

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

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| Direct Loan Making 3-FLP (Revision 2) | Amendment 49 |
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Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 41 A has been amended to add the FSA Online Loan Application as an acceptable option for application submission.

Subparagraph 41 B has been amended to clarify that requests received through the FSA Online Loan Application may be accepted from applicants who have Level 2 eAuthentication credentials.

Subparagraph 41 D has been amended to add guidance for providing technical assistance to applicants utilizing the FSA Online Loan Application.

Subparagraph 153 A has been amended to correct a paragraph reference.

| Page Control Chart | | |
|---------------------------|-------------------------------|-------------------|
| TC | Text | Exhibit |
| | 3-1 through 3-4 7-43, 7-44 | Exhibit 1, page 5 |

Part 3 Loan Application

41 Obtaining and Filing a Loan Application

A Obtaining a Loan Application

A loan application may be obtained from:

- any FSA office
- FSA's web site at **www.fsa.usda.gov**
- eGov's web site at **www.sc.egov.usda.gov**.

--Applicants may choose to apply using the FSA Online Loan Application (OLA).--

An agency official will:

- not refuse to provide a requested application to any person
- not discourage the prospective applicant to apply for a direct loan even when loan funds are limited or unavailable

Note: On Friday, May 13, 2011, FR notice was published to inform the public that, because of a lack of funding for the CL program, direct CL applications will not be accepted until further notice. Agency officials should advise prospective applicants of the availability of other FSA loan programs.

- not make oral or written statements that would discourage any individual from applying for assistance based on any ECOA prohibited basis (race, color, religion, national origin, sex, marital status, age, applicant's income deriving from public assistance, or because the applicant has in good faith exercised any right under the Consumer Protection Act)

Note: Additional information, as necessary, may be requested; however, information that would create unapproved paperwork burden will not be requested. Specifically, anything that asks the applicant to provide information to FSA is not allowed by the State without approval from the National Office.

- provide assistance as necessary to help applicants complete the application

Note: Information about race, national origin, sex, and marital status is collected on a voluntarily basis on FSA-2001, FSA-2301, and FSA-2314.

B Filing a Loan Application

[7 CFR 764.51(a)] A loan application must be submitted in the name of the actual operator of the farm. Two or more applicants applying jointly will be considered an entity applicant. The Agency will consider tax filing status and other business dealings as indicators of the operator of the farm.

41 Obtaining and Filing a Loan Application (Continued)

B Filing a Loan Application (Continued)

Generally, requiring a non-applicant's spouse signature on loan documents is a violation of ECOA regulations. Therefore, unless required by State law, FSA will not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under FSA's standards of creditworthiness for the amount and terms of the credit requested. FSA will **not** consider the submission of a joint financial statement or other evidence of jointly held assets, such as a joint bank account, as an application for joint credit. See Exhibit 6 for guidance on submitting documents in compliance with ECOA as required by this handbook.

Upon receiving an application for direct loan assistance, the authorized agency official and DD shall follow 1-PL to ensure that the type of operation reflected on FSA-2001 is consistent with any representations previously made by the applicant for FP benefits.

If any difference in representations of the farming operation is identified, notify the applicant
--using FSA-2304 and insert the following reason why the application is incomplete.--

“A review of your FSA records revealed inconsistent representations in how your farming operation is conducted. (Provide details of different representations identified by FSA records.) Documentation must be provided to resolve the inconsistencies identified prior to your application for assistance to be considered complete.”

Note: See subparagraph 45 B for notification of incomplete application guidance.

Exception: An application will not be considered incomplete if the difference in representation is the result of either of the following:

- *--married persons representing themselves as a joint operation for FLP--*
assistance but combined as a single person for FP
- producer participating in 2 separate and distinct operations.

* * *

When receiving an application from married persons, FSA cannot treat a married couple applying together the same way as 1 person applying individually. A married person may apply according to 1 of the following, depending on how the farm is operated.

- “As an individual” – A married person should apply as an individual when they are the operator of the farm, and the spouse has minimal involvement in the farm operation, particularly the day-to-day management and operations. In such cases, the nonfarming spouse will not be required to sign the application, except when required by State law to perfect a lien on marital or jointly owned property.

41 Obtaining and Filing a Loan Application (Continued)

B Filing a Loan Application (Continued)

- “As a joint operation” – Married persons should apply as a joint operation if they share the responsibilities of the farm including day-to-day management and operations, they wish to apply for the loan together, and they have not formed some other operating entity such as a partnership, LLC, trust, or corporation. When a married couple does apply as a joint operation, both parties must meet the eligibility requirements in Part 4.
- “As an entity” – If married persons have formed a legal entity (partnership, LLC, etc.), which operates the farm, the entity must apply for the loan.

***--Notes:** Forming or changing the structure of an entity can have significant tax and legal consequences. Agency officials should not advise applicants whether or not to form an entity, or what type of entity to form. It is appropriate to explain the impact of any proposed change to applicant structure on loan eligibility and on any existing FSA loans. Applicants considering entity formation or a change in operating structure should be strongly encouraged to seek guidance from qualified professionals such as a tax accountant or attorney.

An application from married persons as a joint operation for FLP assistance, but who are combined as a single person for FP benefits, shall be considered the same type of operation, and therefore requires no corrective action.

All applicants, including an entity, should ordinarily file their loan application with the FSA FLP office serving the area where the headquarters of the farm operation is located. In situations where an operation is spread out between multiple county or State jurisdictions, the operation headquarters will typically be the location where the majority of operational and production activities occur. Once an FLP servicing office is assigned, efforts should be taken to maintain account activities with that servicing office providing significant farming activities are likely to continue within the jurisdiction of the FLP servicing office originally assigned.

If the authorized agency official is not present in the office where the application is filed,--* the receiving office must immediately contact the office where the authorized agency official is located to determine whether the application needs to be forwarded to that office for processing.

Exceptions: For applications from:

- FSA employees and relatives of employees, see 3-PM
- applicants who have either filed a new discrimination complaint or have an outstanding discrimination complaint, contact DD and SED for direction on application processing.

41 Obtaining and Filing a Loan Application (Continued)

B Filing a Loan Application (Continued)

In unclear cases, the authorized agency official should contact SED for a determination on where the applicant should file the loan application.

--Electronic applications, including those submitted through OLA, may be accepted from-- applicants who have Level 2 eAuthentication credentials. FAXed and emailed applications are acceptable. See 1-FLP for a list of forms that must be signed with an original pen and ink signature, or a digital signature completed with an approved 2-factor authentication process.

C Notification of Targeted Funding and Limited Resource Interest Rates

To determine whether an applicant is a member of an SDA group, the applicant must voluntarily provide the applicant's ethnicity, race, and gender on FSA-2001 or FSA-2301. If the applicant will not voluntarily provide the ethnicity, race, or gender information, targeted funding will not be available.

FSA-2001, FSA-2301, and FSA-2314 provide applicants notification, as applicable, that a portion of FO, CL, and OL funds are targeted for SDA and beginning farmer assistance. In addition, FSA-2001 and FSA-2314 provide notification of the availability of limited resource interest rates for FO's and OL's.

See Exhibit 2 for definitions of beginning farmer, limited resource interest rates, SDA applicant or farmer, and SDA group.

Note: Targeted SDA farmer funding is available for youth loans, but targeted beginning farmer assistance and limited resource interest rates are not available for youth loans.

41 Obtaining and Filing a Loan Application (Continued)

D Technical Assistance

Agency officials are required to:

- inform applicants that FSA will provide technical assistance, if needed, to complete FSA forms and gather information necessary for a complete application
- explain the application procedure, process, and the requirements for a complete application
- assist applicants in completing FSA forms and identifying sources of information needed for a complete application, if assistance is requested
- inform applicants of other technical assistance providers who may be of assistance at minimal or no charge; examples include, but are not limited to the Cooperative Extension Service, institutions and organizations providing assistance under Section 2501 or other USDA outreach grants, Intertribal Agriculture Council, Service Corp of Retired Executives, and other similar organizations
- advise applicants of alternatives that would help overcome barriers to being determined eligible, but caution that significant changes may have tax, estate planning, or other legal implications that may require consultation with an accountant, legal counsel, or other qualified expert.

***--Note:** Applicants utilizing OLA for submission may require technical assistance or have questions about the OLA process. Although FSA staff will not have access to the customer's OLA, guidance and information for assisting applicants can be found in the FSA Online Loan Application User Guide.--*

E SED Action

SED's will prepare and publicize, at least semi-annually, through newspaper articles, radio announcements, and television broadcasts, that FSA targets direct and guaranteed loan funds to beginning and SDA farmers.

These required outreach efforts are in addition to information provided in State or Service Center newsletters.

Note: Outreach to assist these potential applicants will include maintaining and documenting close liaison and attending meetings with local, State, and national organizations serving beginning and SDA farmers.

42 Complete Loan Application**A Requirements**

[7 CFR 764.51(b)] A complete loan application, except as provided in paragraphs (c) through (f) of this section (paragraphs 43 and 44), will include:

[7 CFR 764.51 (b)(1)] The completed Agency application form;

The application must be initialed, signed, and dated by the applicant. An unsigned *--FSA-2001, FSA-2301, or FSA-2314 will be considered an incomplete application.

Notes: FSA-2001 or FSA-2314, with missing initials only, will not be considered--* incomplete; however, initials shall be obtained before loan closing.

Youth loan applications should be filed according to paragraph 44.

The authorized agency official shall consider if an application can be ML or Streamlined before requiring a regular, full documentation application. See paragraphs 216 and 217. ML and streamlined OL applications should be filed according to paragraph 43.

Streamlined OL applications should be filed according to paragraph 43, but a qualified applicant needs to only submit additional information necessary to make their application complete when added to the information already in the applicants file.

153 Limitations**A General**

[7 CFR 764.203(a)] The applicant must:

--(1) Comply with the general limitations established at § 764.102 (paragraph 74).--

B Minimum Down Payment

The applicant must:

[7 CFR 764.203(a)(2)] Provide a minimum down payment of 5 percent of the purchase price of the farm.

The applicant must provide the minimum down payment in cash.

C Maximum FSA Loan Amount

[7 CFR 764.203(b)] Down payment loans will not exceed 45 percent of the lesser of:

- (1) The purchase price,
- (2) The appraised value of the farm to be acquired, or
- (3) \$667,000; subject to the direct FO dollar limit specified in 7 CFR 761.8(a)(1)(i).

[7 CFR 764.203(c)] Down payment loans made as ML for FO purposes may not exceed \$50,000.

The following is an example of a DFOML down payment loan.

| | |
|--------------------------------|-----------|
| Example: Purchase Price | \$325,000 |
| Cash Down Payment | \$ 16,250 |
| Down Payment DFOML | \$ 50,000 |
| Other Financing | \$258,750 |

Note: The balance of the purchase price not covered by the down payment loan and applicant down payment may be financed by a commercial, cooperative, or private lender, including the seller.

D Maximum Combined Loans

[7 CFR 764.203(d)] Financing provided by the Agency and all other creditors must not exceed 95 percent of the purchase price. Financing provided by eligible lenders may be guaranteed by the Agency under part 762 of this chapter (2-FLP).

154 Rates, Terms, and Security**A Rates**

***--[7 CFR 764.204(a)] The interest rate for Down payment loans will be the regular direct FO rate minus 4 percent, but in no case less than 1.5 percent. See 1-FLP, Exhibit 17 for current rates.**

B FSA Terms

[7 CFR 764.204(b)(1)] The Agency schedules repayment of Down payment loans in equal, annual installments over a term not to exceed 20 years.

The authorized agency official may schedule repayment over a period of less than 20 years if requested by the applicant and the farm operating plan (see 1-FLP, Part 8, Section 3) indicates that the loan can be repaid within the period requested.

C Other Lender Terms

[7 CFR 764.204(b)(2)] The non-Agency financing must have an amortization period of at least 30 years and cannot have a balloon payment due within the first 20 years of the loan.

D Minimum Security Requirements

[7 CFR 764.205] A Down payment loan must:

(a) Be secured in accordance with §§ 764.103 through 764.106 (paragraphs 91 through 93);

(b) Be secured by a lien on the property being acquired with the loan funds and junior only to the party financing the balance of the purchase price.

FSA:

- requires adequate security on a down payment loan as it does for an FO--*
- does not require additional security
- does not require a lien on nonessential assets.

Note: The purchase price of a property may exceed the appraised value, providing adequate security is available to satisfy all security requirements.

See Part 5 for detailed information on security requirements.

155-170 (Reserved)

Reports, Forms, Abbreviations, and Delegations 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 |
| OLA | Online Loan Application | 41 |
| 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 |

Delegations of Authority

None

