

For: State and County Offices**Farm Loan Programs Denial Decision Letters****Approved by:** Deputy Administrator, Farm Loan Programs**1 Overview****A Background**

Most if not all FSA programs contain specific program eligibility and application approval criteria that will determine if assistance can be provided to an FSA customer. With FLP, an applicant or borrower must meet eligibility, feasibility, and security requirements prior to approval of a loan making and/or servicing request.

Recent National Appeals Division (NAD) determinations have revealed that not all adverse aspects of loan or servicing applications are being considered prior to the denial of agency assistance. When the agency fails to include all issues considered adverse in its determination, it can place an additional burden on agency personnel if the determination is overturned by NAD. In some cases, the agency can be precluded from rendering a subsequent adverse determination even though other adverse conditions exist that would prevent approval of the application.

For example, the agency denied an application because of the applicant's adverse credit history; however, there was substantial evidence from the application to justify concluding the applicant did not meet the requirements of being the owner/operator of a family farm. Upon NAD appeal, the applicant prevailed, and the agency's eligibility determination was overturned. Because the agency did not address the family farm owner/operator requirement in its initial determination, the agency may be required to issue a subsequent eligibility determination. These types of subsequent determinations on the same basis (eligibility) can cause distrust among customers, or be seen as retaliation.

B Purpose

This notice reminds all authorized loan officials that agency denial decision letters must address, when practicable, all adverse aspects of a loan making or servicing application. If all adverse issues cannot be addressed in the initial denial, the agency notification should include a disclaimer that other requirements will need to be reviewed prior to any approval action.

Disposal Date	Distribution
October 1, 2024 8-10-23	State Offices; State Offices relay to County Offices

1 Overview (Continued)

C Contacts

If there are questions about this notice:

- County Offices will contact State Office
- State Office will contact the following DAFLP staff:
 - jennifer.thompson@usda.gov for loan making issues
 - david.sullivan2@usda.gov for loan servicing issues.

2 FLP Adverse Decision Letters

A Adverse Decision Considerations

FSA FLP best practice is to fully review, when practicable, all eligibility, feasibility, and other approval criteria when there is sufficient documentation in the application to support the determination. The purpose of disclosure of all adverse aspects in a determination is to ensure the agency's decision is transparent to customers, and their due process rights are preserved.

Generally, FSA considers an applicant's eligibility prior to consideration of feasibility, security, and other requirements. In determining eligibility, all relevant eligibility criteria must be reviewed before issuance of an adverse determination, when practicable. Additionally, the individual elements of a rule must be considered as well. For example, an applicant that received prior debt forgiveness is initially considered under 7 CFR 764.101(d)(2); however, it is reasonable for the authorized agency official to determine if regulations regarding good faith also apply per 7 CFR 764.101(d)(1). While both are elements of credit history and technically could stand alone in a determination, it is reasonable that each should be addressed in the adverse decision letter to ensure the agency's determination is supported by substantial evidence. This will lessen confusion during any informal or administrative appeal, should it occur.

Feasibility determinations should be addressed in a similar way. For example, if the agency determines the income projections are unrealistic and not supported by sufficient documentation, the authorized agency official shall address all other cash flow concerns, such as operating expenses. Both are considered in the final determination of feasibility and must, be addressed in the adverse decision letter if they adversely impact the final determination.

During the progression of an application review, not all aspects of the loan making or servicing decision are made simultaneously. It may not be possible during an eligibility review to determine the feasibility of the proposal, or if adequate security is available. However, if substantial evidence is available to make a determination, the authorized agency official must take the time to discuss every applicable criterion that is adverse. Should it be unrealistic or unreasonable to address certain aspects, the adverse decision letter must specifically provide that disclaimer. For example, a statement similar to the following must be included in the adverse determination letter: "It should be noted that FSA has not made formal determinations regarding any other loan making criteria at this time, including security, environmental, eligibility or creditworthiness requirements.."

2 FLP Adverse Decision Letters (Continued)

B Preparing Adverse Decision Letters

Authorized agency officials should ensure that adverse determinations follow applicable agency regulations and procedures in:

- 2-FLP for guaranteed loan making and servicing
- 3-FLP for direct loan making
- 4-FLP, 5-FLP, and 7-FLP for direct loan servicing.

Note: For PLS, the authorized agency official should include eligibility and feasibility issues as noted in 5-FLP, subparagraphs 116 B and C.

As a reminder, when an appeal involves a guaranteed loan, 7 CFR Part 11 (the NAD regulation) stipulates that when an adverse decision directly affects the applicant/borrower, the agency shall grant appeal rights to the applicant/borrower. The lender would be an “interested party”, without appeal rights. The lender would be granted appeal rights for decisions involving liquidation plans or loss claims since these do directly affect the lender.

Authorized agency officials should be fully informed of any statutory reference they might be making in adverse decision letters, which may require OGC concurrence prior to issuing an adverse decision letter. For example, if the authorized agency official is uncertain if a previous loss was authorized under Section 353 of the CONACT, they should contact their regional OGC, through the State Office, as appropriate.

Decision letters must clearly state each basis for the adverse determination(s). FSA’s explanation of the determination(s) will include specific citation of related sections of CFR. Applicable handbook guidance beneficial to supplement CFR should also be cited within the decision letter.

Authorized agency officials shall follow the informal appeals process procedures in 1-APP when conducting reconsiderations, mediations, or preparing for NAD appeals. As a reminder to all authorized review officials, FSA reconsiderations and NAD appeals are *de novo* reviews, meaning the review official or Administrative Judge reviews the adverse issue as if it were deciding the issue for the first time. FSA review officials or NAD may add evidence during reconsideration and appeal. Further, they are not precluded from adding additional adverse issues to a reconsideration determination letter if they are supported by substantial evidence.