Lender Training Q & A

SEPTEMBER 2023

1. **Are the farming experience standards the same for both Direct and Guaranteed loans?**

   No. Unlike the direct loan program, an applicant for a guaranteed Farm Ownership loan is not required to have prior farming experience to be considered eligible. For Guaranteed loans, the lender is expected to consider the applicant's ability to operate the farm as proposed, which includes having the necessary knowledge, experience, and ability. Consideration can be given to assistance available from family members or other mentors. When necessary, the lender should discuss this in the loan narrative.

2. **Can a lender get a guarantee on a bridge loan?**

   No, guarantees are not available for bridge loans. A bridge loan is only made available when an applicant has already been approved for an FSA direct loan, but funding is temporarily unavailable for that FSA loan. Since the applicant was approved for that direct loan, FSA wouldn't also guarantee the temporary bridge loan.

3. **Are guaranteed loans analyzed on a global basis (all income sources) if additional income is needed to support the purchase/repayment of an additional poultry farm?**

   Yes. When evaluating the repayment ability of an applicant, the lender can consider non-farm income as part of the overall capacity analysis. While it is fairly common for agricultural operations to have one or more sources of non-farm income, it is important to ensure that the applicant still qualifies as the operator of not larger than a family size farm.

4. **If a lender is waiting on FSA local office to complete FSA-851/ Environmental Review, is the guarantee application considered incomplete? How may the local commercial lender assist in this to speed up the process?**

   The environmental due diligence review (Form FSA-851, "Environmental Risk Survey Form" or a similar form) addresses the suitability of the loan security, which is separate and distinct from the National Environmental Policy Act (NEPA) environmental review that is completed by FSA.

   Lenders are responsible for completing the FSA-851 or a similar form for guaranteed loans with real estate serving as primary security.

   Lenders should generally complete this review prior to submitting the application because the lender must certify on the FSA-2211 "Application for Guarantee" that they've completed a site visit and they must indicate whether or not any environmental hazards are present.

   Lenders are not required to submit that due diligence review to FSA unless their review indicates that potential hazards may exist. If a lender fails to complete the review and there is a loss claim, that loss claim may be reduced or denied if environmental hazards contributed to the loss.

   The NEPA environmental review focuses on the potential environmental impact of whatever action is being facilitated by the guaranteed loan funds. FSA is responsible for completing this review and any related consultations that may be necessary. However, FSA may need the lender's assistance in obtaining the information needed to complete the NEPA review and consultations. To facilitate a timely NEPA review, the lender is encouraged to communicate with FSA as early as practical in the planning process to ensure all parties are aware of what exactly will be required to complete the review. The lender's assistance in collecting necessary information from the applicant can also help to improve the amount of time needed to complete the review.

   The application is not considered complete until FSA has all the information needed to complete the NEPA environmental review. If consultations with outside agencies are required, the application is not considered complete until all those consultations are finished. FSA Handbook 2-FLP, Paragraph 97 allows for extended application processing timeframes if a more complex environmental review is required.

   If FSA has inadvertently determined an application to be complete, but later discovers additional information is needed for the NEPA environmental review, that information still must be provided since NEPA requires that the environmental review must be fully completed before the application for guarantee can be approved. This statutory requirement related to NEPA supersedes the requirement that FSA must make an approval decision on an application for guarantee from a PLP lender within 14 days of receiving a complete application.

5. **Is there any news or updates as to the pause on guaranteed or direct loan processing for medium sized concentrated animal feeding operations? Any guess as to when we can expect processing to continue?**

   In April of 2023, the Agency temporarily paused processing of loan applications for medium CAFOs due to a ruling in *Dakota Rural Action v. USDA*. However, in May 2023 an amended order was entered by the Court which allowed processing of those applications to resume. FSA staff should be processing applications from medium CAFOs according to guidance provided by the National Office after the amended order was entered in May 2023.

6. **Our bank is a PLP. We did not make the required number of loans to remain a PLP lender. Are we able to get a waiver?**

   Unfortunately, the lender eligibility regulations as currently written do not allow FSA to grant a waiver of the PLP loan volume eligibility requirements. However, FSA has heard similar concerns from several lenders, so the Agency is reviewing whether any changes can or should be made to those loan volume requirements in the future.

7. **Page 2-3 of FSA Handbook 2-FLP states the applicant "be unable to obtain sufficient credit without a guarantee at reasonable rates and terms to finance the farming operation." Where are "reasonable rates and terms" defined?**

   "Reasonable rates and terms" are defined in Agency regulations and FSA Handbook 2-FLP, Exhibit 2 as follows: Reasonable rates and terms are those commercial rates and terms that other farmers are expected to meet when borrowing from a commercial lender or private source for a similar purpose and similar period of time. The "similar period of time" of available commercial loans will be measured against, but need not be the same as, the remaining or original term of the loan.

8. **If an applicant has obtained a non-guaranteed loan from a conventional bank on favorable terms, does this mean they are ineligible for a guaranteed loan?**

   If the lender submitting the guaranteed loan request is able to make an applicant an unguaranteed loan in the same amount and for the same purpose as which they are seeking a guarantee, the applicant would generally be ineligible for that particular loan to be guaranteed. However, just because the lender didn't need a guarantee for the initial loan request, that doesn't mean that the applicant would be ineligible for a guarantee on a subsequent loan made for a different purpose.

9. **Why is the Land Contract Guarantee advertised on FSA marketing handouts, but many states don't offer this?**

   Through the Land Contract Guarantee program, FSA offers financial guarantees for land sale contracts to a beginning or socially disadvantaged farmer. With this program, the purchase price of the farm cannot exceed the lesser of $500,000 or the market value of the property, and the buyer must provide a minimum down payment of 5 percent of the purchase price of the farm.

   This program continues to be available in all states, although it is rarely used because of some of the program requirements, including the need for an escrow agent to track payments.

10. **We are a preferred lender. We have experienced abnormal delays in credit decisions and funding.**

    Overall, our Preferred lenders experience faster turnaround times for loan decisions; however, we recognize there are certain situations where abnormal delays can occur. We recommend you contact the FSA State Office Guaranteed Point of Contact in the state where this is occurring to discuss the problem.

11. **At what loan amount do we need a formal real estate appraisal as opposed to a bank internal estimate of value?**

    For real estate secured loans greater than $250,000, the lender must document the value of real estate using a current appraisal (not more than 18 months old) completed by a State Certified General Appraiser. Real estate appraisals must be completed in accordance with USPAP.

    For loans of $250,000 or less, the lender must document the value of the real estate by applying the same policies and procedures as their non-guaranteed loans. (See FSA Handbook 2-FLP, Subparagraph 183 A for details).

12. **Joint financing in many situations involves a lender getting a 1st REM position on the REM being purchased. The lender will many times request a guarantee in this scenario. If the producer wants to do any kind of improvements, a subordination is needed. However, guaranteed security may not be subordinated in most situations. How many subordinations does the National Office approve each year? How long is the turnaround?**

    The number of subordination requests submitted to the National Office varies from year to year. Requests are reviewed in accordance with 2-FLP Par. 278 and approved if the determination can be made that the subordination is in the best interest of both the government and the borrower.

An approval or denial is typically granted within 30 days; however this is dependent on how much information is submitted with the initial request. Lenders should provide county or state office with as much information as possible to help make the final determination. When the National Office is required to request additional information, this can add time to the response.

13. We have poultry operations that are unable to obtain wind coverage insurance - does this affect their ability to obtain a direct or guaranteed loan?

If the borrower is unable to obtain insurance coverage and the poultry house(s) should collapse due to wind snow, ice, or other natural disasters, this could adversely affect the payment of a potential loss claim by the Agency. If insurance coverage for wind damage is not available, the lender will need to specifically document why the borrower is unable to obtain such coverage and what factors caused the coverage to be truly unavailable.

Lenders are required to protect the Government's interest in the loan security as well as their own interest in that security. Therefore, in the event of a loss caused by wind damage when wind coverage was not available, the lender will need to document what actions they took to protect the Government's interest in the security and mitigate the risk associated with the lack of coverage. Such actions could include, but are not limited to, structural upgrades that would protect the poultry house(s) from possible wind damage. That information will be evaluated on a case-by-case basis when determining whether a loss claim as the result of wind damage can be paid by the Agency.

Direct loan security is required to be covered by hazard insurance if it is readily available (sold by insurance agents in the applicant's normal trade area) and insurance premiums do not exceed the benefit.

14. What is the definition of a non-essential asset?

Non-essential asset means assets in which the borrower has an ownership interest, that:

(1) Do not contribute to:

(i) Income to pay essential family living expenses, or

(ii) The farming operation; and

(2) Are not exempt from judgment creditors or in a bankruptcy action.

15. What is the definition of a beginning farmer?

Beginning farmer means an individual or entity who:

(1) Meets the loan eligibility requirements for a direct or guaranteed operating loan (OL) or farm ownership (FO) loan, as applicable;

(2) Has not operated a farm for more than 10 years. This requirement applies to all members of an entity;

(3) Will materially and substantially participate in the operation of the farm:

(i) In the case of a loan made to an individual, individually or with the family members, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a loan made to an entity, all members must materially and substantially participate in the operation of the farm. Material and substantial participation requires that the member provide some amount of the management, or labor and management necessary for day-to-day activities, such that if the individual did not provide these inputs, operation of the farm would be seriously impaired;

(4) Agrees to participate in any loan assessment and borrower training required by Agency regulations;

(5) Except for an OL applicant, does not own real farm property or who, directly or through interests in family farm entities owns real farm property, the aggregate acreage of which does not exceed 30 percent of the average acreage of the farms in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the applicant's residence is located will be used in the calculation. If the applicant's residence is not located on the farm or if the applicant is an entity, the average farm acreage of the county where the major portion of the farm is located will be used. The average county farm acreage will be determined from the most recent Census of Agriculture;

(6) Demonstrates that the available resources of the applicant and spouse (if any) are not sufficient to enable the applicant to enter or continue farming on a viable scale; and

(7) In the case of an entity:

(i) All the members are related by blood or marriage; and

(ii) All the members are beginning farmers.

16. **When talking about purchasing a farm for a qualified beginning farmer, what's the definition of "farm?"**

    Farm means a tract or tracts of land, improvements, and other appurtenances that are used or will be used in the production of crops, livestock, or aquaculture products for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. The term "farm" also includes the term "ranch". It may also include land and improvements and facilities used in a noneligible enterprise or the residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

17. **Is the limited resource rate similar to what was called Interest Assistance?**

    Limited resource rate is an interest rate below the Agency's regular interest rate available to farmers who are unable to develop a feasible plan at regular rates. This is different than interest assistance, where the Agency made payments to the lender on behalf of the guaranteed loan borrower.

18. **There are cases where the owner/operator requirement complicates tax filings. Is this a congressional statute?**

    Owner-operator requirement is statutory. CFR further clarifies the borrower must be the owner-operator of the farm financed with Agency funds. **[7 CFR 764.152(c)] Must be the owner-operator of the farm financed with Agency funds after the loan is closed. Ownership of the farm operation and farm real estate may be held either directly in the individual's name or indirectly through interest in a legal entity.**

19. **When does FSA pay for the real estate appraisal and can the bank use the same appraisal?**

    FSA pays for the real estate appraisal when ordered by FSA. The timing of ordering the appraisal varies based on individual circumstances. The participating lender can be included as an intended user and utilize the appraisal if the appraisal meets the lenders standards.

20. **Can FSA use an appraisal ordered by a customer?**

    FSA is not able to use a customer ordered appraisal. FSA must verify that the appraisal was ordered by and prepared for a financial institution or land trust, FSA Handbook 1-FLP, subparagraph 141 H.

21. **Are Lender's 3rd party appraisals acceptable for use in a direct loan/ joint financing loan?**

    Yes, FSA can use a 3rd party appraisals per FSA Handbook 1-FLP, subparagraph 141 H.

    FSA may use an appraisal that has been completed by a third party for any direct loan making or servicing action, provided the appraisal meets the following:

    - appraisal was completed within the previous 18 months
    - administrative review is completed and the appraisal is found acceptable.

22. **Does the applicant need to attempt to get credit elsewhere before a 2-year operating loan extension is considered/granted?**

    The applicant and anyone who will sign the promissory note, may close an operating loan in no more than seven calendar years, either as an individual or as a member of an entity. (Microloans made to a beginning farmer or a veteran farmer and youth loans are not counted toward this limitation.) There are exceptions for beginning farmers, land subject to the jurisdiction of an Indian tribe, and if the applicant closed direct operating loans in 4 or more previous calendar years as of April 4, 1996. A two-year extension will be considered if individual applicants, entity applicants, as well as all individual members of the entity applied for commercial credit from at least two lenders and were unable to obtain a commercial loan, including an Agency-guaranteed loan.

23. **Can FSA participate with lenders on operating loans?**

    FSA can participate with lenders to provide operating credit for the loan applicant. FSA requires a first lien on all property or products acquired or produced with direct OL funds. If the participating lender also requires a first lien on the assets financed, FSA can provide credit for the annual operating needs while the lender finances the machinery and equipment. Another example would be FSA finances a crop operation while the lender finances a livestock operation.

24. **In a participation scenario, is approval for the participating lender's portion of the financing required prior to FSA working on the direct loan financing?**

    No, FSA can approve a direct loan subject to the applicant obtaining financing from a participating lender. The applicant will need to provide rates and terms of the participating lender's financing to develop the cash flow.

25. **What can be used to meet the FO eligibility for 3 years of farm experience?**

    The applicant (and in the case of an entity, one or more members constituting a majority interest) must have participated in the business operations of a farm for at least 3 years out of the 10 years prior to the date the application is submitted.

The following experiences can substitute for up to 2 of the 3 years:

(i) Not less than 16 credit hours of post-secondary education in an agriculture related field;

(ii) Successful completion of a farm management

curriculum offered by a cooperative extension service, community college, adult vocational agriculture program, non-profit organization, or land-grant college or university;

(iii) One (1)-year experience as a farm laborer with substantial management responsibility;

(iv) Successful completion of an internship, mentorship, or apprenticeship in day-to-day farm management;

(iv) Significant business management experience;

(v) Honorable discharge from the armed forces of the United States;

(vi) Successful repayment of an FSA financed youth loan;

(vii) Established relationship with a counselor in the Service Corps of Retired Executives (SCORE) program who has experience in farming or ranching, or with Agency-approved local individuals or organizations that are committed to providing mentorship in farming or ranching; or

The 3-year requirement can be waived if the applicant has one (1)-year experience as a farm laborer with substantial management responsibility AND has an established relationship with a counselor in the Service Corps of Retired Executives (SCORE) program who has experience in farming or ranching, or with Agency-approved local individuals or organizations that are committed to providing mentorship in farming or ranching.

26. What are the circumstances, that must be met, for a lender to provide a bridge loan to the applicant and later be refinanced by FSA?

FSA FO funds can be used to refinance a bridge loan if all of the following conditions are met:

(1) The applicant obtained the loan to be refinanced to purchase a farm after a direct FO was approved;

(2) Direct FO funds were not available to fund the loan at the time of approval;

(3) The loan to be refinanced is temporary financing; and

(4) The loan was made by a commercial or cooperative lender.

27. Should the applicant be maximizing the use of credit elsewhere if the cash flow supports they can afford the higher commercial loan? Example, if the Commercial Lender only needs a 30% down payment based on pre-approval, then the agency should only consider a loan for the 30%. A lot of the time the Applicant wants 50% from FSA because of the lower interest rate.

Applicants are to supplement direct FO's and OL's with credit from other credit sources to the extent economically feasible and according to sound financial management practices. In some examples, a minimal "1 to 1" cash flow may be achieved with 30% FSA financing; however, FSA and the lender would be encouraged to consider adequate FSA participation to allow for a reasonable amount of cash flow margin to support operational stability and growth.

28. Is it true that gross farm income must be high enough to cover the total debt payments for a new loan? We have been told that even if an applicant has additional non-farm income, enough to make all obligations, the client would only be eligible for a loan with a payment that can be serviced only by the farm income.

The key determination remains whether the applicant meets the "Family Farm" definition. Part of the "Family Farm" definition found in FSA Handbook 3-FLP includes: "a business operation that produces agricultural commodities for sale in sufficient quantities so that it is recognized as a farm rather than a rural residence." The administrative guidance, in FSA Handbook 3-FLP, states that the gross farm income generated by the operation must be proportionate to the purchase price. As a guide to determine if a proposal is proportionate, typical year gross farm income should normally be at least equal to the annual installments for any debts associated with the real estate purchase or improvement.

The "As a guide" and "should normally" language allows the FSA FLP loan official flexibility to deviate from the rule on a case by case basis if the Family Farm definition is met. This flexibility is necessary due to a variety of factors including but not limited to variances in local real estate values, improved versus vacant property, enterprise differences, interest rate changes, etc.

29. Is there any way for FSA to participate in a RE auction?

FSA direct farm ownership programs can be used to finance real estate purchased at auctions. To provide timely and equitable services to all stakeholders, FSA is required to process applications based on the date the application was determined to be complete.

FSA Handbook requires a real estate purchase agreement as part of a complete application. For a real estate auction, a complete application is not typically available until the conclusion of the real estate auction, when the real estate purchase agreement is executed. The applicant can prepare ahead of time to provide a complete application once a purchase agreement has been obtained. Good communication will help expedite the process. Meeting with the local farm loan team to discuss the operation, goals, expectations, and application requirements will help improve the timely processing of the loan application.

30. What can I do to improve the joint financing process, reduce delays, and help the applicant complete the proper forms?

A joint meeting between the FSA loan official, applicant, and any person who will be involved in the loan process can often be beneficial. The meeting allows for everyone to communicate the goals, responsibilities, and expectations of all parties involved. The applicant will have the opportunity to explain the specifics of their operation and needs. FSA can explain the application process, review the specific FSA forms and documents required based on the applicant's situation, and answer any questions the attendees have.

31. What is the maximum amount a down payment farm ownership loan request can be?

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 (or $300,150).

32. Can a farm operator purchase a 10-acre parcel that has a farm house, shop, grain bins, and 7 tillable acres with a joint financing loan with the bank? The operator farms approximately 4,000 acres and primary income is generated through the farm operation.

Yes, the purchase of a headquarters unit used for the operation of a farm is considered an acceptable use of direct Farm Ownership funds.

33. Can FSA allow for loan closing costs to be added into the down payment loan?

No, the use of down payment loan funds is limited to partially financing the purchase of a family farm. Expenses associated with the purchase (such as closing costs) or real estate improvements cannot be financed through a down payment loan.

34. Is it possible to utilize the down payment program in conjunction with a joint financing loan to maximize the FSA farm ownership loan limit? If it is possible what would the lien positions be for the respective loans?

Yes, the down payment loan program and a joint financing loan can be utilized together to finance the purchase of a family farm. The below scenario is based on a $1,400,000 purchase price and appraised value.

Loan Program	Loan Amount	Percentage of Purchase Price	Lien Position
Joe Farmer	$70,000	5.0%	Down Payment
ABC Bank	$730,000	52.1%	1st Lien
FSA Down Payment Loan	$300,150	21.4%	2nd Lien
FSA Participation Loan	$299,850	21.4%	3rd Lien
Total	$1,400,00	100.0%	