loan

Direct loan means a loan funded and serviced by the Agency as the lender.

Disaster

Disaster means an event of unusual and adverse weather conditions or other natural phenomena or quarantine, that has substantially affected the production of agricultural commodities by causing physical property or production losses in a county, or similar political subdivision, that triggered the inclusion of such county or political subdivision in the disaster area declared, by the President or designated by the Secretary of Agriculture, for physical losses only, the FSA Administrator may authorize emergency loan assistance.

Disaster Area

Disaster area means the county or counties declared or designated as a disaster area for EM loan assistance as a result of disaster related losses. This area includes counties contiguous to those counties declared or designated as disaster areas.
Exhibit 2

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

Disaster Yield

*Disaster yield* means the per-acre yield of an agricultural commodity for the farming operation during the production period when the disaster occurred.

Down Payment Loan

*Down payment loan* means a type of FO loan made to beginning farmers and socially disadvantaged farmers to finance a portion of a real estate purchase under Part 764, Subpart E of this chapter (Part 7, Section 2).

EM

*EM* means a loan made to eligible applicants who have incurred substantial financial losses from a disaster.

Embedded Entity

*Embedded entity* means an entity that has a direct or indirect interest, as a stockholder, member, beneficiary, or otherwise, in an entity.

Entity

*Entity* means a corporation, partnership, joint operation, cooperative, limited liability company, trust, or other legal business organizations, as determined by the Agency, that is authorized to conduct business in the state in which the organization operates. Organizations operating as non-profit entities under Internal Revenue Code 501 (26 U.S.C. 501) and estates are not considered eligible entities for Farm Loan Program purposes.

Entity Member

*Entity member* means all individuals and all embedded entities, as well as the individual members of the embedded entities, having an ownership interest in the assets of the entity.

*--Equitable Relief

*Equitable relief* means waiving a requirement for Direct Farm Ownership, Direct Farm Operating, or Direct Emergency loans when the borrower is not in compliance with loan program requirements but acted in good faith and relied on a material action, advice, or non-action from an Agency official to the detriment of the borrower's operation.--*
U.S. Noncitizen National

A **U.S. noncitizen national** means a person born in American Samoa or Swains Island on or after the date the U.S. acquired American Samoa or Swains Island, or a person whose parents are U.S. noncitizen nationals. Typical evidence of the relatively uncommon status as a noncitizen national includes a birth certificate or passport with a document bearing a photograph of the person.

**Note:** See Exhibit 9 for further documentary requirements to meet this definition.

Veteran

**Veteran** means **any person who served in the military, naval, or air service during any war as defined in section 101(12) of title 38, United States Code.** For a National Guard member to be eligible for Veteran status, they must have served for 20 years or more and been discharged other than dishonorably or been deployed on active duty for at least 180 consecutive days during their service commitment.

Veteran Farmer

**Veteran farmer** is a farmer who has served in the Armed Forces (as defined in 38 U.S.C. 101(10) and, the term “Armed Forces” means the U.S. Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components, **who**:

- has not operated a farm; or
- has operated a farm but for not more than 10 years

**--has first obtained status as a veteran during the most recent 10-year period, regardless of their previous farming experience.--**

For entity applicants, the majority interest must be held by veteran farmers. For married couples, the veteran farmer must have at least 50 percent ownership in the farm business and make most of the management decisions, contribute a significant amount of labor, and generally be recognized as the operator of the farm.
Definition of Terms Used in This Handbook (7 CFR 761.2(b)) (Continued)

Working Capital

*Working capital* means *cash available to conduct normal daily farming operations including but not limited to feed, seed, fertilizer, pesticides, farm supplies, cooperative stock, and cash rent.*

Youth Loan

*Youth loan* means *an operating type loan made to an eligible rural youth applicant to finance a modest income-producing agricultural project.*

**Note:** This definition is being amended to remove “rural” by the 2014 Farm Bill and is effective immediately. This change will be incorporated in a Farm Bill CFR, but is effective, as provided here, immediately.