

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Special Programs
6-FLP

Amendment 20

Approved by: Deputy Administrator, Farm Loan Programs



Amendment Transmittal

A Reasons for Amendment

Subparagraph 174 C has been amended as follows:

- clarify ownership for the family farm operation or the farm real estate
- modify rules for entity buyers who are owned by embedded entities
- modify the rules for buyers who are operator only entities.

Subparagraph 174 D has been amended to provide additional options for the buyer to meet the 3-year participation requirement.

Subparagraph 175 C has been amended to remove the word “personal” before “financial statement”.

Exhibit 2 has been amended as follows:

- embedded entity definition has been added
- entity definition has been amended
- entity member definition has been added
- family farm definition has been amended to clarify that family farm refers to the business operation
- operator definition has been amended
- participated in the business operations of a farm has been amended.

Exhibit 34 has been added to provide examples of how to evaluate embedded entities.

Amendment Transmittal (Continued)

Page Control Chart		
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3, 4	8-3, 8-4 8-4.5, 8-4.6 (add) 8-5, 8-6 8-13, 8-14	2, pages 9, 10 pages 15-18 34, pages 1, 2

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***--174 Buyer Eligibility Requirements**

A General

[7 CFR 763.5 (b)] The buyer must meet the following requirements to be eligible for the Land Contract Guarantee Program:

See subparagraphs B through O for buyer eligibility requirements.

Buyer eligibility will be documented in the FBP “D-Loan Making” section.

B Beginning or Socially Disadvantaged Farmer

The buyer

[7 CFR 763.5 (b) (1)] Is a beginning farmer or socially disadvantaged farmer engaged primarily in farming in the United States after the guarantee is issued.

See Exhibit 2 for the definitions of “beginning farmer” and “SDA farmer”.--*

174 Buyer Eligibility Requirements (Continued)

C Owner and Operator Requirement

The buyer

[7 CFR 763.5 (b) (2)] Is the owner and operator of a family farm after the Contract is completed. Ownership of the family farm operation or the farm real estate may be held either directly in the individual’s name or indirectly through interest in a legal entity.--* In the case of an entity buyer:

- (i) Each entity member’s ownership interest may not exceed the amount specified in the family farm definition in § 761.2 of this chapter (Exhibit 2)**
- (ii) If the applicant has one or more embedded entities, at least 75 percent of the individual ownership interests of each embedded entity must be owned by members actively involved in managing or operating the family farm.**

Each embedded entity must separately meet the 75 percent test. When determining whether the individual owner is actively involved in managing or operating the family farm, consider whether the individual has a daily or weekly role in the farming operation rather than simply acting as an absentee investor. Also consider the total time the individual participates in the operation, either labor or management, and their time in comparison to others. To be considered actively involved, the entity member must provide some amount of the management, or labor and management such that if the individual did not provide these inputs, operation of the farm would be seriously impaired.

To determine if an embedded entity meets the 75 percent rule, the following steps can be used.

Step	Action
1	Identify the embedded entities.
2	Identify the individual ownership interests of each embedded entity.
3	For each individual with ownership interest in the embedded entity, determine whether they are actively involved in managing or operating the family farm.
4	For each embedded entity, individuals representing 75 percent of ownership of each embedded entity must meet the test in step 3.

See Exhibit 34 for examples of embedded entity scenarios.

- (iii) An ownership entity must be authorized to own a farm in the state or states in which the farm is located. An operating entity must be authorized to operate a farm in the state or states in which the farm is located.--***

174 Buyer Eligibility Requirements (Continued)

C Owner and Operator Requirement (Continued)

(iv) If the entity members holding a majority interest are related by blood or marriage, at least one member of the entity must:

- *--(A) Operate the family farm and
- (B) Own the farm after the contract is completed;

(v) If the entity members holding a majority interest are not related by blood or marriage, the entity members holding a majority interest must:

- (A) Operate the family farm; and
- (B) Own the farm, or the entity itself must own the farm after the contract is completed.

(vi) If the entity is an operator-only entity, the individuals that own the farm (real estate) must own at least 50 percent of the family farm (operating entity).

(vii) All ownership may be held either directly in the individual’s name or indirectly through interest in a legal entity.

To determine if an operator-only entity meets the 50 percent rule, the following steps can be used.

Step	Action
1	Identify all individuals with an ownership interest in any farm real estate operated by the family farm.
2	Identify the individuals with an ownership interest in the family farm operating entity and their percent interest.
3	Select the individual family farm owners who are also owners of the real estate.
4	The total interests from step 3 must be at least 50 percent.

Example: Jones Farm Inc. applied for FO. The corporation is owned by Bob and Jeff Jones. Jones Farm Inc. operation includes a farm that is owned by Jones Farms, LLC, with Bob and Betty Jones, each having a 50 percent ownership interest in LLC.

Individuals owning farmland	Jones Farm Inc.
Bob Jones	Bob Jones (50 percent)
Betty Jones	Jeff Jones (50 percent).

Jones Farm Inc. would meet the ownership rule because farmland owner (Bob Jones) owns 50 percent of the family farm (Jones Farm Inc.).--*

174 Buyer Eligibility Requirements (Continued)**C Owner and Operator Requirement (Continued)**

The authorized agency official must consider the following factors when making the family farm determination.

- Be recognized in the community as a farm. The farm operation must be large enough to be considered a working farm (as opposed to a “hobby farm”, garden, or residence) and provide a significant financial return.
- Members of the farm family must make all the day-to-day farm management and operational decisions. The use of outside consultants or advisors is acceptable provided that someone in the farm family is the ultimate decision-maker.
- Family or entity members must supply a substantial amount of the full-time labor. This does not preclude using seasonally hired labor, but in most instances, the family should provide most of the day-to-day labor. Exceptions may be made for enterprises that produce high value, labor-intensive crops such as fruit or vegetables.
- Credit needs. Congress established FSA’s loan limits to assist family farm operations. The loan limits generally ensure that loans are made to family farm operations.
- Loan participation agreements are acceptable when FSA farm loans cannot meet the total credit needs of the applicant. However, if the FSA loan only represents a small portion of the total credit requirements, this may be an indication that the applicant’s operation is larger than a family farm when all factors are considered.

Note: See Exhibit 2 for the definition of “family farm”.

174 Buyer Eligibility Requirements (Continued)

D Participation Requirements

The buyer:

[7 CFR 763.5 (b) (3)] Must have participated in the business operations of a farm or ranch for at least 3 years out of the last 10 years prior to the date the application is *-submitted. Of those 3 years, 1 year can be substituted with the following experience:

- **Postsecondary education in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields,**
- **Significant business management experience, or**
- **Leadership or management experience while serving in any branch of the military.**

Note: To meet the substitution requirements for 1 year out of 3 years, the applicant can use any 1 of the following:

- postsecondary education, that is at least 16 semester hours in agriculture business, horticulture, animal science, agronomy, or other agriculture related fields
- significant business management: that is at least 1 year of management experience in a non-agriculture-related field where the applicant's day-to-day responsibilities include direct management experience, such as personnel decisions, payroll, and/or inventory ordering; however, would not include an individual who is a manager in title only
- military leadership or management that is, as a general rule, any officer or E5 or above will have completed an acceptable military leadership course.--*

Factors to determine participation in the business operations of a farm are similar to those for determining adequate farming experience necessary to ensure a reasonable prospect of success in the operation.

Note: The buyer need not have been the primary operator.

174 Buyer Eligibility Requirements (Continued)**D Participation Requirements (Continued)**

Significant responsibilities include, but are not limited to:

- decisions to cull livestock
- selection of seed varieties and weed control programs
- determination of whether equipment should be repaired or replaced
- selection of input suppliers
- selection of feeding programs or strategies.

Buyers must thoroughly document participation in the business operation of a farm and verify that participation was not solely as a laborer. Documentation includes but is not limited to:

- copies of farm business operation related bills or statements with buyer's name
- copies of checks with buyer's signature for payment of farm business operation related goods or services
- written statements from other parties with knowledge of buyer's role and responsibilities in the business operation of a farm.

For an individual buyer to be an operator, the buyer must have materially and substantially participated and provided day-to-day labor and management of the farm for at least 3 years, such that if the individual did not provide these inputs, operation of the farm would have been seriously impaired.

For an entity buyer to be an operator, 1 or more members constituting a majority interest must have materially and substantially participated in the operation of the farm for at least 3 years. Material and substantial participation requires that the members provided a significant amount of management or management and labor necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm would have been seriously impaired.

--175 Application Requirements (Continued)*B Seller Application Requirements**

[7 CFR 763.7 (a)] A seller who contacts the Agency with interest in a guarantee under the Land Contract Guarantee Program will be sent the land contract letter of interest (FSA-2680) outlining specific program details. To formally request a guarantee on the proposed land contract, the seller, and each entity member in the case of an entity, must:

- (1) Complete, sign, date, and return the land contract letter of interest to the Agency, and**
- (2) Provide the name, address, and telephone number of the chosen servicing or escrow agent.**

C Buyer Application Requirements

[7 CFR 763.7 (b)] A complete application from the buyer will include:

- (1) The completed Agency application form;**

The buyer must initial, sign, and date FSA-2683. An unsigned FSA-2683 will be considered an incomplete application.

Notes: FSA-2683 with missing initials only will not be considered incomplete; however, initials will be obtained before closing.

- [7 CFR 763.7(b)] (2) A current financial statement (not older than 90 days);**

The buyer will provide the information either by completing FSA-2037 or a similar format containing the same information.

[7 CFR 763.7(b) (3)] If the buyer is an entity:

- (i) A complete list of entity members showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or stock held in the entity by each member, or the percentage of interest in the entity held by each member;--***

175 Application Requirements (Continued)

C Buyer Application Requirements (Continued)

- (ii) **A current * * * financial statement for each member of the entity** (not older than 90 days);
- (iii) **A current financial statement for the entity itself** (not older than 90 days);
- (iv) **A copy of the entity's charter or any entity agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (in good standing), and a resolution adopted by the Board of Directors or entity members authorizing specified officers of the entity to apply for and obtain the land contract guarantee and execute required debt, security and other instruments and agreements; and**
- (v) **In the form of a married couple applying as a joint operation, items in paragraphs (b)(3)(i) and (b)(3)(iv) of this section will not be required. The Agency may request copies of the marriage license, prenuptial agreement, or similar documents as needed to verify loan eligibility and security. The information specified in paragraphs (b)(3)(ii) and (iii) of this section are only required to the extent needed to show the individual and joint finances of the husband and wife without duplication;**

Each entity member must demonstrate individual ownership in the entity by owning either shares or a percentage of the entity.

If entity documents require more than 1 member to apply, then all identified members must sign FSA-2683.

For a married couple, FSA will accept any of the following to verify existence of a joint operation:

- applicable CCC-902
- jointly filed tax return
- marriage license
- prenuptial agreement
- similar documentation.

Ordinarily, individual financial statements are not required from a married couple applying as a joint operation. However, in States without community property laws and in some other States, individual financial statements may be necessary to obtain a complete picture of the financial situation. SED will issue a State supplement, if applicable, to provide additional guidance and information requirements for a married couple applying as a joint operation.

Definition of Terms Used in This Handbook (Continued)

Disaster

[7 CFR 761.2] **Disaster** is 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 as designated by the Agency.

Domestically-Owned Entity

[7 CFR 773.2 and 7 CFR 774.2] **Domestically-owned entity** is an entity organized in the U.S. under the law of the state or states in which the entity operates and a majority of the entity is owned by members meeting the citizenship test.

Downpayment Loan

[7 CFR 761.2] **Downpayment loan** is 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.

***--Embedded Entity**

[7 CFR 761.2] Embedded entity means an entity that has a direct or indirect interest, as a stockholder, member, beneficiary, or otherwise, in another entity.--*

Entity (Applies to Part 4)

[7 CFR 772.2(b)] **Entity** is a cooperative, corporation, partnership, joint operation, trust, or limited liability company.

Entity (Applies to Part 8)

*--[7 CFR 761.2] Entity is means a corporation, partnership, joint operation, cooperative, limited liability company, trust, or other legal business organization, 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 Programs purposes.

Entity Member

[7 CFR 761.2] 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.--*

Definition of Terms Used in This Handbook (Continued)

False Information

[7 CFR 773.2 and NOFA I.] **False information** is information provided by an applicant, borrower, or other source to the Agency which information is known by the provider to be incorrect and was provided to the Agency to obtain benefits for which the applicant or borrower would not otherwise have been eligible.

[7 CFR 774.2] **False information** is information provided by an applicant, borrower, or other source to the Agency that the borrower knows to be incorrect, and that the borrower or other source provided in order to obtain benefits for which the borrower would not otherwise have been eligible.

Family Farm

*--[7 CFR 761.2] **Family farm** is a business operation that:--*

- (1) Produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence;
- (2) Has both physical labor and management provided as follows:
 - (i) The majority of day-to-day, operational decisions, and all strategic management decisions are made by:
 - (A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or
 - (B) The members responsible for operating the farm, in the case of an entity.
 - (ii) A substantial amount of labor to operate the farm is provided by:
 - (A) The borrower and persons who are either related to the borrower by blood or marriage, or are a relative, for an individual borrower; or
 - (B) The members responsible for operating the farm, in the case of an entity.
- (3) May use full-time hired labor in amounts only to supplement family labor.
- (4) May use reasonable amounts of temporary labor for seasonal peak workload periods or intermittently for labor intensive activities.

Family Members

[7 CFR 761.2] **Family members** are the immediate members of the family residing in the same household with the borrower.

Definition of Terms Used in This Handbook (Continued)

***--Mortgage**

[7 CFR 761.2] **Mortgage** is a legal instrument giving the lender a security interest or lien on real or personal property of any kind. The term “mortgage” also includes the terms “deed of trust” and “security agreement.”--*

MRLS

[NOFA I.] **MRLS** is, during the period beginning April 24, 2001, and ending June 30, 2001, the occurrence of any of the following equine medical conditions:

- early- and late- term equine fetal losses
- pericarditis
- epicarditis
- unilateral endophthalmitis
- panophthalmitis.

***--Natural Disaster**

[7 CFR 761.2] **Natural disaster** is unusual and adverse weather conditions or natural phenomena that have substantially affected farmers by causing severe physical or production, or both, losses.--*

Native American Tribe

[7 CFR 770.2 (b)] **Native American tribe** is:

- (1) An Indian tribe recognized by the Department of the Interior; or
- (2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

***--Negligent Servicing**

[7 CFR 761.2] **Negligent servicing** is servicing that fails to include those actions that are considered normal industry standards of loan management or comply with the lender's agreement or the guarantee. Negligent servicing includes failure to act or failure to act in a timely manner consistent with actions of a reasonable lender in loan making, servicing, and collection.--*

Definition of Terms Used in This Handbook (Continued)

Non-Eligible Enterprise

[7 CFR 761.2] **Non-eligible enterprise** is a business that meets the criteria in any one of the following categories:

- (1) Produces exotic animals, birds, or aquatic organisms or their products which may be agricultural in nature, but are not normally associated with agricultural production, e.g., there is no established or stable market for them or production is speculative in nature.
- (2) Produces non-farm animals, birds, or aquatic organisms ordinarily used for pets, companionship, or pleasure and not typically associated with human consumption, fiber, or draft use.
- (3) Markets non-farm goods or provides services which might be agriculturally related, but are not produced by the farming operation.
- (4) Processes or markets farm products when the majority of the commodities processed or marketed are not produced by the farming operation.

Non-Program Loan

[7 CFR 761.2] **Non-program loan** is a loan on terms more stringent than terms for a program loan that is an extension of credit for the convenience of the Agency, because the applicant does not qualify for program assistance or the property to be financed is not suited for program purposes. Such loans are made or continued only when it is in the best interest of the Agency.

Operator

[7 CFR 761.2] **Operator** is the individual or entity that provides the labor, management, and capital to operate the farm. The operator can be either an owner-operator or tenant-operator. Under applicable State law, an entity may have to receive authorization from the State in which the farm is located to be the owner and/or operator of the farm.

--Operating-only entities may be considered owner-operators when the individuals who own the farm real estate own at least 50 percent of the family farm operation.--

Ordinary and Necessary Expenses

[NOFA I.] **Ordinary and necessary expenses** are the operating expenses directly related to the horse breeder business, including, but not limited to taxes, feed, veterinary expenses, fixtures, and farm maintenance.

Definition of Terms Used in This Handbook (Continued)**Participated In the Business Operations of a Farm**

[7 CFR 761.2] **Participated in the business operations of a farm** requires that an applicant has:

- (1) Been the owner, manager or operator of a farming operation for the year's complete production cycle as evidenced by tax returns, FSA farm records or similar documentation;
- (2) Been employed as a farm manager or farm management consultant for the year's complete production cycle; or
- (3) Participated in the operation of a farm by virtue of being raised on a farm or having *--worked on a farm (which can include a farm-related apprenticeship, internship, or similar educational program with applied work experience) with significant responsibility for--* the day-to-day decisions for the year's complete production cycle, which may include selection of seed varieties, weed control programs, input suppliers, or livestock feeding programs or decisions to replace or repair equipment.

Partnership

[7 CFR 761.2] **Partnership** is any entity consisting of two or more individuals who have agreed to operate a farm as one business unit. The entity must be recognized as a partnership by the laws of the State in which the partnership will operate a farm. It also must be authorized to own both real and personal property and to incur debt in its own name.

Production Cycle

[7 CFR 761.2] **Production cycle** is the time it takes to produce an agricultural commodity from the beginning of the production process until it is normally disposed of or sold.

Protective Advance

[7 CFR 761.2] **Protective advance** is an advance made by the Agency or a lender to protect or preserve the collateral from loss or deterioration.

Readily Available

[NOFA I.] **Readily available** is when the insurance is sold by insurance agents in the applicant's normal trade area.

Definition of Terms Used in This Handbook (Continued)

*--Redemption Rights

[7 CFR 761.2] **Redemption right** is a Federal or state right to reclaim property for a period of time established by law, by paying the amount paid at the involuntary sale plus accrued interest and costs.

Related by Blood or Marriage

[7 CFR 761.2] **Related by blood or marriage** is being connected to one another as husband, wife, parent, child, brother, sister, uncle, aunt, or grandparent.

Relative

[7 CFR 761.2] **Relative** is the spouse and anyone having one of the following relationships to an applicant or borrower: parent, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, cousin, grandparent, grandson, granddaughter, or the spouses of the foregoing.--*

Rental Value

[7 CFR 770.2(b)] **Rental value** for the purpose of rental value write-down's, equals the average actual rental proceeds received from the lease of land acquired under ITLAP. If there are no rental proceeds, then rental value will be based on market data according to Sec. 770.10(e)(4).

Reservation

[7 CFR 770.2 (b)] **Reservation** is lands or interest within:

- (1) The Native American tribe's reservation as determined by the Department of the Interior; or
- (2) A community in Alaska incorporated by the Department of the Interior pursuant to the Indian Reorganization Act.

Reserve

[7 CFR 770.2 (b)] **Reserve** is an account established for loans approved in accordance with regulations in effect prior to February 8, 2001, which required that an amount equal to 10 percent of the annual payment be set aside each year until at least one full payment is available.

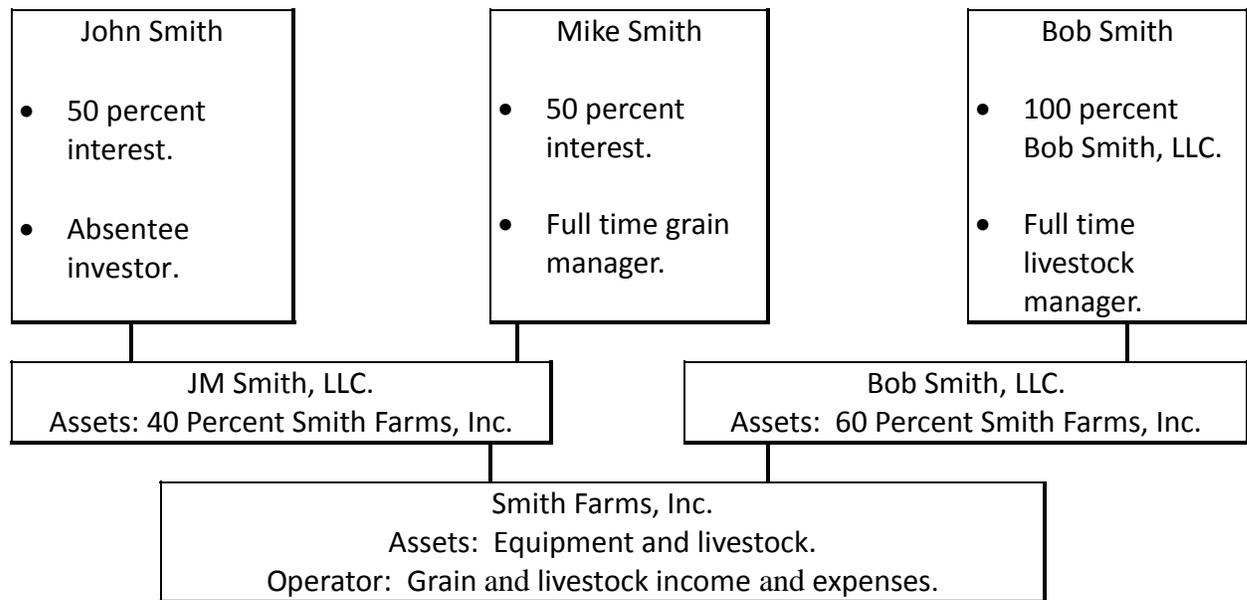
Note: Regulations in effect before February 8, 2001, were published in 7 CFR 1823, Subpart N. Further guidance was contained in FmHA Instruction 442.11.

***--Embedded Entity Examples**

A Determining Embedded Entities

Subparagraphs B and C have been provided to help in determining whether embedded entities meet 7 CFR 762.120 FLP rules.

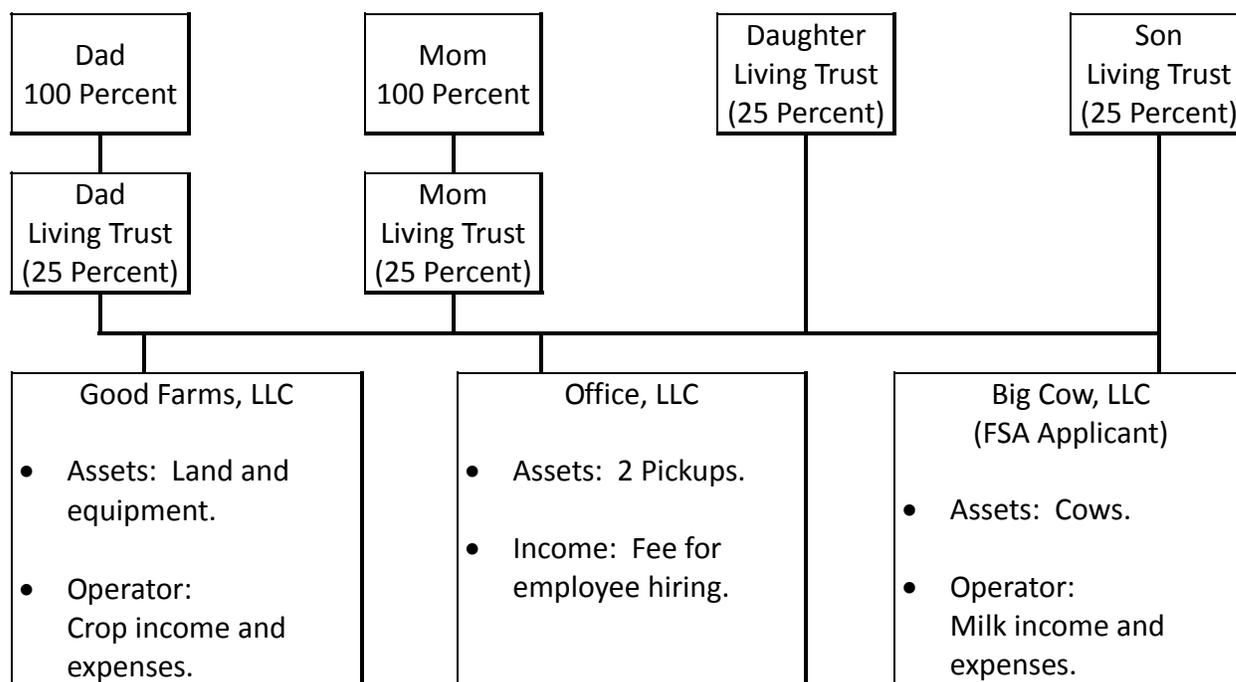
B Embedded Entity Example 1



JM Smith, LLC, fails the 75 percent test because only Mike is actively involved in the operation and he owns only 50 percent of the embedded entity, JM Smith, LLC. If Mike Smith owned 75 percent of JM Smith, LLC, then the application would meet the embedded entity test.--*

***--Embedded Entity Examples (Continued)**

C Embedded Entity Example 2



Both Mom and Dad must be actively involved in managing or operating the family farm. Daughter and Son are not involved in embedded entities, so they are not subject to the 75 percent rule.

Either Good Farms, LLC, or Big Cow, LLC, could be the FSA applicant depending on the purpose of the loan.--*