



# USDA FARM SERVICE AGENCY

## Guaranteed Lender News Kentucky



February 2012

### From the Desk of John W. McCauley

At FSA, we continue to face many budget related challenges. Simply, we must do more with less and still get the job done. Recently, Secretary Tom Vilsack introduced the Blueprint for Stronger Service. This is the key to building a modern and efficient service organization that is closely in tune with the long-term vitality of rural America and the success of American agriculture. The plan takes a realistic view of the needs of American agriculture in a challenging budget climate, and lays out USDA's plans to modernize and accelerate service delivery and improving the farmer experience through the use of innovative technologies and business solutions. In the plan, 131 Farm Service Agency offices in 32 states are proposed for consolidation, five of those county offices are in Kentucky. The 2008 Farm Bill, written by Congress, set the criteria for proposed office consolidation.

Over the past several days, myself and members of my management team conducted public meetings in each of the five communities that have an office proposed for consolidation. The comments received from those meetings will be forwarded to Secretary Vilsack for review and discussion before a final decision is made.

Each day our farmers are faced with many challenges. That is why it is so important that we make good decisions as we look ahead. Our farmers continue to provide our food and fiber, safer, cheaper, more effectively and more efficiently than any other nation in the world. And we in the Farm Service Agency owe that same commitment of service to our farmers by being the most efficient and effective in program delivery.

We are very proud of our Farm Loan Program. In 2011, we continued to be a national leader and achieved a top




**John W. McCauley**  
State Executive Director

five ranking. Whether we are working to help a farmer purchase that first farm, or providing operating loans to purchase farm equipment or livestock, these are all examples of how important FSA's Farm Loan Program are to Kentucky agriculture.

Our dedicated team of professionals across the Commonwealth remain committed to serving our farm community. As we move forward, we will continue to build upon that commitment.

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 The Farm Service Agency will not guarantee any loan that would result in the applicant's total indebtedness exceeding the limits established in Handbook 1-FLP, paragraph 29. The maximum, FO, CL, OL, and LC levels include the guaranteed loan being made plus any outstanding direct or guaranteed principal balances owed by anyone who will sign the promissory note. The dollar limit of guaranteed loans is adjusted annually based on the percentage change in the Prices Paid by Farmers Index, as compiled by USDA. The total outstanding combined guaranteed FO, CL, SW, OL, and LC principal balance cannot exceed \$1,214,000. 2-FLP paragraph 244 (A)

## Land Contract Guaranteed Program

The Land Contract Guarantee Program was authorized by the 2008 Farm Bill and became effective on January 3, 2012. This new guaranteed program provides a valuable alternative for transfer of farm real estate to a Beginning (BF) or Socially Disadvantaged (SDA) farmer to help ensure the future viability of family farms. In addition, the new program affords some protection to the seller of the property while providing the Beginning or Socially Disadvantaged farmer reasonable rates and terms.

The program is a "hybrid" of both the direct and guaranteed loan program. The program basics are consistent with other Farm Service Agency Farm Loan Program (FLP) regulations with regards to general eligibility criteria and most loan servicing options.

There are two types of FSA guarantees within this program. The Prompt Payment Guarantee guarantees the payments of three amortized annual contract installments plus any related real estate property taxes and insurance premiums. The second program is the Standard Guarantee which guarantees 90% of the outstanding principal of the land contract. (A land contract is a contract between the seller and buyer of the property in question, where ownership is not transferred until all payments required by the contract are made by the buyer.) Both guarantees are limited to a ten year period. Both programs limit the risk to the seller of the property while also possibly lowering

his/her tax liability vs. obtaining all sales proceeds from the property at one time. At the same time, the buyer can obtain seller financing possibly unavailable through conventional lender financing.

Under either program the farm purchase price is limited to \$500,000 and the guarantee can only be granted on new farmland purchases. The buyer must be the operator of the farm. FSA cannot guarantee a contract if the buyer intends to rent or lease the property to another operation. Equine operations are ineligible for this program. The interest rate must be fixed at a rate not to exceed FSA's Direct Farm Ownership loan rate in effect at the time the guarantee is issued plus three (3) percent. The contract payments must be amortized for a minimum of 20 years and payments on the contract must consist of equal amounts for the term of the ten year guarantee. The buyer must provide a minimum down payment of 5% of the purchase price. The down payment can come from borrowed funds, but not from an FSA Direct loan or another FSA guarantee.

FSA will check the credit history of the buyer and complete a Farm Business Plan to assure the feasibility of the planned operation. There is no fee payment for the FSA guarantee, but the seller must obtain the services of either an escrow agent for the Prompt Payment Guarantee or a servicing agent for the Standard Guarantee in order to handle

servicing of the contract. These fees are to be negotiated and paid by the seller. Escrow agents must be bonded and may be title insurance companies, attorneys, financial institutions or any fiscally responsible institution approved by FSA. Servicing agents must be bonded commercial lending institutions or similar entities which are registered and authorized to provide escrow and collection services in the State in which the farm is located.

No title search on the property is required by FSA due to the guarantee involving a contract only and the ten year term of the guarantee. It is the buyer's responsibility to determine the need for a title search in order to determine the presence of other liens or title defects. The funding of the program will come from the FSA Guaranteed Farm Ownership loan allocation.

### *Did You Know?*

It is the prerogative of the lender to notify markets concerning collateral for FSA guaranteed loans. However, a loss claim may be reduced by the lender's failure to secure property *after a default*. Losses will not be reduced regarding unaccounted for security, as long as the lender's efforts to locate and recover the missing collateral was equal to that which would have been expended in the case of an unguaranteed loan in the lender's portfolio.

2-FLP paragraph 360(F)

# Guaranteed Lender News

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## 2012 Guaranteed Lender Meetings

**YES, we are having 2012 Guaranteed Lender Meetings. We have a lot of information to cover since we were unable to have the meetings last year. All meetings will begin at 9:30 a.m. local time and will end around noon. The meeting dates and locations are as follows. We will send reminders closer to the meeting dates.**

- ⇒ Tuesday, April 17th: Clark County Cooperative Extension Office located at 1400 Fortune Drive, Winchester KY
- ⇒ Wednesday, April 18th: Lake Cumberland Area Development District located at 2384 Lakeway Drive, Russell Springs KY
- ⇒ Thursday, April 19th: Nolin RECC located at 411 Ring Road, Elizabethtown KY
- ⇒ Tuesday, April 24th: KY Community and Technical College located at 1127 Morgantown Road, Bowling Green KY
- ⇒ Wednesday, April 25th: Kentucky Dam Village located at 113 Administration Drive, Gilbertsville KY



During an Agricultural Outreach Tour to Western Kentucky, John W. McCauley, State Executive Director (m) discusses The Hispanic and Women's Claims process with Wayne Hunt (l) member of the Kentucky Agricultural Development Board and State Senator Joey Pendleton (r) from Hopkinsville.

### Hispanic and Women Farmers Claims Process

On January 25, 2012, Agriculture Secretary Tom Vilsack announced an updated and improved process to resolve discrimination claims of Hispanic and women farmers. The updated claims process increases the maximum cash recovery to \$250,000 instead of \$50,000. The process offers a streamlined alternative to litigation for each Hispanic or woman farmer and rancher who can prove that USDA denied their loan or loan servicing for discriminatory reasons for certain time periods between 1981 and 2000. As announced in February 2011, the voluntary claims process will make available at least \$1.33 billion for cash awards and tax relief payments, plus up to \$160 million in farm debt relief, to eligible Hispanic and women farmers and ranchers. There are no filing fees or other costs to claimants to participate in the program. Participation is voluntary, and the program does not preclude individuals who opt not to participate from pursuing their cases in court.

Over the past months, USDA has worked to reach out to potential Hispanic and female claimants through a call center for farmers and ranchers, a website, public service announcements, and in-person meetings around the country. Individuals interest in participating in the claims process may register to receive a claims package, or may obtain more information, by visiting [www.farmerclaims.gov](http://www.farmerclaims.gov) or by calling the Farmer and Rancher Call Center at 1-888-508-4429. USDA cannot provide legal advice to potential claimants.



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## USDA Farm Service Agency

## Electronic Access to Forms for FSA Lenders

Handbook 2-FLP Exhibit 5

**A. Creating an Account With USDA eAuthentication Level 2 Access:**

USDA developed a centralized eAuthentication service to provide authentications for USDA Web services. USDA eAuthentication Level 2 accounts enable the secure presentation of information and electronic signing of submissions. FSA lenders must obtain USDA eAuthentication Level 2 account to acquire a Level 2 user ID and password. Follow these steps to obtain a Level 2 account.

Step	Action
1	Go to <a href="http://www.eauth.egov.usda.gov/eauthCreateAccount.html">http://www.eauth.egov.usda.gov/eauthCreateAccount.html</a> and CLICK “Level 2 Access” hyperlink.
2	Complete and submit the 4-step registration. Required fields are indicated by asterisk (*).
3	After users submit the registration, the Level 2 Access Confirmation Page will be displayed that provides instructions on activating the newly created Level 2 account.
4	Users will receive a confirmation e-mail within 24 hours of registering. The e-mail message will provide further instructions and the link necessary to activate the account.
5	Obtain final verification of user’s identity by presenting a Government-issued ID card (such as, State-issued driver’s license or ID, military ID, passport) at user’s local USDA Service Center, where a Local Registration Authority will verify user’s identity. This <b>must</b> be done in person; otherwise, Level 2 authorization <b>cannot</b> be granted. To locate user’s local USDA Service Center, go to <a href="http://offices.sc.egov.usda.gov/locator/app">http://offices.sc.egov.usda.gov/locator/app</a> .
6	Send request, in writing to FSA State Office, ATTN: FLP Division, to link the validated eAuthentication ID as either a Lender Administrator or Branch Administrator.

**B. Accessing Forms:**

Although all FSA lenders have access to online forms, users **must** register for a USDA Level 2 user ID and password to be able to save their information on the form and to submit the form electronically.

Lenders with an eAuthentication Level 2 user ID and password shall follow these steps to access forms.

Step	Action
1	Go to the Service Center Agencies eForms Home Page at <a href="http://forms.sc.egov.usda.gov/eForms/welcomeAction.do">http://forms.sc.egov.usda.gov/eForms/welcomeAction.do</a> and CLICK “Login”.
2	On the eAuthentication Warning Screen, CLICK “I Agree”.
3	On the USDA eAuthentication Login Screen, enter user ID and password and CLICK “Login”.
	<b>Note:</b> When viewing forms, have only 1 browser window open. Each form has a supporting instruction file that explains how to complete the form.

**C. Searching for Forms:**

Follow paragraph B above, under “eforms”, CLICK “**Browse Forms**”, and do either of the following:

- Select the Agency, program, and service name from the corresponding drop-down menus to narrow the search results
- When searching for a specific form, enter information in the “Form Number” and “Title or “Keywords” fields.

CLICK “**Search**” to review all forms that meet user’s search criteria.

## ***Did You Know? Questions and Answers***

**Q.** A lender requests a subordination of guaranteed loan security that does not meet any of the exceptions, and the FSA state office wants to deny it. Does it still need to go to the Deputy Administrator of Farm Loan Program (DAFLP) for exception approval?

**A.** No. It does not need to go to DAFLP if the state office wants to deny the request. It is also not appealable. Only submit requests that needs DAFLP approval and the state office supports. Also, the lender and the state office requests must be submitted in writing from the State Executive Director (SED) with all bulleted items in Handbook 2-FLP Par. 278 B addressed. (7 CFR 762.142)

**Q.** Can a Protective Advance be approved and issued during a reorganization bankruptcy?

**A.** No. Protective Advances are used only when the borrower is in liquidation, liquidation is imminent, or when the lender has taken title to real property in a liquidation action. Handbook 2-FLP Par. 360 D (7 CFR 762.149)

**Q.** If a CLP or PLP lender is performing well and no major deficiencies are found in the first 3 years of reviews, can the file reviews be reduced to every 3 years with just 10% of the borrowers being reviewed?

**A.** No. If a PLP lender is performing well and no major deficiencies are found in the first 3 years of reviews, the file reviews may be reduced to **every 2 years** with just

*10% of the borrowers being reviewed. A CLP lender will have 20% of files reviewed each year. SEL lenders will have 40% of files reviewed each year. Further details are provided under certain circumstances in Handbook 2-FLP Par. 267 B.*

**Q.** If there is a conflict between the PLP lender's Credit Management System (CMS) agreement and 7 CFR 762, is the lender authorized to follow their CMS in affect at the time the conflict occurred?

**A.** No. Regulations in 7 CFR 762 always take precedence over the PLP lender's CMS agreement. The Forms 1980-38 and 2201 Lender's Agreement Part H 1, states "The guaranteed loan program is administered under 7 CFR 762. The lender is required to comply with these regulations as well as any future amendments not inconsistent with this agreement."

**Q.** Can a loan be less than fully secured and restructured with a balloon payment?

**A.** No. A loan does not have to be fully secured to be restructured, unless it is restructured with a balloon payment. When a loan is restructured with a balloon payment, the lender must take a lien on all assets and project the loan to be fully secured at the time the balloon payment becomes due. Handbook 2-FLP Par. 312 A (7 CFR 762.145 (b)(4)).

**Q.** Liquidation is expected to be completed timely after the borrower is declared in default. Should a lender request an extension if it will take longer than 9 months from default to complete liquidation?

**A.** Yes. Liquidation is expected to be completed within 230 days of default. A final loss claim should be submitted within 30 days of liquidation or 260 days (about 9 months) from the date of default. If there are unexpected or unavoidable delays, the lender should request an extension, and FSA shall document the request and approve or reject it as practical. Many liquidations are taking too long, and security values are likely to decrease and loss claims increase with delays. 2-FLP Par. 355 I

### ***Did You Know?***

The following guaranteed loan transactions qualify for a waiver of the guarantee fee (currently established at 1.5 percent).

- loans where a majority of the funds are used to refinance an Agency direct loan.
- applicants who meet the requirements of the beginning or socially disadvantaged farmer, **and** are participating in the direct Downpayment Loan program under 3-FLP, Part 7, Section 2.

*2-FLP paragraph 247(A)*

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**USDA Farm Service Agency**

### Common Findings on 2011 Preferred Lender (PLP) Reviews

- ◆ No documentation of farm visit before loan closing.
- ◆ Evidence of hazard insurance could not be located.
- ◆ Debts in excess of \$1,000 were not verified.
- ◆ Appraisals not always being done on subsequent guaranteed loans secured by real estate.
- ◆ Loans secured by the same real estate are cross collateralized but mortgages securing the individual guarantee not always filed.
- ◆ Loans being made to ineligible individuals or entities.
- ◆ Lack of ledgers showing disbursements and repayment on lines of credit.
- ◆ Annual farm inspections are not being completed or not being documented.
- ◆ Files did not contain annual/current financial statements.
- ◆ Estimated loss claims are not being filed.
- ◆ Files do not contain evidence of environmental compliance (FSA-850 or ENV-1).

### Other Guaranteed Loan Updates

- ◆ USDA Farm Service Agency to focus on increasing Socially Disadvantaged Applicant (SDA) participation in the Guaranteed Loan Program.
- ◆ Nationwide, FY 2011 had the highest Guaranteed FO lending ever.
- ◆ New National Office initiative to increase number of lenders who are eligible for the Preferred Lender Program (PLP).
- ◆ The National Office projects that the number of PLP lenders will surpass 180 in early FY 2012.

**Kentucky Farm Loan Program makes the top ten list in loans made for the sixth consecutive year!**

#### National Ranking

1st	Youth Loan Dollars—\$884,410
2nd	Direct Operating Loans—1,114
2nd	Youth Loans—223
4th	All Socially Disadvantaged Loans—203
5th	All (Direct and Guaranteed) Loans—1555
5th	All Beginning Farmer Loans—745



Kay Barton (left), CED at the Mt. Washington FSA Service Center, talks to attendees at the 5th Annual Kentucky Farm Women Field Day in Louisville.

### **2-FLP Handbook Revisions**

#### **Highlights of Amendment 13 dated 7/20/11:**

- \* Removed reference to the suspension of term limits
- \* Notated that the lender must use FSA-2004 or the lender's authorization form for release of borrower's financial information
- \* Clarified the documentation required for Standard Eligible Lenders (SEL) for their annual borrower financial analysis
- \* Clarified the documentation required for release of liability by authorized agency officials
- \* Requires that all lenders are to submit an estimated loss claim no later than 150 calendar days after the payment due date
- \* Clarified how a lender will appraise Concentrated Animal Feeding Operation (CAFO) property when it will not be used for CAFO in the future

#### **Highlights of Amendment 14 dated 9/19/11:**

- \* Updated the statutory loan limit for guaranteed loans
- \* Updated the regulations to reflect an increase in the guaranteed fee to 1.5 percent beginning in FY 2012

#### **Highlights of Amendment 15 dated 12/5/11:**

- \* Amended the regulations to provide that the Farm Service Agency is no longer accepting applications for guaranteed loans with Interest Assistance (IA)
- \* Clarified that Interest Assistance is not available for new guaranteed applications

#### **Highlights of Amendment 16 dated 2/3/12:**

- \* Amended to require documenting the review of delinquent guaranteed loan borrowers

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