

FLAG



FARMERS' LEGAL
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INCORPORATED

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July 24, 2012

Director
Loan Making Division (LMD)
Farm Service Agency
U.S. Department of Agriculture
1400 Independence Avenue, SW, Stop 0522
Washington, DC 20250-0522

Dear Director:

Re: Microloan Operating Loans proposed rule, 77 Fed. Reg. 31,220
(May 25, 2012)

Farmers' Legal Action Group, Inc. (FLAG) submits these comments on behalf of Minnesota Food Association concerning the proposed rule, published at 77 Federal Register 31,220 (May 25, 2012) for a new Microloan process within the existing Operating Loan program.

Minnesota Food Association (MFA) is a nonprofit organization in Minnesota dedicated to providing farmers with the skills and knowledge to operate their own viable organic and sustainable vegetable farms. MFA is also committed to distribution of fresh, organic produce to local consumers. Most of that produce is grown by farmers-in-training. MFA provides education, training, and technical assistance in marketing, farm business planning, and identification and use of resources for socially disadvantaged farmers. MFA builds partnerships with the community, including specific ethnic-focused organizations, nonprofit organizations, businesses, universities, funding partners, agencies, and individuals. MFA is governed by a board of directors and has a staff of 3.75 FTE. Approximately 30 farmers participate in the program each year.

FLAG is a nonprofit, public interest law center dedicated to providing legal services and support to family farmers and their communities in order to help keep family farmers on the land. For more than 25 years, FLAG has provided legal services to thousands of small- and medium-scale family farmers throughout the nation in class action lawsuits, administrative proceedings, public education initiatives, and legislative technical assistance involving agricultural issues. FLAG has long worked to help farmers understand their legal rights and responsibilities. In recent years, FLAG has begun

working with small-scale farmers, primarily immigrant farmers, who raise fruit and vegetable crops and sell them at farmers' markets.

The Proposed Microloan Process Is a Welcome Replacement for the Unwieldy Lo-Doc Process

MFA commends the Farm Service Agency (FSA) for proposing a lending process that recognizes the unique circumstances of very small farming operations, particularly those operated by vegetable farmers. The proposed process would reduce application requirements, allow more timely application processing, and add flexibility in meeting the managerial ability eligibility requirement which is important and helpful to the success of small-scale specialty crop farmers.

Importance of Flexibility for Small Operations in Meeting Managerial Ability Requirement

FSA is proposing changes to 764.101 that would allow microloan (ML) applicants two additional options for meeting managerial ability requirements. MFA appreciates the recognition that small-scale farmers have different paths to successful farming operations, but is concerned that the rule language proposed is open to a narrow interpretation that limits the usefulness of the additional options.

The first option allows ML applicants to meet managerial ability requirements through certification of a past association with an agriculture-related organization that demonstrates experiences in a related enterprise. The proposed rule specifically names two such agriculture-related organizations: 4-H Club and FFA. By limiting the rule language to the term "agriculture-related organization" and specifically naming two traditional "farm kid" organizations, there is a serious risk that local FSA staff will take a very narrow reading of what type of organizational experience is eligible. Thus, limiting the named organizations to these traditional entities may exclude the experiences of many beginning, minority, and immigrant farmers. Currently, many beginning, minority, and immigrant farmers are participating and graduating from farm incubator and farm training programs that provide intensive farm production, financial, and managerial education. MFA urges FSA to add the terms "farm incubator programs" and "farm training programs" after the term "agriculture-related organization" in 764.101(i)(4)(i).

The second option allows ML applicants to meet the managerial ability requirement by agreeing as a condition of the loan to seek, receive, and apply for guidance from an individual with the skills and knowledge pertinent to the successful operation of the farm enterprise being financed. MFA asks FSA to clarify the criteria of who qualifies as a mentor for this purpose.

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Clarify Rule Language Regarding Yield Records Not Always Required

MFA notes that the background remarks discussing proposed changes to 761.104 show a welcome understanding on FSA's part as to the reasons why small-scale vegetable farmers may be unable to provide yield records that satisfy traditional Operating Loan program requirements. The remarks note that past income and expense records for crop production may be more meaningful documentation for projecting future production income. MFA is concerned that the proposed rule language is too vague and terse to capture the full scope of the background remarks and may lead agency staff accustomed to the traditional programs to continue to interpret the phrase "documentation from other reliable sources" as requiring yield and unit price data for each farmer. While it would be impractical and unnecessary to import the full background remarks into the rule language, MFA believes it is important that the rule explicitly state that, in some cases, the farmer need not produce documentation of past yields but that, instead, other reliable data appropriate for the type of operation, including income and expense records, are acceptable.

Thank you for your consideration of these comments.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

/s/ Hli Xyooj

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HX/rgc