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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761 and 764

RIN 0560-AI33

Direct Farm Ownership Microloan

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is adding Direct Farm Ownership Microloan (DFOML) to the existing Direct Loan Program. The revisions to the Direct Loan Program regulations consist of application, eligibility, repayment terms, and security requirements to better serve the unique operating needs of small family farm operations. The existing Microloans (ML) in the Direct Loan Program already include MLs for operating loans (OL). DFOML is expected to make farm ownership loans (FOs) available and more attractive to small operators through reduced application requirements, more timely application processing, and added flexibility for Youth Loan (YL) borrowers in meeting the farm experience eligibility requirement.

DATES: Effective date: **[Insert the date of publication in the FEDERAL REGISTER]**.

Comment Date: We will consider comments we receive by **[Insert date 90 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: We invite you to submit comments on this final rule. In your comment, please specify RIN 0560-AI33 and include the volume, date, and page number of this issue of the Federal Register. You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Director, Loan Making Division, Farm Loan Programs (FLP), FSA, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 0522, Washington, DC 20250-0522.

Comments will be available for inspection online at <http://www.regulations.gov> and in the Office of the Director, Loan Making Division, FSA, USDA, 1400 Independence Avenue SW, Stop 0522, Washington, DC 20250-0522, between 8 a.m. and 4:30 p.m., except holidays.

FOR FURTHER INFORMATION CONTACT: Russ Clanton; telephone: (202) 690-0214. Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION

Background

FSA provides agricultural credit to the Nation's farmers and ranchers through the FO Program. The Consolidated Farm and Rural Development Act of 1972 (CONACT, Public L. 92-419), as amended, authorizes FSA's FO Program. The FO Program is

designed to finance the farm ownership needs of family farms for operators who meet the program eligibility requirements. Among other things, eligible applicants must be unable to obtain sufficient credit from other sources; have sufficient farming experience; have an acceptable credit history; and have adequate collateral for the proposed loan. (See 7 CFR 764.101 and 764.152 for a full explanation of FO eligibility requirements.) FO funds may be used, among other purposes, to purchase a farm, enlarge an existing farm, construct new farm buildings or improve structures, pay closing costs, and promote soil and water conservation and protection. (See 7 CFR 764.151 for a complete list of FO funds uses.) Throughout this rule, any reference to “farm” or “farmer” also includes “ranch” or “rancher,” respectively; in this document, the word “operator” refers to farmers who operate a farm.

FSA has conducted a Direct ML Program for OLs since January 2013 and has made 16,842 MLs to farmers since inception and provided MLs totaling \$66.1 million dollars in FY 2013, \$98.3 million in FY 2014, and \$209.4 million in FY 2015 and the first quarter of FY 2016 (loan amounts are as of January 13, 2016). The Direct ML Program has seen explosive growth and helped to fill a need for financing of small farm operations, many of them to beginning or underserved farmers. Following the success of the Direct ML Program for direct OLs, FSA has decided to expand the ML Program to add direct FOs to reach more beginning farmers and farmers with small farms.

FSA evaluated the unique needs of small farm operations and identified unintended barriers to applying for FOs of smaller loan amounts. FSA is simplifying the application process and adding flexibility for meeting loan eligibility in order to encourage their participation. FSA is creating the new DFOML application process

within the existing FO Program framework, and will use existing FO appropriations to focus on the financing needs of small farm operations.

FSA is implementing the DFOML to provide credit in an aggregate amount not to exceed \$50,000. The \$50,000 limit for MLs is established as specified in section 5106 of the Agricultural Act of 2014 (Pub. L. 113-79, referred to as the 2014 Farm Bill), amending the CONACT (7 U.S.C. 1943), to set the limit of \$50,000 for the total ML indebtedness outstanding at any one time to any single borrower. Therefore, eligible farmers cannot have more than \$50,000 in direct ML debt in each of the direct FO and OL programs upon loan closing. It is intended that smaller loan amounts will help small operations, such as beginning farmers, truck farmers, niche-type operations, and those who have demonstrated financial and business experience through the successful repayment of a Youth Loan (YL). These farmers tend to have difficulty obtaining real estate financing from lenders who are unlikely to loan such small amounts, particularly to non-typical operations. FSA is providing credit to these farmers at reasonable rates and terms that are significant because financing costs have a greater impact on smaller startup operations, which typically have a tighter cash flow.

Similar to the OL ML, under 7 CFR 761.104(e) DFOML applicants can provide other forms of documentation, such as operator's sales receipts, financial statements, contracts, and tax returns. This change will be helpful for operations where past yields have little bearing on the projected plan, such as vegetable operators who plan short term and grow different crops to meet current demand; operators who produce crops using measures such as rows or partial rows versus acres; or operators who grow crops that sell in volumes such as bunches. In some of these cases it will be impracticable, burdensome,

and often irrelevant for the farmer to demonstrate accurate yields, especially if a variety of produce is harvested and then sold to the public only hours later. In such cases, past reliable history of income and expenses or cash receipts may be more useful in projecting the future production revenue of a field, greenhouse, or operation. Also, if an operator is changing the crop from year to year to meet changing market demands, then production for the past 2 or 3 years may not be applicable to the production model. This modification allows FSA to assist operations that otherwise may have difficulty meeting or documenting production and yield history and will provide sufficient information for a loan official to determine eligibility and feasibility.

Additionally, repayment terms are being modified for these smaller FOs to allow borrowers to more quickly build equity in their farm real estate according to their repayment ability. That, combined with the already established flexibility for the farmers to make loan payments when they sell their products, allows farmers to more efficiently manage their income and resources.

This rule modifies the FO eligibility requirements in 7 CFR 764.152 to allow farmers who have successfully repaid an FSA financed YL to use the term of that loan toward the 3 years farm management experience for a DFOML. Each year of the YL term can be applied toward meeting the requirement for 3 years of farm management experience.

The repayment terms of DFOML will differ from the regular FO Program; the maximum number of years for a borrower to pay back a DFOML is 25 years. For smaller real estate loans, there is not a large difference in the payment amount between the annual installments under DFOML's maximum 25-year amortization schedule and the regular

FO's maximum 40 year amortization. However; the interest paid on a 40 year amortization is considerably larger than on the 25-year schedule. The borrowers will benefit from paying less total interest on the life of their loan. The average number of years for an FO to be outstanding is 13 years, with loans being either paid in full or refinanced with another lender within this timeframe. Some borrowers do remain with FSA for the duration of their FO term. The 25-year maximum is reasonable for assisting our borrowers to purchase land and to build equity in the property. The benefits will help small operations endure through the start-up years, demonstrate capacity, build equity, move up to FSA regular loan programs, and eventually graduate to commercial credit.

Our role in providing supervised credit is to help borrowers prepare for the transition to conventional credit. While a DFOML will reduce the paperwork burden on applicants and FSA staff, it will not reduce the amount of oversight provided by FSA to these farmers. In fact, as a result of streamlining the application process, FSA will have more time to work on cash flow analysis, provide borrower training and ready these borrowers for transition into commercial credit.

ML Application Requirements and Application Processing

This rule is revising 7 CFR 764.51 to add the requirements for the DFOML application. A complete DFOML application will consist of the following:

- A microloan application form (§ 764.51(b)(1));
- A balance sheet (§ 764.51(b)(9) and (d)(2)(ii));
- An operating plan (§ 764.51(b)(9));

- Applicable environmental information (§ 764.51(b)(7));
- Description of the applicant's farm training and experience (§ 764.51(b)(3));
- Verification of applicant's farm experience (§ 764.51(d)(2)(v));
- Documentation that credit cannot be obtained elsewhere (§ 764.51(b)(6));
- Documents with regard to the property or option to purchase agreement (§ 764.51(b)(10));
- The credit report fee (§ 764.51(b)(11)); and
- Verification of non-farm income for repayment (§ 764.51(d)(2)(iii)).
- In addition, if the applicant is an entity, the complete application will include entity and entity member information specified in § 764.51(b)(2).

The DFOML application form is the same one in use for applicants for Direct ML Program for OLs. This form is intended to capture most of the information needed to process an ML, including sections for the applicant to describe farm training and experience. It also reduces and simplifies the financial statement.

Environmental information will still be handled through the county office process, involving FSA staff and NRCS staff, as applicable. This will not change from the current process followed for regular FOs.

Verification of non-farm income will only be required if that income is necessary for a feasible plan and sufficient cash flow for debt repayment. This is a change from the existing FO application process, as income is always verified as specified in § 764.51(b)(8). If it is necessary to verify debt, debts will be verified through the credit bureau reporting system.

This information will be sufficient for a loan official to determine eligibility and feasibility. The DFOML includes an abbreviated loan assessment, Farm Business Plan credit presentation, and year-end analysis, which will better parallel components of a small operation. Additionally, since these real estate loans will be \$50,000 or less, the appraisal requirement may be met by an authorized agency official's evaluation that establishes the value of the real estate. An acceptable evaluation for DFOML will include an identification of the location of the property; a description of the property, including any improvements and its current and projected use; confirmation that the property was physically inspected and the date of the inspection; description of the analysis performed and supporting information used to determine the property's market value; an effective date of the evaluation and signature of the preparer.

The reduced requirements will allow loan staff to focus on paperwork that is valuable in the analysis of these smaller operations, instead of reviewing the required forms and paperwork necessary with larger, more complex real estate loans. The lower loan limit helps mitigate much of the risk inherent with less documentation and non-typical agricultural operations.

For incomplete applications, FSA will follow existing direct loan processing procedures. Following current procedures, FSA will inform the applicant, through written correspondence, of any missing items needed to complete the application prior to established regulatory deadlines.

Eligibility

Since DFOMLs are FOs, applicants will be subject to existing FO eligibility requirements. However, FSA added flexibility for YL borrowers in meeting the managerial ability requirement. Current regulations in 7 CFR 764.152(d) require that an FO applicant show the ability to manage a farm operation; the applicant 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. One of these three years can be substituted with the following experience:

- Postsecondary education in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields,
- Significant business management experience, or
- Leadership or management experience while serving in any branch of the military.

As noted above, the current revisions add flexibility for farmers who have successfully repaid an FSA financed YL to use the term of that loan toward the 3 years farm management experience for a DFOML.

Except as noted in the rule, FO eligibility and feasibility criteria will remain consistent with existing programs in FLP, but the small loan amount will make the extensive paperwork requirements unnecessary. The farm operation will be required to project a positive cash flow, and servicing options will remain consistent with existing FLP options. The DFOML process will simply broaden the reach of FSA's FO Program

by providing flexibility that allows FSA loan programs to be more attractive to small and beginning farmers.

This rule modifies the ML definition, in 7 CFR 761.2, to include FO uses of funds; the prior ML definition only addressed direct OLs. Additionally, this rule creates a distinction between MLs used for OL and FO purposes in areas in which the application process, eligibility, and security requirements differ.

FSA has considered several options in creating the DFOML and has weighed the underwriting risks against the opportunity to improve the FO Program. The underwriting risks will be limited due to the lower loan amounts and the smaller pool of applicants who are able to benefit from DFOML. The benefits to beginning and small farmers to apply for DFOML clearly outweigh any perceived risks or barriers.

Security Requirements

As specified in §764.101(c) and (e), MLs are exempted from the requirements of obtaining 150 percent security and taking a lien on non-essential assets. As specified in § 764.155(b)(1), an ML made for FO purposes, may be secured only by the real estate being purchased or improved, as long as it meets the 100 percent security requirement. This is consistent with the security requirements in place for existing OL MLs.

Applicability of Other Regulatory Requirements

Other existing and applicable regulatory requirements pertaining to development of operating plans, loan processing and closing, use of loan funds, loan servicing, and

environmental requirements not specifically amended by this rule will apply to MLs, like other FOs.

Miscellaneous Changes

In addition to the changes discussed above, this rule is making conforming minor changes to correct the ML limit to be consistently \$50,000 and to otherwise add MLs to FOs in the regulations.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the Federal Register and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. This rule involved matters relating to loans and is therefore being published as a final rule. Although FSA is not required to provide the opportunity for comments on this rule, we are requesting public comments for 90 days to get input on the changes.

Effective Date

The Administrative Procedure Act (5 U.S.C. 553) provides generally that before rules are issued by Government agencies, the rule is required to be published in the Federal Register, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds

good cause for not delaying the effective date. Most FO loans are established at the beginning of the calendar year, therefore, implementing this rule quickly will benefit beginning and small farms starting in 2016 instead of having to wait for 2017. Using the administrative procedure provisions in 5 U.S.C. 553, FSA finds that there is good cause for making this rule effective less than 30 days after publication in the Federal Register. Therefore, this final rule is effective when published in the Federal Register.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB has not reviewed this final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is

required by APA or any other law to publish a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act because it is exempt from notice and comment rulemaking requirements of the APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR 799 and 7 CFR part 1940, subpart G). FSA concluded that simplifying the application process and adding flexibility for meeting loan eligibility requirements to encourage small farm operation participation in its FO program explained in this rule are administrative in nature and will not have a significant impact on the quality of the human environment either individually or cumulatively. The environmental responsibilities for each prospective applicant will not change from the current process followed for all FLP actions (7 CFR 1940.309). Therefore, FSA will not prepare an environmental assessment or environmental impact statement on this rule.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials. The objectives of the Executive

Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” The provisions of this rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule will not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally

requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, or Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), FSA described the Direct Farm Ownership Microloan (DFOML) information collection activities in the request for the renewal and revision of the 0260-0237, Direct Loan Making, notice published on 10/07/2015, 80 FR 60614-60615. FSA will be using the existing approval for the forms to begin the DFOML collection under the 0560-0237, Direct Loan Making. Therefore, no change to the information collection was required in this rule.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this final rule would apply is:

10.407 Farm Ownership Loans.

List of Subjects

7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

7 CFR Part 764

Agriculture, Disaster assistance, Loan programs-agriculture, Agricultural commodities, Livestock.

For reasons discussed above, FSA amends 7 CFR chapter VII as follows:

**PART 761 – FARM LOAN PROGRAMS; GENERAL PROGRAM
ADMINISTRATION**

1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

2. Revise the definition of “Microloan” in § 761.2(b) to read as follows:

§ 761.2 Abbreviations and definitions.

* * * * *

(b) * * *

Microloan means a type of OL or FO of \$50,000 or less made using a reduced loan application. Direct MLs are made under modified eligibility and security requirements.

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PART 764 – DIRECT LOAN MAKING

3. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 764.1 [Amended]

4. In § 764.1(b)(1), add the phrase “ML and” immediately after “including”.

5. Amend § 764.51 as follows:

a. In paragraph (c) introductory text, add the words “for OL purposes”

immediately after “request”;

b. Redesignate paragraphs (d), (e), and (f) as paragraphs (e), (f), and (g); and

c. Add a new paragraph (d).

The addition reads as follows:

§ 764.51 Introduction.

* * * * *

(d) For an ML request for FO purposes, all of the following criteria must be met:

(1) The loan requested is:

(i) To pay for any authorized purpose under the FO Program, which are specified in § 764.151; and

(ii) \$50,000 or less and the applicant's total outstanding Agency FO debt at the time of loan closing will be \$50,000 or less,

(2) The applicant must submit the following:

(i) Items specified in paragraphs (b)(1), (2), (3), (6), (7), (9), (10), and (11) of this section;

(ii) Financial and production records for the most recent production cycle, if available and practicable to project the cash flow of the operating cycle; and

(iv) Verification of all non-farm income relied upon for repayment; and

(v) Verification of applicant's farm experience;

(3) The Agency may require an ML applicant to submit any other information listed in paragraph (b) of this section upon request when necessary to make a determination on the loan application.

* * * * *

6. Amend § 764.101 as follows:

a. In paragraph (i)(3), remove "MLs" and add the phrase "MLs, made for OL purposes," in its place; and

b. Revise paragraph (i)(4).

The revision reads as follows:

§ 764.101 General eligibility requirements.

* * * * *

(i) * * *

(4) Alternatives for MLs made for OL purposes. Applicants for MLs made for OL purposes, also may demonstrate managerial ability by one of the following:

* * * * *

7. Revise §764.107(a) to read as follows:

§ 764.107 General appraisal requirements.

(a) Establishing value for real estate. The value of real estate will be established by an appraisal completed in accordance with §761.7 of this chapter, except that for MLs

made for FO purposes, the appraisal requirement may be satisfied by an evaluation by an authorized agency official that establishes the value of the real estate.

* * * * *

8. Amend § 764.152 as follows:

- a. Redesignate paragraph (e) as paragraph (f); and
- b. Add a new paragraph (e).

The addition reads as follows:

§ 764.152 Eligibility requirements.

* * * * *

(e) For an ML made for FO purposes, if an ML applicant has successfully repaid an FSA financed youth loan, the term of that loan may be used toward the 3 years of management experience required for a FO direct loan.

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9. Amend § 764.154 as follows:

- a. In paragraph (b), remove the words “The Agency” and add the phrase “Except for MLs made for FO purposes, the Agency” in their place.

b. Add paragraph (b)(1) and add and reserve paragraph (b)(2).

The addition reads as follows:

§ 764.154 Rates and terms.

* * * * *

(b) * * *

(1) For MLs made for FO purposes the Agency schedules repayment of an FO based on the applicant's ability to repay and the useful life of the security. In no event will the term be more than 25 years from the date of the note.

(2) [Reserved]

* * * * *

10. In § 764.155, add paragraph (b)(1) to read as follows; and add and reserve paragraph (b)(2).

§764.155 Security requirements.

* * * * *

(b) * * *

(1) An ML made for FO purposes, may be secured only by the real estate being purchased or improved, as long as its value is at least 100 percent of the loan amount.

(2) [Reserved]

* * * * *

11. Amend § 764.203 as follows:

a. Redesignate paragraph (c) as paragraph (d); and

b. Add a new paragraph (c).

The addition reads as follows:

§764.203 Limitation.

* * * * *

(c) Downpayment loans made as an ML for FO purposes may not exceed \$50,000.

* * * * *

§ 764.251 [Amended]

12. In § 764.251(a) introductory text, add the phrase “used for OL purposes” immediately after “ML”.

§ 764.255 [Amended]

13. In § 764.255(c) introductory text, add “used for OL purposes” immediately after “MLs”.

Val Dolcini,
Administrator,
Farm Service Agency.

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