



Mr. Zach Ducheneaux
Office of the Administrator
Farm Service Agency, USDA
1400 Independence Ave., S.W.
Washington, DC, 20250-0506

October 7th, 2024

RE: Enhancing Program Access and Delivery for Farm Loans
Docket No. FSA-2023-0003

Dear Mr. Ducheneaux,

The National Family Farm Coalition (NFFC) is grateful for the opportunity to comment on the ‘Enhancing Program Access and Delivery for Farm Loans’ (Docket No. FSA-2023-0003) rule changes which took effect on September 25th, 2024. NFFC applauds the leadership of the Farm Service Agency for their work on these long overdue changes to the Agency’s lending practices. In general, we support the details of these rule changes, while offering the following comments to further clarify and strengthen the Farm Service Agency’s lending practices.

NFFC is an alliance of grassroots farmer- and advocate-led groups across 42 states, representing the rights and interests of independent family farmers, ranchers, and fishermen in Washington, D.C. Today NFFC’s 31 state, national, and regional farm and rural organizations are bound by a common belief that communities have the right to determine how their food is grown and harvested; that everyone in the food system should receive fair prices or wages; that all producers have equitable access to credit, land, seeds, water, markets, and other resources; and, that our food and agriculture policy must support sustainable farming, ranching, and fishing practices. Since NFFC’s founding in 1986, and our work on the passage of the Agricultural Credit Act of 1987, we have been advocating for more effective and equitable lending practices by public institutions like the Farm Service Agency (FSA).

Access to credit is an essential service needed on an annual basis by most commercial producers. And as the ‘lender of last resort,’ FSA plays an essential role in serving farmers with the least resources both in-terms of production scale and capital, but also resources for navigating the lending process. These farmers, the bedrock of our rural economies and our local and regional food systems, need and deserve these services to support their businesses and livelihoods. As farm debt nationally is at historic highs due to chronically low prices below farmers’ costs of production, fair access to credit with equitable lending terms is only becoming even more essential. We believe these most recent FSA rule changes mark important Agency action, backed by Congressional authority, in the right direction to ensure FSA lending practices are not extractive, but rather serve their purpose as a form of public safety net service for all

NFFC’s mission is to mobilize family farmers, ranchers, and fishermen to achieve fair prices, vibrant communities, and healthy foods free of corporate domination.



producers, and small and diversified operations in particular. That being said, we believe the agency can go further in strengthening these lending rules, as detailed below.

DBSA Program Implementation

NFFFC supports the development and implementation of the DBSA Program as a new and hopefully faster alternative deferral option to DSA and PLS for farmers. In particular, we support the reduced interest rate for deferred payment, and the provision that the borrower does not have to suffer a loss from a declared disaster for eligibility. We do though offer the following comments on eligibility in 7 CFR 766.452:

- Section (a)(4) states that *“The borrower does not have sufficient income available to pay all family living and farm operating expenses, other creditors, and debts to the Agency.”* We have some concern with the language of *“sufficient income available to pay all family living and farm operating expenses”* given that some farm families may be able to pay for the most basic living expenses, but their income levels are still impoverished. For example, if a farmer is able to pay for their the most basic living expenses, but those expenses are supported by access to SNAP benefits, informal community support programs (such as community food banks), or the family routinely has to make difficult financial trade-offs, such as choosing between paying for food, adequate healthcare, or farm machinery repairs, that family appears to maybe not eligible for this program, even though they are still in financial distress as a household. If the goal is for farm families to be able to live in dignity and without significant financial hardship to qualify for FSA services such as DBSA, we suggest adding additional detail that indicates that borrowers qualify if they cannot pay all family living expenses and/or meet minimum income levels (such as referencing the federal poverty level).
- Similarly, Section (a)(6) states that *“The borrower must not be in non-monetary default”* to be eligible. We have some concern that this language will exclude some farmers who are clearly in financial distress, such as contract livestock producers who may hold significant levels of debt from on-farm infrastructure upgrades, but are currently out of contract for reasons outside their control.

In addition to the points above, we note that implementation will determine the success of this Program, given that borrowers must submit requests in writing to FSA. There is an unfortunate long history of farmers, and farmers of color in particular, not having equal access to information about best loan options, due to discrimination or otherwise. Therefore, we urge the Agency to develop clear, transparent, and equitable implementation protocols to avoid this potential shortfall. Furthermore, we would like to see this Program be funded and available on a permanent basis for loans made after September 25th, 2024.

NFFFC’s mission is to mobilize family farmers, ranchers, and fishermen to achieve fair prices, vibrant communities, and healthy foods free of corporate domination.



FLP Regulatory Improvements - Substantial Changes

Farm Operating Plan Development and Farm Assessments

NFFFC supports rule amendments to 7 CFR 761.103 and 761.104(f) that provide opportunities for FSA's farm assessments and borrowers' farm operating plans to allow for savings to support long-term operational financial stability and growth, including savings to ensure personal financial stability. This approach to FSA farm assessments and FSA analysis of borrowers' farm operating plans, if implemented effectively and equitably, can contribute to a more holistic view of the economic stability of the farm business as part of a farming household with multiple short, medium, and long-term financial goals and needs. This more holistic approach in-turn has the potential to more effectively support the financial stability of the farm, and in-turn reduce the likelihood of default on loans. That being said, we feel that this important objective is somewhat vaguely explained by the language provided, with little indication of how farm operating capital and household savings are identified and differentiated by FSA, in the best interest of the farmer borrower. We encourage the Agency to more clearly articulate these provisions to ensure that farmers are treated equitably in these farm assessment process.

Direct Loan Repayment Terms

NFFFC supports the updates to 7 CFR 764.154(b)(1), 764.254(b)(2), 764.354(b)(4) and (5) that both standardize repayment terms, and require all FOs, OLs, and EMs to be scheduled over a maximum term authorized by law, unless the applicant otherwise requests a shorter term in writing. Unfortunately, it is well documented that historically, not all farmers – particularly farmers of color, and black farmers particularly – have received equal treatment by some loan officers in-terms of access to information or favorable loan terms (such as repayment terms). This standardization approach should reduce (although not necessarily eliminate) individual loan officer discretion that has (in some, but too many) cases led to discrimination. NFFFC also supports repayment terms defaulting to the maximum term length unless otherwise requested by the farmer borrower, which should, if the rule change is effectively and equitably implemented, eliminate borrowers having to negotiate on their own behalf with FSA loan officers who may not be working on behalf of their best interests. That being said, farmer access to information again will be critical, as these maximum loan repayment terms will have important implications on the farmer to use those collateralized assets for seeking credit elsewhere in the future.

NFFFC also supports amendments to the standard repayment term for the ML-FO Program which aim to better serve the unique financial operating needs of new, niche, and small family farm operations, including more relaxed application requirements and a maximum repayment term of 40 years.

In addition, NFFFC supports the flexible repayment terms in 7 CFR 764.154(b)(2) and (3), 764.254(b)(3) and (4), and 764.354(b)(6) and (7). Interest-only payments and the other repayment flexibilities indicated, particularly for those operations that are starting and getting their operations and markets established, should support particularly new and beginning producers and ultimately help to diversify our rural farming economies. With that said, we urge FSA to provide essential technical service materials

NFFFC's mission is to mobilize family farmers, ranchers, and fishermen to achieve fair prices, vibrant communities, and healthy foods free of corporate domination.



for farmers, and transparency and accountability mechanisms within FSA, to ensure effective and equitable implementation of these rule changes.

While NFFFC supports the above rule changes to Direct Loan repayment terms, we believe that these important flexibilities and pro-farmer changes can go further. As stated in the Federal Register, current FSA policy restricts farmers to only seven years of loan eligibility for Operating Loans, regardless of their financial status. After this period, farmers are forced to engage the private credit sector where they have fewer borrower protections and are more likely to encounter predatory lending practices. This limited timeframe for accessing FSA loans is arbitrary and undermines FSA's mandate as a 'lender of last resort.' Thus we urge FSA to examine opportunities under existing Congressional authority, and support Congress with technical assistance in advancing new Congressional authority, to eliminate FSA loan eligibility term limits for farmers who cannot access favorable credit options for Operating Loans in the private sector.

Loan Security

NFFFC generally supports rule amendments to FSA's direct loan security and collateral servicing requirements the aim to reduce the trend of over-collateralization of FSA loans, placing significant financial risk on the farmer. When all or most of a farmers' assets are securitized, it gives them very few financial options and makes it more difficult for them to access credit with other lenders, which directly contradicts FSA's stated goals of supporting farmers' financial stability through progressive lending. Thus NFFFC supports the following amendments on loan security:

- NFFFC supports provisions in CFR 764.103(b) indicating that Emergency Loans do not have to be secured by more than 100 percent of the loan amount. While we support this provision of the rule, we also note that generally, FSA's Emergency lending programs must be significantly scaled up and adapted to support farmers to be resilient in the face of increasingly severe and frequent natural disasters. The necessary resources, in FSA and across USDA's programming, are not meeting the scale of disasters impacting family farmers across the country, with particularly severe implications for small-scale, under-resourced, and historically marginalized farmers in particular.
- NFFFC also supports provisions in CFR 764.103(c) stating that "*down payment loans, MLs, youth loans, and FOs for the purchase of a farm where the applicant provides a cash down payment equal to 5 percent or greater of the purchase price*" and will not need an additional security margin beyond 100 percent of the loan.
- NFFFC applauds the Agency for the provisions of 7 CFR 764.106(d) which will not take a security interest "*when the property includes the primary personal residence and appurtenances of the applicant or any entity member(s).*" This provision will ultimately help keep farmers in their homes, and reduce stress on farmers in financially challenging contexts.
- NFFFC supports the removal of 7 CFR 766.56 so that additional security will not be required to be pledged if a customer requires DSA Program assistance.
- NFFFC supports the removal of a requirement in 7 CFR 762.145(b)(7) that required guaranteed lenders to take a lien on all assets when restructuring a loan with a balloon installment.

NFFFC's mission is to mobilize family farmers, ranchers, and fishermen to achieve fair prices, vibrant communities, and healthy foods free of corporate domination.



With the support noted for the above points, NFFFC does see several opportunities for Agency to strengthen this section of the rule:

- As stated in CFR 764.103(c), “125 percent loan security margin when available” will be secured for direct loans. While this 125 percent benchmark is an improvement from the 150 percent most farmers are forced to accept by FSA loan officer discretion, we remind FSA that statutory authority does not mandate FSA to take more than 100 percent loan security margin. We urge FSA to reduce the loan security margin to 100 percent for direct loans.
- CFR 764.103(e) states: “The Agency will take a lien on all assets that are not essential to the farming operation and are not being converted to cash to reduce the loan amount when each such asset, or aggregate value of like assets (such as stocks), has a value in excess of \$15,000. The value of this security is not included in the Agency's additional security requirement stated in [paragraph \(c\)](#) of this section.” This continued Agency approach of taking a lien on *all assets that are not essential to the farming operation* appears to be antithetical to the stated objectives in the rule summary of supporting farmer financial stability. We urge the Agency to clarify this language to ensure that the Agency will take a lien on only assets needed to attain the security margin, not on all assets.
- Finally, NFFFC believes that amendments on 7 CFR 765.305(c) and 7 CFR 765.351(f) on release of security interests make some important progress but do not go far enough. Both of these sections related to FSA’s direct loan security and collateral servicing requirements state that liens and security margins will be release when certain criteria are met and “upon written request from the borrower.” As stated previously, it is well documented that historically all farmers – particularly farmers of color, and black farmers particularly – have not received equal treatment by some loan officers in-terms of access to information on when they may be able to request liens to be removed from their assets. Therefore, we urge the Agency to address this issue by reducing or removing the burden of action (i.e. written request) on the farmer for this lien removal process (which is always in the interest of the farmer) to be initiated. We believe there are multiple possible ways to achieve this – 1) the Agency could automatically remove liens on priority assets (as identified by the farmer during loan origination) – particularly residences - when they become eligible for removal, unless the farmer states otherwise (i.e. an opt-in, rather than an opt-out approach); 2) it could be mandatory for the Agency to contact the farmer immediately when assets become available for removal of a lien, and the farmer can have the option to meet with the Agency to approve that process outside of their regular loan review processes if needed; or 3) a review of all liens, and eligibility for removal, be a mandatory part of the annual loan review process.



FLP Regulatory Improvements - Non-Substantial Changes

Definition of Family Farm, Commercially Foraged, Indian Land, and Indian Tribe

NFFFC supports amending the definition of “family farm” to including to include commercial foraging operations for the purposes of operating loan assistance where commodities are foraged on Indian land, and adding definitions for “commercially foraged”, “Indian land” and “Indian Tribe.”

Borrower Production Training

NFFFC supports the removal of all reference to borrower production training in 7 CFR 764.

FSA Lien Position on Real Estate Repaired or Improved With Direct OL Funds

NFFFC supports changes to 7 CFR 764.255 to allow a lien in junior lien position to serve as adequate security for OLs where the purpose is to make minor repairs or improvements. We do though encourage FSA to amend language in 7 CFR 764.255(c)(2) to place a ceiling threshold security value of 100 percent of the loan amount.

Increase Loan Limit of the Youth Loan Program

NFFFC supports the increased loan limit for the Youth Loan Program from \$5,000 to \$10,000 to ensure that the loan amount is current with national inflation rates since 1988 when this loan amount was established.

Direct FO Eligibility—Farm Experience

NFFFC supports changes to 7 CFR 764.152(d) on farm experience eligibility requirements to expand credit opportunities for applicants.

Emergency Loan Loss Calculations

NFFFC supports the removal of the 30% production loss threshold for the EM program 7 CFR 764.352(h) and instead allowing EM eligibility for a disaster yield that is below the normal production yield of the crop.

Lease of Security

NFFFC generally supports the amendments to 7 CFR 765.252(c) related to farmer rights to lease non-estate security. We do though encourage the Agency to adapt the amended language to reflect the best interests of FSA and the farmer, as FSA’s interest as a service provider should be in most cases aligned with the farmer’s best (financial) interest. Furthermore, we question the language of 7 CFR 765.252(c)(5) that “[l]eased security must be accessible and readily identifiable at all times” – this language seems so broad that it could be used unreasonably against farmers. We suggest amending the language along the lines of ‘readily accessible and identifiable with reasonable notice by FSA.’

Use of Proceeds From Sale of Security

NFFFC supports the amendments to 7 CFR 765.352(a)(4)

NFFFC’s mission is to mobilize family farmers, ranchers, and fishermen to achieve fair prices, vibrant communities, and healthy foods free of corporate domination.



Borrower Loan Servicing Deadline Extension

NFFFC supports the amendments to 7 CFR 766.101(e) to permit State Executive Directors to extend the 60-day PLS application deadline in extraordinary circumstances.

Borrower Eligibility Requirements for PLS

NFFFC supports the amendments to 7 CFR 766.104(a)(1)(vi) to add catastrophic medical expenses for a family member in the household of a borrower or entity member, in the case of an entity borrower, as circumstances beyond the control of the borrower leading to delinquency or financial distress for the purposes of PLS eligibility.

Notification for PLS

NFFFC supports provisions for better communication and transparency for farmers of missed deadlines and program eligibility across all of FSA's services, including PLS.

FLP Regulatory Clarifications

Definition of Family Farm and Non-Eligible Enterprise

NFFFC supports the revised definition of family farm in 7 CFR 761.2(b) that targets FLP resources for farms producing for human consumption, fiber, or draft use. We do though encourage FSA to recognize that market diversification is an important part of strong rural agricultural economies, so the Agency should take steps to clarify language on "established or stable market" to ensure that farmers who are developing new and emerging markets, particularly farmers selling to culturally diverse and immigrant communities, are not undercut by this language.

Definition of Good Faith

NFFFC does not support the revised language of "Good Faith" which authorizes the USDA Office of General Counsel to be considered an "independent basis" when making determinations whether fraud, waste, or conversion actions violate good faith. We urge the Agency to provide additional clarification on this definition change.

Definition of Participated in the Business Operations of a Farm

NFFFC supports the amended definition of "Participated in the business operations of a farm" in 7 CFR 761.2(b) to clarify that owning a farm does not necessarily mean an individual has participated in the business operations of a farm.

NFFFC's mission is to mobilize family farmers, ranchers, and fishermen to achieve fair prices, vibrant communities, and healthy foods free of corporate domination.



Definitions of Related by Blood or Marriage and Relative

NFFC supports the expanded definitions in 7 CFR 761.2(b) to allow FSA to support improved access to its loans. That being said, we believe the Agency can go further. There is significant evidence that the blood or marriage definition restricts new and beginning farmers' access to loans. Furthermore, the Agency should recognize that the institution of marriage in the U.S. historically has not been accessible by all communities. So while these changes to 7 CFR 761.2(b) are a step in the right direction, we urge FSA to take a more inclusive approach to recognizing stable familial relationships, such as shared residences, finances, parenting responsibilities, and/or domestic partnerships.

Definition of Youth Loan

NFFC supports the amendment to 7 CFR 761.2(b) on the definition of youth loan, and removal of the terminology of "rural youth."

Credit Elsewhere Determinations

NFFC supports the amendments to 7 CFR 764.51(b)(6) and 764.101(e)(1) on credit elsewhere determinations.

Guaranteed Loan Eligibility—Credit History

NFFC supports the amendments to 7 CFR 762.120 on Guaranteed Loan Eligibility, and we believe this provision should be extended to all of FSA loans

Direct Loan Eligibility—Managerial Ability

NFFC supports the amended language in 7 CFR 764.101(i)(3) and 7 CFR 764.152(d) on managerial ability and lookback periods.

Microloan (ML)-OL and Indian Tribal Land Acquisition Program (ITLAP) Interest Rate Clarification

NFFC supports the amendments to the Microloan (ML)-OL and Indian Tribal Land Acquisition Program (ITLAP) interest rate clarification

Conclusion

Thank you for the opportunity to comment and for your consideration of our views. Should you have any questions about this comment, please feel free to contact Jordan Treakle (Jordan@nffc.net).
Sincerely,

A handwritten signature in black ink, appearing to read 'Jordan Treakle'.

Jordan Treakle
National Programs and Policy Coordinator
National Family Farm Coalition

NFFC's mission is to mobilize family farmers, ranchers, and fishermen to achieve fair prices, vibrant communities, and healthy foods free of corporate domination.