

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

**Direct Loan Making
3-FLP (Revision 2)**

Amendment 45

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraphs 65 A, B, C, and D have been amended to clarify credit history requirement.

Subparagraph 69 A has been amended to:

- correct the name of Colorado State University
- clarify the credit history.

Subparagraph 92 B has been amended to add two notes to clarify the applicability of a LOC ceiling.

Subparagraph 152 B has been amended to update the average farm size note.

Subparagraph 246 A has been amended to clarify security requirements for entity applicant.

Subparagraph 353 B has been amended to show down payment as two words.

Exhibit 7 has been amended to update the requirement for a debt verification from \$1,000 to \$5,000.

Exhibit 26 has been amended to update the PAD language.

Amendment Transmittal (Continued)

| Page Control Chart | | |
|---------------------------|--|--|
| TC | Text | Exhibit |
| 1, 2 | 4-3 through 4-6 4-7, 4-8 4-8.5, 4-8.6 4-11, 4-12 4-13, 4-14 5-3, 5-4 7-41, 7-42 10-25, 10-26 15-9, 15-10 | 1, page 5 7, pages 1, 2 page 3 26, pages 1, 2 |

Table of Contents

| | Page No. |
|------------------|--|
| Part 1 | Introduction and Purpose |
| 1 | Purpose and Sources of Authority 1-1 |
| 2 | Related References..... 1-2 |
| 3 | FLP Forms 1-4 |
| 4 | Introduction to Direct FLP's..... 1-8 |
| 5-20 | (Reserved) |
| Part 2 | (Reserved) |
| 21-40 | (Reserved) |
| Part 3 | Loan Application |
| 41 | Obtaining and Filing a Loan Application 3-1 |
| 42 | Complete Loan Applications 3-5 |
| 43 | Streamlined OL, ML (FO and OL), and Streamlined CL Requests 3-11 |
| 44 | Youth Loan Requests 3-13 |
| 45 | Processing Loan Applications..... 3-14 |
| 46-60 | (Reserved) |
| Part 4 | General Eligibility and Loan Limitations |
| Section 1 | Eligibility Requirements |
| 61 | Overview..... 4-1 |
| 62 | Controlled Substances..... 4-2 |
| 63 | Legal Capacity 4-3 |
| 64 | Citizenship 4-4 |
| 65 | Credit History..... 4-4 |
| 66 | Credit Elsewhere..... 4-8.6 |
| 67 | Delinquent Federal Debt and Unpaid Federal Judgments 4-10 |
| 68 | Federal Crop Insurance Violations 4-11 |
| 69 | Managerial Ability 4-12 |
| 70 | Borrower Training 4-14 |
| 71 | Owner/Operator of a Family Farm 4-14 |
| 72 | Entity Composition 4-16 |
| 73 | (Withdrawn--Amend. 37) |
| 74 | Limitations 4-19 |
| 75-90 | (Reserved) |

Table of Contents (Continued)

Page No.

Part 5 Loan Security

| | | |
|--------|---|------|
| 91 | Security Requirements | 5-1 |
| 92 | Real Estate Security | 5-4 |
| 93 | Other Security Requirements | 5-10 |
| 94 | Exceptions to Security Requirements | 5-11 |
| 95 | Appraisals and Values | 5-14 |
| 96-110 | (Reserved) | |

Part 6 Insurance

| | | |
|---------|----------------------------------|-----|
| 111 | Overview | 6-1 |
| 112 | Type of Insurance Required | 6-2 |
| 113 | Documentation | 6-4 |
| 114 | Indemnity | 6-6 |
| 115-130 | (Reserved) | |

Part 7 Farm Ownership Loan (FO) Programs

Section 1 FO (Regular and Microloan)

| | | |
|---------|--|-------|
| 131 | Uses | 7-1 |
| 132 | Eligibility | 7-4 |
| 133 | Limitations | 7-7 |
| 133.5 | Direct Farm Ownership - Microloan | 7-8.5 |
| 134 | Joint Financing Arrangements | 7-9 |
| 135 | Rates, Terms, Payments, and Security | 7-10 |
| 136 | Subsequent Loans | 7-12 |
| 137 | Program Outreach | 7-13 |
| 138-150 | (Reserved) | |

Section 2 Down Payment Program

| | | |
|---------|----------------------------------|------|
| 151 | Uses | 7-41 |
| 152 | Eligibility | 7-42 |
| 153 | Limitations | 7-43 |
| 154 | Rates, Terms, and Security | 7-44 |
| 155-170 | (Reserved) | |

63 Legal Capacity**A General Requirements**

[7 CFR 764.101(b)] The applicant, and anyone who will sign the promissory note, must *--possess the legal capacity to incur the obligation of the loan.

Note: By Statute, CONACT Section 311(b)(2), A person receiving a loan under this section who executes a promissory note; therefore, shall incur full personal liability for the indebtedness evidenced by such note in accordance with its terms free of any disability of minority.--*

The applicant must be of legal age, mental capacity, and have authority to enter into a legally binding agreement. If the applicant is an entity, all members must meet this requirement.

The authorized agency official must review documentation provided by entity applicants to ensure that the entity members meet legal capacity requirements.

Note: An entity that has members who have not reached the age of majority is ineligible for assistance because of the requirement that all entity members must sign FSA-2026 as an individual.

64 Citizenship

A General Requirement

[7 CFR 764.101(c)] The applicant and anyone who will sign the promissory note must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws.

See:

- Exhibit 2 for the definition of U.S. noncitizen national and qualified alien
- Exhibits 8 and 9 for guidance about documentary evidence of U.S. noncitizen national citizenship and qualified alien status.

Notes: The loan term to a qualified alien may not exceed the number of years of residency which they have been formally granted by the documents described in Exhibit 8.

If an applicant presents a valid I-551, showing the applicant has permanent resident status, the expiration date on I-551 has no bearing on the loan term. Therefore, the maximum loan terms may be extended beyond the I-551's expiration date.

65 Credit History

A General Requirement

[7 CFR 764.101(d)] The applicant must have acceptable credit history demonstrated by debt repayment.

In the case of an entity, the applicant and all members of the entity must have an acceptable credit history.

***--Note:** All factors addressed in this paragraph must be analyzed by the Loan Approval Official when considering an applicant's credit history. With the exception of previous debt forgiveness, each credit history factor shall be assessed as a part of an applicant's comprehensive credit history, rather than a single disqualifying factor.

Example 1: Applicant A makes a new application for a farm loan and discloses they had previous loans with FSA 10 years ago. Upon further review, the Loan Official finds documentation that 10 years ago the borrower provided false information on FSA financial documents necessary for a classification review, which ultimately led to a determination that the applicant did not act in good faith. However, that loan was paid in full on or before the due date with all payments as agreed and all history since that time shows repayment of debts as agreed. This applicant is likely eligible when determining credit worthiness.--*

65 Credit History

A General Requirement (Continued)

***--Example 2:** Applicant B's credit report shows a mixture of on-time and late payments. Notations include: three 90-day late payments in the last year, past-due accounts still outstanding, and a charged off credit card later sent for collection within the last 12 months. However, prior to the last 12 months, accounts were paid as agreed. While the derogatory history may result in an ineligibility determination, the Loan Official must review the history with the applicant to determine if the recent issues have been caused by circumstances beyond their control.--*

[7 CFR 764.101(d)(1)] As part of the credit history the Agency will determine whether the applicant will carry out the terms and conditions of the loan, and deal with the Agency in good faith. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.

The authorized agency official may determine that an applicant has not acted in good faith if the applicant:

- deliberately falsifies information
- intentionally omits information relevant to the loan decision
- does not make every reasonable effort to meet the conditions and terms of any previous FSA loan
- failed to make reasonable effort to resolve delinquencies with other lenders
- failed to file Federal tax returns when it appears that sufficient income was generated to require a tax filing.

***--Notes:** Applicants who provide false information may also be subject to civil and/or criminal prosecution and should be referred by the authorized agency official to OIG.

A lack of good faith determination requires OGC concurrence for each new application package submitted. Previous lack of good faith determinations must be reevaluated by OGC and an updated determination provided. If the previous OGC lack of good faith determination occurred more than 10 years prior to the date of a new application, National Office concurrence is required before final disposition. Loan approval officials will refer these cases through the State Office

Example: Twenty years ago, a direct farm loan borrower failed to report all livestock sales to the Agency, resulting in a formal lack of good faith determination. That same producer submits a new loan request today, in which the loan approval official plans to deny the request, citing the producer's prior lack of good faith from this incident as a contributing factor in the denial. National Office concurrence to deny the loan request must be obtained prior to final disposition.--*

65 Credit History (Continued)

A General Requirement (Continued)

[7 CFR 764.101(d)(2)] When the applicant caused the Agency a loss by receiving debt forgiveness, the applicant may be ineligible for assistance in accordance with eligibility requirements for the specific loan type. If the debt forgiveness is cured by repayment of the Agency's loss, the Agency may still consider the debt forgiveness in determining the applicant's creditworthiness.

--FSA will not consider the following as debt forgiveness for loan making purposes:--

- debt reduction through a conservation easement or contract
- any debt written off as part of the resolution of a discrimination complaint against FSA, including debt written off in conjunction with the *Pigford Consent Decree or Keepseagle* settlement.

Notes: This includes any debt forgiveness on eligible loans that occurred before the Keepseagle Settlement Agreement signed on October 29, 2010.

See Exhibit 14 for guidance on processing loan applications for claimants.

- prior debt forgiveness that has been repaid in its entirety
- prior debt forgiveness on a youth loan, if circumstances were beyond the applicant's control.

* * *

*--**Notes:** Debt forgiven on any non-Youth Loan debt will still be considered in determining applicant's credit worthiness. Determination that debt forgiveness was beyond the applicant's control should have been made and documented at the time of debt forgiveness approval.

Debts and receivables established by Farm Programs will be reviewed for compliance with this subparagraph. Established debts that are forgiven or granted relief will not hinder eligibility for Farm Loan Programs but should be considered when assessing credit worthiness.--*

65 Credit History (Continued)

B Verifying Direct Loan Losses

An agency official shall use the customer profile in DLS to enter TIN for the applicant and each individual who will sign FSA-2026.

| IF... | THEN... |
|---|---|
| the applicant's TIN is not found in DLS | a screen print of the page will be placed in position 3 of the case file. |
| the applicant's TIN shows a previous debt in DLS | refer to the list of paid codes provided in Exhibit 10. |
| the paid code indicates debt forgiveness | use the customer profile in DLS to determine the type, date, and amount of the debt forgiveness and if the debt forgiveness has been paid in full. History is available from 1989 to present. If the debt forgiveness was a write-down, determine the type, date, amount of the debt forgiveness, and if the debt forgiveness has been paid in full. If an equity record exists, the online history should be reviewed for partial write-downs. |
| it is determined that the applicant or any individual who will sign FSA-2026 has received debt forgiveness that has not been paid in full | review appropriate program regulations to determine if the type and date of the debt forgiveness makes the applicant ineligible for the type of assistance requested. Note: Exceptions for EM's still apply. The authorized agency official should document all *--findings in FBP.--* |

C Verifying Guaranteed Loan Losses

--The authorized agency official shall access the View Loan Screen in GLS to verify previous debt forgiveness on guaranteed loans. At the GLS Loan List Screen, click on the ID Cross Reference button. At the ID Cross Reference screen, enter the Tax ID/SSN of the applicant and each individual who will sign the FSA-2026 and submit. If no information is found, print the screen and place in the case file. If the Tax ID/SSN is associated with any existing or prior guaranteed loans, clicking on the ID Number link provided will display previous and current loan information for the individuals entered. Detailed information for a specific loan can be accessed by selecting the View Loan Screen from the "Action" drop-down box and clicking on the loan number hyperlink.--

D Assessing Past Repayment Problems

[7 CFR 764.101(d)(3)] A history of failures to repay past debts as they came due when the ability to repay was within the applicant's control will demonstrate unacceptable credit history. The following circumstances, for example, do not automatically indicate an unacceptable credit history.

65 Credit History (Continued)

D Assessing Past Repayment Problems (Continued)

(i) Foreclosures, judgments, delinquent payments of the applicant which occurred, more than 36 months before the application, if no recent similar situations have occurred, or Agency delinquencies that have been resolved through loan servicing programs available under 7 CFR Part 766 (5-FLP).

(ii) Isolated incidents of delinquent payments which do not represent a general pattern of unsatisfactory or slow payment.

(iii) “No history” of credit transactions by the applicant.

(iv) Recent foreclosure, judgment, bankruptcy, or delinquent payment when the applicant can satisfactorily demonstrate that the adverse action or delinquency was caused by circumstances that were of a temporary nature and were beyond the applicant’s control; or was the result of a refusal to make full payment because of defective goods or services or other justifiable dispute relating to the purchase or contract for goods or services.

***--Important:** The loan approving official’s authority to make exceptions is the most important tool for addressing creditworthiness. Exceptions can be used to justify payment history problems as long as the exception is clearly documented in the farm business plan. The only exception that cannot be made is that of an outside judgement obtained by the United States in a Federal court, other than the United States Tax Court.

In cases where an exception cannot be justified, the loan official will explain FSA creditworthiness requirements, the importance of paying accounts as agreed, and provide guidance on how the applicant can improve their credit history.--*

Isolated delinquent payments because of unforeseen medical expenses are considered beyond the applicant’s control.

Example: Applicant had a baby born prematurely and incurred large, unpaid accounts because of medical bills. The applicant should demonstrate that they have made payments on other debts as agreed.

Nonpayment of a debt because of circumstances within an applicant’s control may be used as an indication of unacceptable credit history. The mere fact that an applicant filed bankruptcy will not be used as an indication of unacceptable credit history. The circumstances causing the nonpayment of debt must be considered.

65 Credit History (Continued)

D Assessing Past Repayment Problems (Continued)

--In some cases, credit reports for applicants may have been negatively impacted by delays in healthcare reimbursements, slow interaction with other agencies and organizations, or by other circumstances beyond the applicant's control. Therefore, extra diligence should be taken to review the credit reports to determine if the circumstances were beyond the control of the applicant. Loan officials should consider if problems identified on the credit report have been corrected or will be corrected if the requested loan is approved. This is especially true of credit reports for microloan applicants who may have been operating using personal credit cards or high interest non-agricultural loans before applying with FSA.--

When an applicant's credit history includes an adverse or delinquent account status, the authorized agency official shall meet with the applicant to discuss the questionable account. The objectives of the meeting are to gather information to determine whether the adverse account status was caused by circumstances beyond the applicant's control and to explain FSA creditworthiness requirements to the applicant. In addition, the applicant will be counseled about the importance of paying accounts as agreed and provided guidance on improving their credit history. The meeting shall be documented in FBP. If additional information is to be provided by the applicant as a result of the meeting, this will be confirmed with the applicant in writing.

Note: Credit scores will not be:

- used as an indicator of poor credit history
- used as a basis of denial
- cited as an indicator of unacceptable credit in a denial letter.

66 Credit Elsewhere

A General Requirement

[7 CFR 764.101(e)] Except for CL, the applicant, and all entity members in the case of an entity, must be unable to obtain sufficient credit elsewhere to finance actual needs at reasonable rates and terms. The Agency will evaluate the ability to obtain credit based on factors including, but not limited to:

(1) Loan amounts, rates, and terms available in the marketplace; and

The applicant must certify in writing on FSA-2001, FSA-2314, or FSA-2330 that the applicant is unable to obtain sufficient credit, with or without a guarantee, to finance the applicant's actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in, or near, where the applicant resides for loans for similar purposes and periods of time.

(2) Property interests, income, and significant non-essential assets.

67 Delinquent Federal Debt and Unpaid Federal Judgments (Continued)**A General Requirement (Continued)**

[7 CFR 764.101(g)] The applicant and anyone who will sign the promissory note must have no outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts.

The authorized agency official shall review debt verification obtained according to subparagraph 65 B.

B Resolving Delinquent Federal Debt and Judgments

Applicants who pay their delinquent Federal debt or judgment in full or otherwise resolve the delinquency or judgment before or at loan closing may be eligible.

Note: FSA will consider such debts as part of the creditworthiness eligibility requirement and in determining cash flow during the loan evaluation process.

68 Federal Crop Insurance Violations**A General Requirement**

[7 CFR 764.101(h)] The applicant, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from Federal Crop Insurance violation, according to 7 CFR Part 718.

Federal Crop Insurance Act, Section 515(h) provides that a person who willfully and intentionally provides any false or inaccurate information to FCIC or to an approved insurance provider with respect to a policy or plan of FCIC insurance after notice and an opportunity for a hearing on the record, will be subject to 1 or more sanctions that may change the applicant's eligibility for all Federal assistance.

Applicants, as well as individual entity members, will self certify on FSA-2001, FSA-2301, FSA-2314, or FSA-2330, that they have not been disqualified. Additionally, RMA will notify the National Office of individuals and entities that have been disqualified as a result of crop insurance violations. The National Office will notify the State Office. State Offices shall notify the appropriate County Office.

Notes: See 7 CFR 718.11 for additional information on disqualifications.

Go to SAM at <http://www.sam.gov/portal/public/SAM> for information on disqualified individuals and entities.

69 **Managerial Ability****A General Requirement**

For an entity to meet the requirements in this subparagraph, either the individual holding the majority interest in the entity or the individual responsible for the day-to-day operations of the entity must demonstrate sufficient managerial ability as described in this paragraph.

[7 CFR 764.101(i)] The applicant must have sufficient managerial ability to assure reasonable prospects of loan repayment, as determined by the Agency. The applicant must demonstrate this managerial ability by:

The applicant may satisfy the managerial ability requirement with **any** combination of education, on-the-job training and farm experience, or by meeting **just 1** of these criteria. The level of management ability required will depend on the complexity of the operation and the amount of the loan request. The authorized agency official will consider each application on a case-by-case basis.

(1) Education. For example, the applicant obtained a 4-year college degree in agricultural business, horticulture, animal science, agronomy, or other agricultural-related field.

To meet the managerial requirement through education alone, the applicant has completed or is completing an educational program in agriculture. Acceptable educational programs include any of the following:

- a 4-year college degree or graduate degree in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields
- a 2-year degree from a technical college in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields
- successful completion of farm management curriculum offered by the Cooperative Extension Service, a community college, adult vocational agriculture program, or land grant university

Examples: The Small Farm Program, University of Arkansas-Pine Bluff.

--Specialty Crops Program, Colorado State University.--

Cultivating Success, University of Idaho Extension, Washington State University Small Farms and Rural Roots.

- successful completion of a community-based, nationally based, non-profit, or similar farm workshop programs

69 **Managerial Ability (Continued)****A General Requirement (Continued)**

To meet the managerial ability requirement through farming experience alone, the applicant may have:

- been an owner of a farm business with management and operator responsibilities for at least 1 entire production and marketing cycle
- been employed as a migrant farm worker and has been elevated to a leadership or foreperson position for at least 1 entire production and marketing cycle and whose responsibilities include crop and field management, livestock health, breeding supervision, labor management or hiring, or general farm management
- been employed as a farm manager or farm management consultant for at least 1 entire production and marketing cycle
- raised on a farm and held significant responsibility for day-to-day management decisions for at least 1 entire production and marketing cycle
- obtained and successfully repaid one FSA Youth-OL.

The applicant may document this experience through FSA farm records or similar documentation.

Applicants should be able to demonstrate that they have carried out their operation according to standard farming practices * * * including keeping accurate records of income and expenses, income tax records, and breeding statistics, as applicable.

[7 CFR 764.101(i)(4)] Alternatives for ML's made for OL purposes. Applicants for ML's made for OL purposes, also may demonstrate managerial ability by one of the following:

[7 CFR 764.101(i)(4)(i)] Certification of a past participation with an agriculture-related organization, such as, but not limited to, 4-H Club, FFA, Beginning Farmers and Rancher Development Programs, Community Based Organizations, or Tribal Youth Organizations that demonstrates experience in a related enterprise, or

[7 CFR 764.101(i)(4)(ii)] A self-directed apprenticeship combined with either prior sufficient experience working on a farm or significant small business management experience. As a condition of receiving the loan, the self-directed apprenticeship requires that the applicant seek, receive, and apply guidance from a qualified person during the first cycle of production and marketing typical for the applicant's operation, and agree to form development partnership with the applicant to share knowledge, skills, information, and perspective of agriculture to foster the applicant's development of technical skills and management ability.

69 Managerial Ability (Continued)

A General Requirement (Continued)

Example: An application seeking DOL-ML financing to produce tomatoes to sell at a farmers market knows a local farmer that produces salad green and this farmer is willing to mentor the applicant during the first production cycle. The farmer's mentorship of the applicant can include advice and applied knowledge on crop planning, supply sources, pest and disease management, and outlets for marketing and sales. The applicant is the responsible party throughout the mentorship for obtaining guidance from the mentor.

Note: The mentor does not have to have the exact same type of operation as the applicant, but should be related, i.e. the applicant for a tomato DOL-ML should not have a dairy farmer as his mentor unless he also has produce experience.

70 Borrower Training

A General Requirement

[7 CFR 764.101(j)] The applicant must agree to meet the training requirements in **subpart K of this part** (Part 18, Section 1). Borrower training requirements for Streamlined CL applicants will be automatically waived without further documentation. All other applicants are required to complete FSA-2370 according to subparagraph 472 B, only if they are requesting a borrower training waiver.

71 Owner/Operator of a Family Farm

A General Requirement

[7 CFR 764.101(k)(1)] Except for CL, the applicant must be the operator of a family farm after the loan is closed.

[7 CFR 764.101(k)(2)] For an entity applicant, if the entity members holding a majority interest are:

(i) Related by blood or marriage, at least one member must be the operator of a family farm;

--(ii) Not related by blood or marriage, the entity members holding at least 50%-- interest must be the operators of a family farm.

[7 CFR 764.101(k)(3)] Except for EM loans, the collective interests of the members may be larger than a family farm only if:

- (i) Each member's ownership interest is not larger than a family farm;
- (ii) All of the members of the entity are related by blood or marriage; and
- (iii) All of the members are or will become operators of the family farm; and

91 Security Requirements (Continued)

F Securing Multiple Loans

[7 CFR 764.104(d)] The same real estate may be pledged as security for more than one direct or guaranteed loan.

[7 CFR 764.105] The same chattel may be pledged as security for more than one direct or guaranteed loan.

92 Real Estate Security

A Overview

Real estate security includes land and permanent structures, including fixtures that can be described on the security instrument, such as bins, silos, and gutter cleaners. It also includes items that are considered part of the farm and ordinarily pass with the title to the farm. These items include assignments of leases and leasehold interests having mortgageable value, water rights, easements, rights-of-way, revenues, mineral rights, and royalties from mineral rights.

Different lien positions on real estate are considered separate and identifiable security.

B Agency Lien Position

[7 CFR 764.104(a)] If real estate is pledged as security for a loan, the Agency must obtain a first lien, if available. When a first lien is not available, the Agency may take a junior lien under the following conditions:

Each prior lienholder must sign FSA-2319 before loan closing, when real estate will serve as security necessary to meet the adequate security requirement in subparagraph 91 B.

Note: The lien will be taken on real estate to be pledged as additional security even if FSA-2319 is not obtained.

[7 CFR 764.104(a)(1)] The prior lien does not contain any provisions that may jeopardize the Agency's interest or the applicant's ability to repay the FLP loan;

[7 CFR 764.104(a)(2)] Prior lienholders agree to notify the Agency prior to foreclosure;

In some States, a prior lienholder may be able to foreclose the security instrument without providing junior lienholders notice of the foreclosure proceedings. In that case, any prior lienholder must complete FSA-2319.

[7 CFR 764.104(a)(3)] The applicant must agree not to increase an existing prior lien without the written consent of the Agency; and

***--Note:** In cases where FSA will have a junior lien position on real estate that secures the prior lienholder's LOC, advances up to the existing LOC ceiling are authorized. However, in no case can the LOC ceiling be increased without written Agency consent.--*

The applicant agrees on FSA-2029 to obtain permission from FSA before granting any additional security interest in the real estate.

[7 CFR 764.104(a)(4)] Equity in the collateral exists.

***--Note:** When taking a junior lien behind a prior lienholder's LOC, the LOC ceiling will be used to determine available equity.--*

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] 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.

***--Note:** When an individual applicant has ownership interest in real estate as a member of an entity, the entire acreage owned by the entity will be used for the 30 percent rule determination. The applicant's pro-rated ownership share in the entity will not be used to determine the number of acres owned.--*

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 or veteran farmer applicants. However, the family farm requirement under § 764.101(k) (paragraph 71) does apply.

245 Rates, Terms, and Repayment (Continued)

F Repayment of Loans for Physical Losses to Real Estate

[7 CFR 764.354(b)(5)] The repayment schedule for EM loans for physical losses to real estate is based on the applicant's repayment ability and the useful life of the security, but in no case will the term exceed 40 years.

The specific term of a loan is determined by the applicant's projected ability to repay based on the farm operating plan.

*--The loan term must be the minimum period of time to achieve a TDCLCR of 1.10, if possible, in a typical year plan, but shall never exceed the useful life of the security. Loan terms are considered in 5-year increments. A loan term of 40 years will only be considered if a TDCLCR of 1.10 cannot be achieved in a typical year plan using a shorter term.

Example: If a proposed loan term will not result in a TDCLCR of 1.10 in a typical year plan, the next 5-year term will be considered, and so on, until the projected installment results in a TDCLCR of 1.10, if possible. If a 35-year term results in a TDCLCR less than 1.10 in a typical year plan, the FO will be placed on a 40-year term, provided this term does not exceed the useful life of the security.

Exceptions to this policy are authorized to be made on a case-by-case basis by the Farm Loan Chief. When considering exception requests, the Farm Loan Chief will ensure repayment terms are reasonable and equitable.--*

The first installment will be scheduled within 12 months of loan closing.

Repayment terms that include balloon installments are prohibited.

Note: Balloon installments result when scheduled payments are insufficient to pay the loan without requiring a final installment that exceeds twice the amount of a regularly amortized installment.

246 Security Requirements**A General**

[7 CFR 764.355(a)] EM loans made under § 764.351(a)(1) (subparagraph 241 A) must comply with the general security requirements established at §§ 764.103 (paragraph 91), 764.104 (paragraph 92) and 764.155(b) (subparagraph 135 D).

[7 CFR 764.355(b)] EM loans made under § 764.351(a)(2) (subparagraph 241 B) and (b) (subparagraph 241 C) must generally comply with the general security requirements established at §§ 764.103 (paragraph 91), 764.104 (paragraph 92) and 764.255(b) (subparagraph 205 A). These general security requirements, however, do not apply to equine loss loans to the extent that a lien is not obtainable or obtaining a lien may prevent the applicant from carrying on the normal course of business. Other security may be considered for an equine loss loan in the order of priority as follows:

- (1) Real estate,**
- (2) Chattels and crops, other than horses,**
- (3) Other assets owned by the applicant,**
- (4) Third party pledges of property not owned by the applicant,**
- (5) Repayment ability under paragraph (c) of this section.--***

--In the case of an entity, FSA will take personal assets held by individual members when all the security held by the entity does not meet the requirement for additional security up to 150 percent of the loan amount. The entity will select and notify FSA which assets will be offered as security for the loan.--

See Exhibit 2 for the definition of nonessential assets.

See Exhibit 21 for security requirements for loans made for reestablishing fruit, nut bearing, and income producing trees and plants.

353 Funding Approved Loans (Continued)**B Preferences When There is Limited Funding (Continued)**

[7 CFR 764.54(b)(2)] **Second, an applicant who is not a veteran, but:**

(i) Has a dependent family;

--(ii) Is able to make a down payment; or--

(iii) Owns livestock and farm implements necessary to farm successfully.

[7 CFR 764.54(b)(3)] **Third, to other eligible applicants.**

FSA uses the secondary priorities only when funding is limited and more than 1 loan application was received on the same date.

C When Loan Funds Become Available

[7 CFR 764.53(f)] **If funding becomes available, the Agency will resume processing of approved loans in accordance with this part.**

When funds become available, the applicant will be notified immediately by letter, such as Exhibit 24, sent by regular mail or hand delivered. The letter will:

- advise the applicant to “contact FSA within 15 business days from the date of the letter”
- contain the statement, “if the applicant does not contact the authorized agency official within 15 business days from the date of the letter, the application will be withdrawn”.

354 Changes After Loan Approval

A Changes in Loan Amount

If it becomes necessary to increase or decrease the amount of the loan before loan closing, the authorized agency official requests that all distributed loan forms be returned to FSA and reprocessed. If the change is minor and replacement forms can readily be completed and submitted, a memorandum justifying the change is attached to the revised forms and sent to the State Office.

B Cancellation of Funds

The authorized agency official cancels obligations, advances, checks, and electronic fund *--disbursements according to 64-FI, Exhibit 17 and other appropriate FI directives.--*

Note: On September 30 of the 5th FY after the period of availability for obligation of a fixed appropriation account ends, the account shall be closed and any remaining balance (whether obligated or unobligated) in the account shall be canceled and thereafter shall not be available for obligation or expenditure for any purpose.

Before loan closing, but after the Finance Office completes de-obligation, file original FSA-2072 in the physical case file with a screen print of the ADPS Unclosed (UN) Screen. After loan closing, see 4-FLP, subparagraph 61 E.

When necessary, the authorized agency official prepares and executes FSA-2026 reflecting the revised total of the loan and the revised repayment schedule.

C Cancellation of Loan

When a loan is canceled:

- the authorized agency official notifies the State Office and to the National Financial and Accounting Operations Center, Farm Services Branch of loan cancellation by using FSA-2072
- the authorized agency official notifies the designated closing agent that the loan has been canceled

Note: If the loan, based upon updated information after initial approval, is rejected because of problems with eligibility or feasibility, see paragraph 351.

- at the request of the applicant, the application will be withdrawn. See subparagraph 45 D for more information.

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

| Approved Abbreviation | Term | Reference |
|-----------------------|---|--------------------|
| BCIS | Bureau of Citizenship and Immigration Services | Ex. 8, 9 |
| CONACT | Consolidated Farm and Rural Development Act | 1, 69, 132, Ex. 16 |
| CAT | Catastrophic Risk Protection Endorsement | 113, 244 |
| CL | Conservation Loans | Text, Ex. 2 |
| CMCB | Cash Management Collections Branch | Ex. 26 |
| DFO | Direct Farm Ownership | Text |
| DOL | Direct Operating Loan | 4, 43, 66, 69 |
| FFA | Future Farmers of America | 69, 227 |
| FI | financial institution | Ex. 26 |
| FICO | Fair Isaac Corporation | 191 |
| FmHA | Farmers Home Administration | 2, 94, 202 |
| FP | Farm Program | 41, 93, 244, Ex. 2 |
| INA | Immigration and Nationality Act | Ex. 8 |
| LOC | line of credit | 92 |
| ML | Microloan | Text |
| NPO | nonprofit organization | 72 |
| PAD | Preauthorized Debit | 399, 419, Ex. 26 |
| PRWORA | Personal Responsibility and Work Opportunity Reconciliation Act of 1996 | Ex. 2, 8 |
| SAM | System for Award Management | 67, 373.5 |
| SDMS | State Directive Management System | 3, 355 |
| ST | softwood timber | 94, Ex. 2 |
| TDCLCR | Term Debt and Capital Lease Coverage Ratio | 135, 245 |

Re delegations of Authority

None

Information Needed for a Complete Loan Application Determination for FSA Direct Operating and Farm Ownership Loans

Following is the Information Needed for a Complete Loan Application Determination for FSA Direct Operating and Farm Ownership Loans letter.

Note: Exhibit 7 is available in a fillable format at <http://inside.fsa.usda.gov>. CLICK “Employee Forms” and CLICK “Find Current Forms Using Our Form Number Search”. For “Form Number”, ENTER “3-FLP Exhibit 7”.

*--

| |
|--|
| 3-FLP, Exhibit 7 |
| (Use Agency Letterhead formatted with local return address) |
| [Name] [Address] [City, State, Zip] |
| INFORMATION NEEDED FOR A COMPLETE LOAN APPLICATION DETERMINATION (For FSA DIRECT OPERATING and FARM OWNERSHIP LOANS) (Not for Use with Microloan, Streamlined OL, Youth Loan, or Emergency Loan Applications) |
| Dear [Name]: Date [MM-DD-YYYY] |
| The FSA loan application process begins with a complete loan application. The complete loan application allows the loan officer to determine your eligibility to receive FSA farm loan assistance. Listed below are the items FSA requires to conduct its initial loan application assessment. |
| Any required forms listed below are enclosed/attached. Please note that in some cases you are permitted to use alternative methods of providing the same information instead of using FSA’s forms <u>as long as they provide all the information found on the associated form.</u> |
| After a review of the items listed below, your FSA loan officer may request additional information not listed, if that information is considered necessary to complete processing your loan application. This can include written documentation that credit is not available elsewhere. |
| NOTE: For Entity Applicants , including all Embedded Entities , the information listed below is required for (1) the entity; (2) the embedded entity; and (3) <u>each</u> individual entity member. |
| <ol style="list-style-type: none">1. FSA-2001, “Request for Direct Loan Assistance”2. FSA-2002, “Three Year Financial History” or similar form acceptable to the Agency. Please do not provide only financial summaries. (Note: If there are no individually owned assets, husband and wife joint operations may submit a consolidated balance sheet.)3. Complete Tax Returns, including Schedule F if available, for the past 3 years or for each year you have been in business, whichever is less.4. FSA-2003, “Three-Year Production History”, or similar form acceptable to the Agency, for the past 3 years or for each year you have been in business, whichever is less.5. FSA-2004, “Authorization to Release Information”6. FSA-2005, “Creditor List”7. FSA-2006, “Property Owned and Leased”8. Legal descriptions of all farm property owned or to be acquired9. Copies of all leases, contracts, options, and other agreements associated with the farm property |

--*

Information Needed for a Complete Loan Application Determination for FSA Direct Operating and Farm Ownership Loans (Continued)

*--

10. FSA-2015, "Verification of Debts and Assets", or similar documentation acceptable to the Agency, for all credit cards, loans and other bank accounts with a balance exceeding \$5,000.. Any original documents you submit will be returned to you. Acceptable documents may include most recent monthly billing statement, most recent statement of account, most recent invoice, or most recent bank statement.
11. FSA-2037, "Farm Business Plan Worksheet Balance Sheet" and the FSA-2038, "Farm Business Plan Worksheet Projected/Actual Income and Expense" for the next 12 months. Similar forms acceptable to the Agency may be used; however, *should not be more than 90 days old*.
12. Credit Report Fee, using personal or bank check, made payable to the *Farm Service Agency* for the type of applicant as shown below. Entity members should be prepared to remit payment for individual credit report in addition to the commercial report.

Individual \$ _____ Joint \$ _____ Commercial \$ _____

13. FSA-2302, "Description of Farm Training and Experience." Please be detailed in your description. Narratives should include, and are not limited to:
 - a. Personal Life Experience/On the Job Training
 - b. Secondary Education
 - c. Webinars or Online Training Courses
 - d. Extension Service Workshops attended
 - e. Participation in agriculturally-related youth organizations, such as 4-H or FFA
 - f. Recipient of FSA Youth Loan with brief description of project
 - g. Work in Community-Based Organization Gardens or Urban Farming
 - h. Agricultural Internships or Apprenticeships
14. Verification of Non-Farm Income, such as off-farm employment, Social Security, rental income, pension plans, etc. The most recent 2 pay stubs, statements of benefits, or similar documentation will usually be sufficient.
15. AD-1026, "Highly Erodible Land Conservation and Wetland Conservation Certification"
16. **For Entity Applicants Only, including All Embedded Entities:** Provide all the following documents, as available or applicable:
 - a. Copies of any Organizational and Operation Documents (e.g., Charter, Articles of Incorporation, Bylaws, Partnership or Joint Operation Agreement, etc.).
 - b. Evidence of current registration and good standing with relevant state regulatory agencies
 - c. A duly adopted resolution to apply for and obtain financing
 - d. A balance sheet not more than 90 days old for the entity
 - e. A balance sheet not more than 90 days old for each individual entity member
17. **For Entity Applicants Only, including All Embedded Entities,** AD-3030, "Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants".

--*

Information Needed for a Complete Loan Application Determination for FSA Direct Operating and Farm Ownership Loans (Continued)

*--

Lastly, it is very important to note that **A DECISION CANNOT BE MADE ON YOUR LOAN REQUEST WITHOUT ALL INFORMATION REQUESTED IN THIS LETTER.**

Please contact this office if you need help. We can help you complete the requested forms, explain what information we need, and answer any questions about the information requested in this letter. If we cannot assist you by phone, we will schedule an appointment to meet with you.

Sincerely,

Farm Loan Officer/Manager

Enclosures

--*

Preauthorized Debit (PAD)

PAD payments are customer authorized transactions that allow the Rural Development Business Center to electronically collect loan payments from a customer's account at a FI. CMCB is responsible for setting up, changing, correcting, and canceling PAD agreements. PAD is being implemented for our FLP customers as an alternative way to make loan payments. There is no additional cost passed on to our customers by FSA for using PAD.

A Using 3550-28

- PAD is initiated by the customer using RD 3550-28. (Customer use of PAD is strictly voluntary.)
- RD 3550-28 must be completed by the customer and the FI. If the customer has a filter on their FI account, they will need to provide the FI with the following information:
 - Origination ID: 1220040804
 - Agency name: USDA RD DCFO.
- A separate RD 3550-28 must be completed for each loan to which payments are to be applied.
- RD 3550-28 has no expiration date.
- The fillable form can be found at <https://formsadmin.sc.egov.usda.gov/eFormsAdmin/searchAction.do>

B County Office Actions

The County Office will issue a letter similar to the one in subparagraph C and RD 3550-28 to applicants with approved direct loans, who are not already borrowers, when FSA-2313 is sent or hand delivered. After a transfer and assumption, new borrowers will be notified of the availability of PAD using the letter in subparagraph C and RD 3550-28. A copy of the *--notification will be retained in the borrower's case file.--*

When a customer returns RD 3550-28 to the County Office, the County Office will:

- review each RD 3550-28 for accuracy and completeness

Note: PAD may only be established for future payments. An accuracy check should be completed to ensure the customer's PAD payment goal will be met. A payment submission which will not make the annual installment requires advance notice to the authorizing borrower. The County Office will document the notice in the case file (or FBP if appropriate).

- fax a copy of each accurate and completed RD-3550-28 to CMCB at 314-457-4370; if using fax2mail, please type //FINE at the end of the subject line
- retain each original RD 3550-28 in the borrower's case file (position 2).

Preauthorized Debit (PAD) (Continued)

C Sample Letter for PAD

The following is a sample letter for PAD (print on official letterhead).

(Date)

(Account Name)

(Address)

Address)

Dear (Account Name),

We are writing to inform you that your Farm Service Agency (FSA), Farm Loan Program payments may now be made through preauthorized debit.

You may use preauthorized debit to have your payments withdrawn electronically from your financial institution and applied toward your annual loan payment. Payments may be withdrawn weekly, bi-weekly, monthly, quarterly, semi-annually or annually. You may initiate preauthorized debit by working with your financial institution to complete RD 3550-28, "Authorization Agreement for Preauthorized Payments" (attached). RD 3550-28 will need to be completed and submitted to your local service center for each loan to which payments are to be applied. If you have a "filter" on the account at your financial institution, you will need to provide the financial institution with the following information: Origination ID: 1220040804, Agency Name: USDA RD DCFO. Preauthorized debit is offered to you by FSA at no cost; you will need to discuss any potential costs with your financial institution. Preauthorized debt has no expiration date, but you may cancel it at any time by submitting a written request to your local service center. If a preauthorized debit agreement receives three payment rejections within a three month period, the preauthorized debt agreement will be cancelled by FSA. The payment amount and due date of your loan is not affected by a cancellation of preauthorized debit. You are responsible to ensure your full payment is made by the due date.

If you have questions on preauthorized debit, please contact (name and title) at (phone number).

Sincerely,

(Name)

(Title)

Attachment: RD 3550-28