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Cooperative Land Purchasing and Financing Guide: FSA Farm Ownership Loans

Written by Farm Commons

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Introduction

This guide addresses how to apply for the Farm Service Agency's (FSA) Farm Ownership Loan (FO) as a group of unrelated and unmarried individuals. Farm Ownership (FO) loans are one type of loan available from FSA for purchasing a farm.

An FSA FO loan can also be used to:

1. Enlarge an existing family farm,
2. Make capital improvements to an existing family farm,
3. Obtain funding for a down payment on a family farm purchase, or
4. To buy out other owners (only in rare and specific circumstances).

The FSA specializes in helping farmers who cannot get financing elsewhere. These loans are favorable because they have lower interest rates than are available on the commercial market. There can be downsides. Primarily, obtaining an FSA loan is a time-consuming process that can make competing with buyers with access to traditional financing difficult. Typically, the traditional financing process is much quicker than obtaining an FSA loan. FSA FO loans are also capped at \$600,000.00. However, the focus of this guide isn't to explore when and how an FSA FO loan is worthwhile. This guide explores the eligibility of one specific applicant type for this loan– the group of unrelated (and unmarried) individuals.

Can a Group of Unrelated Persons Receive an FSA FO Loan?

Groups of unrelated, unmarried persons can apply for and receive an FSA FO loan. But, the path forward isn't quite as straightforward as it is for the more typical individual or family-based applicant. This guide will illuminate the way for groups of unrelated and unmarried persons wanting to apply for an FO loan.

But before we begin, let's adjust our terminology. FSA calls applicants who are groups of persons that are unrelated and unmarried "**entity applicants.**" The term entity applicant is used because the individuals involved typically form an LLC, corporation, or other qualifying business entity. The entity is the applicant for the FO loan. In turn, the entity's owners make binding commitments to FSA in their capacity as owners, just as an individual or married couple might do. However, the distinction is essential to understand how the criteria apply to an entity applicant. We will explain further, but for now, readers should recognize that we are calling groups of persons that are unrelated and unmarried "entity applicants."

How Can an Entity Applicant Receive an FSA FO Loan?

Applicants for an FO loan must fulfill the 12 general requirements listed below. All of these factors are important to be a successful FSA FO loan applicant. Among those is an obligation to meet a "family farm" requirement. This can confuse groups of folks who want to acquire a farm together but are unrelated and unmarried, and thus not the traditional definition of 'family.'

All Farm Ownership loan applicants must:

1. Be a US citizen, a US non-citizen national, or a qualified 'alien'
2. Have no convictions for controlled substances
3. Be of legal capacity
4. Have an acceptable credit history
5. Be unable to get financing on the commercial market
6. Not be in delinquent status on Federal debt (unless IRS debt)
7. Have no outstanding judgments
8. Have no federal crop insurance violations
9. Demonstrate farm managerial ability
10. Follow training requirements
11. Meet family farm requirements, and
12. Meet the 75% test if multiple entities are involved

When analyzing how the 12 criteria apply to an entity applicant, a general principle applies: the entity meets the criterion if **every** individual owner of the entity meets the criterion. For example, criterion 2 states that the applicant must have no convictions for controlled substances. If we apply the general principle for an entity applicant, then every individual owner of the entity must not have any convictions for controlled substances. If any owner has such a conviction, the entity applicant does not meet the criteria.

The general principle of applying the specific criteria to each member of the entity works well with criteria 1-8. In the second part of this

guide, more guidance is provided on exactly how to apply these criteria to each individual owner of an entity.

Things get more complicated when examining criteria 9-12. For example, criteria 11 states that the entity must meet family farm requirements. If the entity's owners are not "family," according to a definition of people who are related to each other by blood or marriage, we have some more complex concerns. What is the intent and definition of a "family farm," and how can an entity with unrelated owners meet it? We explore this criterion alongside the training requirements (#10) and the 75% test (#12). Because these criteria are potentially more challenging and nuanced, we address them first.

Which Entity Do We Form and Who Are Our Owners?

The individuals working together to seek an FSA FO loan need to distinguish themselves as a specific group of people, which is easiest to achieve if the group organizes a

separate, formal business structure. **The most common choices are a Limited Liability Company (LLC) or a corporation.** Both of these entities can be straightforward to contract with FSA for an FO loan because they offer a distinct legal name for the formalized group of individuals. LLCs and corporations provide a clear legal structure as well. Other business structure options, such as partnerships or joint operations, are eligible, but there may be additional details to work out with the loan officer regarding the name of the contracting party.

Nonprofits, however, are not an eligible entity type. One reason is that a nonprofit has no owners, and it can be difficult to hold those involved in a nonprofit personally liable for the nonprofit's debts. The other reason is that the FSA provides these loans to assist businesses in becoming profitable and self-sufficient. Nonprofits are generally neither of those things. Because of this, the FSA will not accept nonprofit applicants.

Every business has owners. The essential characteristic of an owner is that they receive a share of the profits (or losses) from the business. Sometimes (especially when the business does not generate profits or losses), it can be challenging to determine who is an owner as opposed to who is simply an employee. **Yet, it's essential to determine who is and is not an owner of the entity applicant before beginning the application process.** Because we know that most criteria that apply to an individual applicant also apply to each individual owner of an entity applicant, we have to get very clear on this issue.

A few different factors usually distinguish owners. Owners typically have significant decision-making power, such as the ability to take on debt or close down the business. Owners account for profit and loss received on their tax returns (akin to how an employee accounts for wages earned on their tax returns). While diverse groups of people may join together to form a farm operation, only some people want or need ownership, necessarily. Some folks may want something other than significant decision-making power. Others may not be prepared to account for profit and losses on an income tax return as doing so requires a social security number or a taxpayer identification number. In addition, if including an individual as an owner will cause the

entity to be disqualified from opportunities like an FSA FO loan, the group may decide not to have that person be an owner.

The decision about which entity to form is often straightforward, while deciding who receives ownership may take more time. **Potential entity applicants may need to assess each criterion below to determine how it impacts their situation before settling on owners.** At any rate, the decision will need to be made before the application is prepared and submitted.

What Other Business Qualities Does the FSA Consider?

It is also important to assess the business's health before applying to the FSA for a loan. The FSA will want to confidently conclude that the entity applicant owns a viable farm business. This has nothing to do with the relative size of the operation but everything to do with the business's future prospects and ability to thrive. The FSA will be considering whether the business primarily sells agricultural commodities, makes sufficient income, and demonstrates sound business practices like recordkeeping. To understand the business's health, the FSA officer will look at business records, which could include business plans, sales records, and production schedules.

In general, the FSA will not want to issue loans to operations that don't keep good records and don't expect to eventually turn a profit. If the business is in its infancy or going through an economic downturn and profits are nonexistent or minimal, the applicants need to demonstrate that the business has a plan to achieve profitability. Essentially, the FSA is looking for businesses that keep strong records and have an achievable business plan.

Furthermore, as in any credit application, the FSA will be interested in specific details about whether or not the business can repay its loan obligation regardless of whether the business is creating profits yet. FSA's test compares the typical gross farm income generated by the operation to the annual installments for the farm's debts. These two figures should be at least equal for the farm business to be determined to be viable by

the FSA. However, gross income won't necessarily be the only figure the loan officer takes into consideration. The loan officer has to be confident that the loan obligation can be repaid.

Lastly, a few requirements apply to all individuals signing the **promissory note**. Promissory notes are written promises to repay borrowed money. Every person who signs the promissory note can be held personally liable to repay the loan if the business fails to repay. It is a big deal to sign a promissory note and give what is sometimes called a "personal guarantee" to repay the loan. FSA requires all entity members to sign the promissory note, and in turn requires that everyone that signs the promissory note meet certain criteria. For example, each of these individuals must satisfy at least one of the following conditions:

1. Be a beginning farmer,
2. Have not had an FO loan outstanding for more than ten years before the date the new loan is closed or
3. Have never received a direct FO loan at all.

Now that we're on the same page about our terminology, ownership considerations, the need for a formal, healthy business entity, and some universal criteria for the FO loans, we're ready! Let's explore how an entity applicant meets each of the standard criteria for an FSA FO loan.

Section 1: Criteria with More Uncertainty for Entity Applicants

Many of the criteria that apply to all applicants are relatively straightforward to apply to entity applicants. Those criteria are discussed in Section 2. Here, we are discussing criteria with more uncertainty for entity applicants.

Criterion #9: Demonstrate Farm Managerial Ability

Applicants must provide evidence to their FSA FO loan officer that they have the skills to manage the farm operation. FSA wants assurance that the farm business can repay the loan on schedule. In the case of individual applicants who aren't applying as a group, those individuals have to demonstrate sufficient education, on-the-job training, or farming experience. If this experience satisfies the FSA loan officer that the person could reasonably be expected to run a successful business, then this criterion would be fulfilled.

This test is a little more complicated when considering an entity applicant. Generally, **the rule is that the majority interest holders of the entity must have "participated in the business operations of a farm" for at least three out of the past ten years** to satisfy this criterion. The majority interest holders of the entity applicant could be one or more people depending on how ownership of the entity is structured. For example, suppose Owner A holds 70% of the ownership interest, and Owners B, C, and D each have 10% ownership interest. In that case, Owner A must have participated in the business operations of the farm for at least three years. The managerial ability of Owners B, C, and D would not be a concern. By contrast, if four

owners share equally in the ownership at 25% each, then at least two of those owners will have to provide evidence of their managerial experience. In the end, the majority (at least 50%) of the owners have to demonstrate that they have participated “in the business operation of a farm” for at least three of the last ten years.

Also, substitutions are available—essentially, parts of this general rule can be waived in some circumstances. Before we get to those substitutions, let’s clarify what it means to ‘participate in the business operations of a farm.’ All of the requirements discussed in the following few paragraphs require the level of participation described for the year’s entire production cycle. Managing a farm for just three months of the summer season will not count towards fulfilling this requirement (even if it’s three months of the summer for 3 out of the past ten seasons).

How Does a Farmer Demonstrate the Required “Participation in the Business Operation of a Farm”?

A farmer can demonstrate “participation in the business operations of a farm” for the required three years through ownership. The farmer can offer tax returns or FSA farm records showing that they owned a farm and, thus, participated in its business operations. Alternatively, the farmer could provide evidence that they were employed as a farm manager or farm management consultant for a farm. The farmer’s title at their previous place of work and job description, if available, will be important to fulfill this option.

In addition, a farmer can demonstrate that they have participated in farm business operations if they were raised on a farm or had a farm-related apprenticeship, internship, or similar educational experience for at least the required three years. If a farmer wants to use their apprenticeship or internship to comply with this requirement, they must have evidence that they had significant responsibility for day-to-day decisions. Examples of significant responsibilities include selection of seed varieties, weed control programs, input suppliers, or livestock feeding programs.

Some farmers may have participated in a business operation but were not an owner, not an employee, and also not part of an educational experience. In this case, FSA will look at other documentation that might be available to demonstrate this experience.

What Can be Substituted for “Participation in the Business Operations of a Farm”?

There are a few other ways by which a farmer can still demonstrate the necessary managerial ability. Up to two of the three required years of participation in the business operations of a farm can be substituted with one of the following experiences:

1. At least 16 credit hours of post-secondary education in an agricultural-related field;
2. Successful completion of a farm management curriculum offered by cooperative extension, community college, adult vocational agricultural program, non-profit organization, or land-grant college or university;
3. One year experience as a farm laborer with substantial management responsibility;
4. Successful completion of an internship, mentorship, or apprenticeship in day-to-day farm management;
5. Significant business management experience in a non-agricultural related field if the relevant individual’s responsibilities included personnel decisions, payroll, and inventory ordering;
6. An honorable discharge from the armed forces of the U.S;
7. Successful repayment of an FSA-financed youth loan; or
8. An established mentorship relationship that meets the criteria of the FSA for mentorship in farming or ranching.

A farmer with only one year of experience as an owner of a farm operation, as demonstrated by the farm business tax returns, but two years of significant business management experience in another field could satisfy the managerial ability requirement. Another example would be a veteran honorably discharged from any branch of the U.S. armed forces who grew up on a family farm. There are many options to fulfill the ‘participation in the business operation of a farm’ requirement.

In fact, there is one combination that waives the three-year requirement entirely. If the individual in question has one year of experience as a farm laborer with substantial management responsibility and has also developed a relationship with a farming mentor

that the FSA has vetted, they may meet this obligation. Any counselor in the Service Corps of Retired Executives (SCORE) with farming and ranching experience would be approved. Otherwise, mentors must be approved by the FSA officer with whom the entity applicant is working.

When you get to Criteria # 11, the Family Farm Criteria, you'll learn that the majority owners of the entity applying for the farm ownership loan must also participate in the day-to-day operations of the business obtaining financing. Therefore, the majority of owners who demonstrate managerial ability for Criteria # 9 must continue that management, bringing that experience into this new venture. In short, an entity applicant cannot have a "silent" owner who is added to the entity as an owner only to meet the managerial requirement but who does not intend to continue participating in the entity's day-to-day operations.

Criterion #10: Follow training requirements

Applicants for an FSA FO loan must be willing to complete additional production and financial management training if FSA determines it's needed. FSA does not require additional training for people who have completed coursework or have experience in production and financial management. Applicants generally need to work one-on-one with their loan officer to determine if and what additional training the applicant will need to complete.

For entity applicants, FSA will start by looking at whether one owner is solely responsible for production or solely responsible for financial management. In that case, FSA will determine whether that individual needs additional training. FSA will only require owners who are responsible for financial and production management to receive training in such areas.

If production and financial responsibility are shared among owners, FSA will look at the training of those persons to see if additional training is required. To assist FSA in determining who is responsible for what, entity applicants should consider drafting job

descriptions and incorporating references to the owners' jobs and descriptions into the entity's governance document.

Criterion #11: Meet family farm requirements

Before we get into how to meet the family farm requirements as an entity applicant, it can be helpful to understand FSA's reasoning behind their rules. The FSA's loan program focuses on the 'family' farm in an effort to support and sustain smaller-scale domestic agriculture. The 'family' farm rules discussed below were all designed with small and mid-size farms in mind. The FSA aims to provide financing to these types of farms rather than large farming operations with many investors who already have adequate funding sources.

It is increasingly common for small farms to be structured with one or several entities. This is true whether or not the owners of the entity are related. The FSA has been responsive to these changes in business practices and developed ways for entity applicants to meet the requirements for a 'family' farm. All of the requirements below were designed to restrict FSA financing to operations that are right-sized for FSA goals.

Several midwestern states have state laws intended to safeguard the ownership and control of farmland by family-scale operations. These laws, often called anti-corporate farming laws, restrict the ability of entities to form for the purposes of owning or leasing farmland. Farmers in these states who are forming an entity will need to consider state laws alongside FSA's FO requirements, although that issue is not further discussed here.

How Does an Entity Become a Family Farm?

To comply with the 'family' farm requirement, the farm cannot be owned by folks who never set foot on the farm and don't participate in farm labor. Owners with this kind of hands-off approach are typical for large corporate farms that have many owner-

investors. The FSA wants assurance that the owners of farms purchased with FSA financing are owners **and** operators.

The line the FSA has drawn in the sand to ensure that this is the case is that at least 50% of the entity's ownership **must** be held by the people who are operating the farm. An operator provides the labor, management, and capital to run the farm.

The FSA considers who provides the physical labor and management of a farm to determine whether it falls into their definition of a 'family' farm. Those members responsible for operating the farm, whose membership interests must reach at least 50% of the entity's ownership (but can be greater), must make all strategic management decisions for the farm business. Furthermore, these owners must make the majority of the day-to-day operational decisions of the farm business. A substantial amount of the labor required to run the farm business must be provided by at least a majority of the owners.

Note that there can be members in the entity who don't or cannot do the physical labor of the farm, but are still considered farm operators. The key deciding factor is whether the individuals are involved in the day-to-day operations of the farm and help guide strategic decisions. There is some leeway in the description of who is an operator to account for regional industry differences.

Full-time hired labor can only be used to supplement the owners' labor. Reasonable amounts of temporary labor for seasonal peak workload periods or intermittent labor-intensive activities are acceptable. The FSA loan officer has discretion to make exceptions to this, especially for farm operations that produce high-value, labor-intensive crops such as specialty fruits and vegetables. Many decisions of the FSA loan officers are based on standard industry practices, so if the entity's type of farming is labor intensive, likely the loan officer will not penalize the application for having a fair number of employees.

Determining whether an entity applicant fits the definition of a family farm is a balancing of many different factors. The loan officer has a fair amount of decision-making power for this aspect of the application. **Do note that the reasoning of the**

loan officer as to whether or not the farm has met the definition of 'family' farm will be documented in the loan file. Ask for the reasoning if the application gets an unfavorable response.

What About Owners That Have Ownership in Separate Businesses?

Owners of the entity applicant cannot be involved in other farming operations that would not also qualify as a family farm. This does not disqualify *any* ownership in other businesses, but the nature of other businesses owned by entity members *may* impact the entity's ability to apply for the FSA FO loan. If this might become an issue with your application, talk to the loan officer about the situation and determine what information they might need about the separately owned business.

Criterion #12: Meet the 75% test if multiple entities are involved

In the past, FSA had a requirement that all entity applicants had to be owned by individuals. Again, the FSA's goal was to avoid financing large, complex corporate operations. However, over time, business practices for small businesses have changed. Family/small operations have begun to segregate aspects of their businesses for liability, financial planning, and succession purposes. In response, the FSA has changed its rule and now allows a certain composition of entity owners for an entity applicant for a FO loan.

When an entity applicant has an owner that is also an entity, FSA calls these 'embedded entities.' To curtail embedded entities hiding away investor-only owners, the FSA developed the 75% embedded entity rule.

Suppose any entity applicant has one or more embedded entities. In that case, at least 75% of the individual ownership interests of each embedded entity must be owned by members actively involved in managing or operating the farm that complies with the family farm requirements.

For example, let's consider a business entity that wants to apply for an FSA FO loan. One owner of this entity was an individual with the requisite managerial ability, creditworthiness, and other necessary criteria for the loan. This individual owned a 50% interest and will be the field operations manager once the farm gets up and running. The other owner was a separate business that owned and operated all the equipment for the farm, and that entity (the "equipment entity") also held 50% ownership in the entity applicant.

In this case, FSA would look into the entity applicant as to whether it met all the criteria we have discussed in this guide. At the same time, FSA would also look into the equipment entity that owns 50% of the entity applicant. Ownership of that second entity—the equipment entity—must be made up of individuals who will be actively involved in managing and operating the farm that is applying for the FO loan. If the equipment entity has one owner with 100% ownership, the owner must have managerial authority in the entity applicant business and be actively involved in its operation. For example, the owner of the equipment entity might be responsible for the care, maintenance, and operational decisions of the equipment for the farming operation. That arrangement would likely satisfy this requirement.

However, if the equipment entity was owned by someone who invested in the equipment for the entity applicant but had no involvement in the farm operation itself, then that embedded entity wouldn't pass the 75% test, and the entity application would be ineligible for an FSA FO loan.

Section 2: Criteria for Entity Applicants that do follow the general principle of application to each individual owner

Criterion #1: All applicants must be a US citizen, a US non-citizen national, or a qualified “Alien”

As part of the loan application, each and every member of the entity that has to sign the Promissory Note will have to state their citizenship status. All applicants must be US citizens, US non-citizen nationals, or fit into the legal category qualified “alien.” This means that if any member of the applicant entity cannot meet the criteria, the FO loan application will not be approved.

All applicants must provide the FSA with photographic identification to prove their identity. If this document is not a passport, a second document will be required to demonstrate the person’s immigration status. Limited passports issued for periods of less than five years will not be acceptable documentation of immigration status.

A person’s immigration status cannot expire before the end of the loan term, either. Only in the case of a lawful permanent resident with a valid I-551 (green card) will the document's expiration date have no bearing on the loan application. Otherwise, the immigration status must remain valid for all entity members throughout the period of the loan term.

Qualified Aliens

The law uses the antiquated language of 'aliens' to describe this group of immigrants. This diverse group can include green card holders, those granted asylum, refugees, Cuban/Haitian entrants, lawful permanent residents, and others. Each of these has different documentation requirements, but some general principles guide the FSA process.

First, as always, documentation of immigration status must be combined with satisfactory proof of identity. The document itself can establish proof of identity if it includes a photograph. Otherwise, some other form of identification that includes a photograph can be used.

The types of documents acceptable to prove one of the above immigration statuses come in 'tiers.' Unless a serious issue arises, FSA officers are instructed to accept the first tier of documents. Of course, the applicant can choose to provide any of these documents to establish immigration status. Just know that the FSA officer has been instructed to accept the first-tier documents and can only move up the tiers in certain circumstances (if first-tier documents are available for the particular immigration status). If the document provided from the first 'tier' does "not reasonably appear to be genuine or representative of the person providing the document," then the FSA officer can ask for further documentation. At this point, the FSA officer can ask for documents in the second tier—registration documents. Once again, this second tier of documents must be accepted unless they do "not reasonably appear to be genuine or representative of the person providing the document."

If the FSA officer is still unsatisfied, then the final step is verifying the applicant's immigration status with the Bureau of Citizenship and Immigration (BCIS). Essentially, FSA would send the registration document provided to BCIS to verify. FSA officers should move through the tiers consecutively—they are not supposed to jump from a tier 1 document to tier 3, verification with BCIS, unless the applicant is unable to provide a registration document (tier 2).

Any decisions made by the FSA officer to ask for a document in the next tier up must be made for non-discriminatory reasons. Applicants working with an FSA officer to establish their status as a qualified “alien” should be familiar with the documentation officers can request. **If an FSA officer requests a document in the second tier or even goes on to the third tier of verification, ask them to articulate why they doubt the authenticity of the document previously provided. Memorialize your conversation in some way to create a record of the FSA officer’s actions.**

Table First and Second Tier Acceptable Immigration Status Documentation for FSA Applicants

	First Tier	Second Tier (Registration Documents)
Lawful Permanent Resident	<ul style="list-style-type: none"> Unexpired temporary I-551 stamp in foreign passport 	<ul style="list-style-type: none"> Unexpired temporary I-551 stamp on BCIS I-94 form BCIS form I-551, i.e., ‘greencard’
Asylee	<ul style="list-style-type: none"> Grant letter from the Asylum Office of BCIS Order of an immigration judge granting asylum 	<ul style="list-style-type: none"> BCIS Form I-94 annotated with stamp showing grant of asylum under Sec. 208 of INA BCIS Form I-688B annotated “274a.12(a)(5)” BCIS Form I-766 annotated “A5”
Refugee	<ul style="list-style-type: none"> BCIS Form I-571 	<ul style="list-style-type: none"> BCIS Form I-94 annotated with stamp showing admission under Sec. 207 of INA BCIS Form I-688B annotated “274a.12(a)(3)” BCIS Form I-776 annotated “A3”
Paroled into the US for a Least 1 Year	N/A	<ul style="list-style-type: none"> BCIS form I-94 with stamp showing admission for at least 1 year under Sec. 212(d)(5) of INA
Deportation or Removal Withheld	<ul style="list-style-type: none"> Order from an immigration judge showing deportation withheld under Sec. 243(h) of INA or removal withheld under Sec. 241(b)(3) of INA. 	<ul style="list-style-type: none"> BCIS form I-688B annotated “274a.12(a)(10)” BCIS Form I-766 annotated “A10”
Conditional Entry	N/A	<ul style="list-style-type: none"> BCIS Form I-94 with stamp showing admission under Sec 203(a)(7) of INA BCIS Form I-688B annotated “274a.12(a)(3)” BCIS Form I-766 annotated “A3”
Cuban/Haitian Entrant	<ul style="list-style-type: none"> Unexpired temporary BCIS I-551 stamp in foreign passport BCIS Form I-94 with stamp 	<ul style="list-style-type: none"> BCIS Form I-551 (green card) with code “CU6,” “CU7,” or “CH6.” Unexpired temporary BCIS I-551

	showing parole as "Cuban/Haitian Entrant" under Section 212(d)(5) of INA	stamp on BCIS form I-94 with code "CU6" or "CU7."
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If an owner of the business does not have an immigration status that meets the FSA requirements, that member will need to step down from ownership in the business until the loan is fully paid off.

Criterion #2: No Convictions for Controlled Substances

For an entity applicant to meet this criterion, each individual owner of the entity may not have a conviction for a controlled substance. If any of the individual owners do have such a conviction, they may not be an owner for the duration of the loan. (Farm businesses may choose to make such a person an employee as an alternative, as no restriction exists within FSA on employing persons with convictions for controlled substances.)

Criterion #3: Legal Capacity

For an entity applicant to meet this criterion, each individual owner of the entity must have the legal capacity to incur the obligation of the loan. Legal capacity can mean having reached the age of legal capacity, which is 18 years old. It can also mean mental capacity—all entity members must be mentally capable of understanding the applicable contract terms. If individual owners of the entity are under 18 years of age or do not have full mental capacity, the entity will be ineligible for the loan.

Mental capacity can be threatened if a person’s cognition is lacking due to age or mental illness along the lines of mania, delusions, or intoxication. This is unlikely to be an issue for an FSA loan, but all individual entity applicants must demonstrate mental capacity.

Entity applicants cannot have minor member-owners, either. Minors can apply for separate Youth loan applications via the FSA, but those loans are not covered in this guide.

Entity member-owners who are minors or mentally incapacitated will not be able to be a part of the entity that applies for an FSA FO loan unless and until they age into legal capacity or return to it mentally. Potential owners gaining capacity may be added to the business during the loan term after they reach capacity upon consultation with the loan officer and meeting all the other criteria.

Criterion #4: Acceptable Credit History

For an entity applicant to meet this criterion, each individual owner of the entity must have an acceptable credit history. This is because every individual owner of the entity must personally sign the loan. Creditworthiness demonstrates an ability to repay the loan. All owners on the entity application should be prepared to provide information about their credit history.

It can be hard to state with any certainty whether or not a specific individual will be found to be creditworthy. We can confidently say that a history of failing to repay debts, outstanding payments to the federal government, or any other federal debt is unacceptable. But things like foreclosures, judgments, and delinquent payments of the applicant, if they occurred at least 36 months (3 years) before the application and no recent similar situations have occurred, may be allowed. This is one situation where the owners involved may need to sit down with the loan officer for an honest conversation about whether ownership (and the loan application) can be amended if one of the owners is found to not be creditworthy.

Criterion #5: Unable to Get Financing on the Commercial Market

For an entity applicant, all owners must be unable to obtain financing for their farm venture in the commercial marketplace. When determining if this criteria is met, the FSA will consider the actual needs of the farm business, as well as the terms and interest rates offered on the commercial financing market.

This does not strictly require that the applicant be outright denied at other financing institutions. Applicants will only be required to furnish credit denial letters from other lenders if the FSA loan officer determines that the applicant *does* have the reasonable potential to obtain financing elsewhere. Applicants must certify in writing that they cannot get sufficient credit. The reasons for meeting this criterion or failing to meet this criterion will be recorded in the loan file.

Note that credit via “subprime” lenders like credit cards and finance companies does not mean the applicant is eligible for financing elsewhere. FSA will still consider these applicants for FO loans.

Criterion #6: No Delinquent Status on Federal Debt (unless IRS debt)

For an entity applicant to meet this criterion, each individual owner must not have a delinquency in any federal debt other than tax court judgments.

Criterion #7: No Outstanding Unpaid Judgements Obtained by the US in any Court

For an entity applicant to meet this criteria, no individual owner can have any outstanding unpaid judgments from any U.S. court. These would be court orders to pay a certain sum of money. If these judgments are not yet paid, an applicant can pay in full prior to the FSA loan closing and still participate. However, any such judgments will be taken into consideration when evaluating the owner's creditworthiness.

Criterion #8: No Federal Crop Insurance Violations

All individual entity members must certify that they have not ever been disqualified from federal crop insurance programs. This would happen if an entity member had intentionally provided false information to the insurance provider. The Risk Management Agency notifies FSA's National Office of disqualified individuals, who then notifies the State and County offices.

Section 3: Working with an FSA Officer

Many FSA officers will have never handled a loan to an LLC or partnership composed of unrelated and unmarried persons, and some may think it isn't allowed. Entity applicants might be working with a loan officer who isn't as familiar with these types of applications, while others will find well-versed loan officers. We can assure you that it is possible to secure an FSA FO as an entity applicant and that the FSA Loan Officers have the resources available to help guide you through the process.

One source we relied on heavily for developing this guide was the [FSA Handbook: Direct Loan Making for State and County Offices: Short Reference, 3-FLP \(Revision 2\)](#), USDA FSA. We don't want you to read through this source yourself, so we created this guide! But, do know that FSA loan officers will have access to this Handbook and likely other policies that will help shape the application process.

Preparation is key to starting off on the right foot with your Farm Loan Officer. Use the checklists we created on the following few pages to help make sure the entity is set up correctly and all individual members have the documents they need to ensure a successful application.

A farm loan officer will want to review many of your business documents. You don't have to create top-notch financial statements explaining your profit and loss, but do spend some time organizing these records so that they are readable by people who aren't part of your business. Other required documentation are tax returns for the past three years, pay stubs if any entity owners have off-farm income, and business and personal credit card and bank statements. Also, if the business is currently leasing, bring copies of those agreements to the farm loan officer.

Checklist: Analyzing Ownership Structure for Success with a FSA FO Loan for Unrelated Co-Owners of a Farm Business

Due to the FSA FO requirements, tough decisions might have to be made about who can be an owner in an entity being formed to apply for a FO loan. Use this checklist to consider the personal circumstances of each of your entity's owners. If any checkbox is left blank, then you know there is an issue and the ownership structure will need to be reconsidered. *If you are working with an individual that you would like to co-own the business with but that doesn't meet some of these criteria, then alternative organizational structures will have to be explored.*

Threshold Questions

All owners or potential owners must check ALL of the following boxes. If you need to refresh your understanding of any of these requirements, the related criterion is listed so you can refer back to the written guide.

- At least one of the following three things are true: The owner is (1) a beginning farmer, (2) has not had a FO loan outstanding in the last 10 years, or (3) has never received a direct FO loan.
- The owner has documentation that they are a U.S. citizen, U.S. non-citizen national, or a qualified "alien." Criterion #1.
- Has no convictions for controlled substances. Criterion #2.
- Is 18 years of age or older. Criterion #3.
- Has the mental capacity to enter into a contract. Criterion #3.
- Is not delinquent on any federal debt (unless it is IRS debt!) Criterion #6.
- No outstanding judgments have been issued against the owner/potential owner in any US court. Criterion #7
- Has not been disqualified from federal crop insurance programs. Criterion #8.

Deeper Questions for Owners or Potential Owners

These questions require a bit more discussion. Owners will need to discuss each other's history and qualifications for running a farm, determine who will participate in day-to-day management of the farm business, and who will be responsible for strategic decisions. All owners will need to divulge their credit history and how suited they are for a FSA loan.

- At least 50% of the owners or potential owners have the required managerial experience and can document it. Criterion #9.
- Each owner or potential owner possesses an acceptable credit history. Criterion #4.
- At least 50% of the owners will be responsible for the day-to-day operation of the farm and all strategic decisions. Criterion #11.

Checklist: Do We Have All the Paperwork Needed for a Successful Application?

Business Structure & Records

- The entity's governance document
- The embedded entity's governance document and ownership ledger
- Business tax returns for the last three years
- Any available profit and loss statements
- Documentation of current business expenses
- The business' payroll
- Business credit card and bank statements, generally from the past two months
- Information on interest rates and terms of other financing offered on the commercial market

Managerial Ability

There are many options here! Consider gathering as much evidence as you have from the list below.

- A farm's tax returns for FSA farm records demonstrating the owner was the manager or owner of that farm,
- Documentation of employment as a farm manager via an employment contract, job description, or something similar,
- Documentation of having grown up on a farm or internship experience with significant responsibilities.
- Evidence of at least 16 hours credit of post-secondary education in an agricultural related field,
- Proof of completion of agricultural program offered by cooperative extension or another similar institution,
- Proof of one year of experience as a farm laborer with substantial management responsibility,
- Proof of significant business management experience,
- Honorable discharge papers from the armed forces of the US,
- Proof of successful repayment of a FSA youth loan
- Proof of a mentorship relationship.

Personal Information and Finances

- Proposed job descriptions and division of labor for all owners that will be operating the farm
- Passport and other necessary documentation of US citizenship or other status
- Proof of age
- Pay stubs from off-farm income

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