

FSA Lending and Farm Legal Structure

FSA direct and guaranteed lending are an important source of farm ownership lending for beginning farmers. FSA rules with respect to eligible entities will affect your client's capacity to obtain FSA loans. Most farms adopt a dual legal structure. The farming operation will operate as a limited liability entity while the land will either remain in fee simple or be transferred to a separate entity. This dual structure encapsulates the financial risk of the enterprise in the farming operation and protects the land base from claims by unsecured creditors and other claimants by virtue of the limited liability shield.

Prior to the 2014 Farm Bill, FSA took the position that a farm operating entity that did not own the farmland was not "an owner operator of a farm" and therefore ineligible for direct farm ownership loans. The Farm Bill made several key amendments which were implemented by FSA rule on October 8, 2014.

The current rule provides that the operating entity need not own farmland provided that the individuals who own the farm own at least 50 percent of the family farm (operating entity).

Direct Lending Entity Eligibility Requirement:

(c) Must be the owner-operator of the farm financed with Agency funds after the loan is closed. Ownership of the family farm operation and 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:

- (1) The entity is controlled by farmers engaged primarily and directly in farming in the United States, after the loan is made;*
- (2) 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.*
- (3) If the entity members holding majority interest are:
 - (i) Related by blood or marriage, at least one member of the entity must operate the family farm and at least one member of the entity or the entity must own the farm; or,*
 - (ii) Not related by blood or marriage, the entity members holding a majority interest must operate the family farm and the entity members holding a majority interest or the entity must own the farm.**
- (4) 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). 7 C.F.R. §764.152(c).*

Loans to Beginning Farmers and Socially Disadvantaged Farmers and Ranchers

FSA sets aside a percentage of its available loan funds each year for beginning and socially disadvantaged farmers and ranchers. In the case of a beginning farmer, who is a member of an operating limited liability entity, FSA requires that all members of the operating entity be beginning farmers:

Beginning farmer is an individual or entity who:

- (1) Meets the loan eligibility requirements for a direct or guaranteed CL, FO, or OL, 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 farm 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.*

7 C.F.R. §761.2

In the case of a socially disadvantaged farmer and rancher, the disadvantaged individual must have at least a 50% ownership interest in the farm business entity:

Socially disadvantaged applicant or farmer is an individual or entity who is a member of a socially disadvantaged group. For an entity, the majority interest must be held by socially disadvantaged individuals. For married couples, the socially disadvantaged individual must have at least 50 percent ownership in the farm business and make most of the management decisions, contribute a significant amount of labor, and generally be recognized as the operator of the farm.

Socially disadvantaged group is a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of: American Indians or Alaskan Natives, Asians,

Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women. 7 C.F.R. §761.2