

Job Aid: Essential Components of An Adverse Decision Letter

FSA is required by law and regulation to notify participants of adverse decisions. These notifications must contain the following common elements:

Component	Description
Decision	A brief explanation of the reason for the letter (e.g., that their application is being denied)
General Program Provisions	A statement about the program for which the applicant filed an application, executed a contract, sought a determination, or the provision that brought about the need for an administrative determination
FSA's Findings	A discussion of the pertinent facts based on specific references to either the application, contract, information submitted by the participant, or other relevant information or evidence that can be and is specifically cited and referenced in the decision letter
Discussion	An explanation of the findings, together with the general program provisions
Reiteration of the Decision	FSA's decision based on the general program provisions, findings and discussion
Next Steps	The steps the applicant can take for reconsideration, mediation and/or appeal
Mandatory Nondiscrimination Language	Standard, required paragraphs describing nondiscrimination policy

The following sample shows these elements.



January 28, 2011

Dear Mr. and Mr. XXXX:

United States
Department of
Agriculture

Farm and Foreign
Agricultural
Services

Farm Service Agency

Farm Service Agency
1000 Pasture Lane
Glenlea, FS 54321

(123) 456-7890

FAX:
(123) 987-6543

[NOTE: The opening paragraph explains the decision clearly.] We appreciate the opportunity to review the facts relative to your Farm Service Agency (FSA) direct loan application. **After careful consideration, the Farm Service Agency was unable to approve your application for a farm ownership loan to purchase 200 acres.** This letter will explain the reasons for our decision and describe the options available to you.

[NOTE: Include specific regulatory language to establish the reasons.] According to Sec.764.401 of the Code of Federal Regulations:

Loan decision.

(a) Loan approval.

(1) The Agency will approve a loan only if it determines that:

- i) The applicant's farm operating plan reflects a feasible plan, which includes repayment of the proposed loan and demonstrates that all other credit needs can be met;
- (ii) The proposed use of loan funds is authorized for the type of loan requested;
- (iii) The applicant has been determined eligible for the type of loan requested;
- (iv) All security requirements for the type of loan requested have been, or will be met before the loan is closed;

[NOTE: Reason #1] It is our determination that your application does not reflect a feasible plan as required by the above regulation. A feasible plan is further defined by CFR761.2 as:

[NOTE: Add additional explanation as necessary.] Feasible plan is when an applicant or borrower's cash flow budget or farm operating plan indicates that there is sufficient cash inflow to pay all cash outflow. If a loan approval or servicing action exceeds one production cycle and the planned cash flow budget or farm operating plan is atypical due to cash or inventory on hand, new enterprises, carryover debt, atypical planned purchases, important operating changes, or other reasons, a cash flow budget or farm operating plan must be prepared that reflects a typical cycle. If the request is for only one cycle, a feasible plan for only one production cycle is required for approval.

[NOTE: The case-specific facts related to the regulations. These facts support Reason #1.] Your plan of operation shows a reliance on approximately \$15,000 in non-farm income to achieve feasibility. There is such a heavy reliance on non-farm income in this plan because your goat operation is showing very little profitability.

According to the plan, if the \$15,000 in farm payments and an additional \$15,000 in consumer credit payments are taken out of your non-farm income, it leaves only approximately \$10,000 for family living, which is far below your reported historical family living expense. Your income tax records and the increasing amount of debt you are carrying further support this analysis. A feasible plan is not possible at this level of debt.

[NOTE: Reason #2] It is also our determination that you are not eligible for the loan requested as required by the reference above. According to 7CFR764.101(d), “The applicant must have acceptable credit history demonstrated by debt repayment:

[NOTE: Regulatory language upon which you based Reason #2.](1) As part of the credit history, the Agency will determine whether the applicant will carry out the terms and conditions of the loan and deal with the Agency in good faith. In making this determination, the Agency may examine whether the applicant has properly fulfilled its obligations to other parties, including other agencies of the Federal Government.

[NOTE: The case-specific facts related to the regulations. These facts support Reason #2.] As of the date of your credit report, there were five delinquent accounts that were in collection or charged off. These accounts are as recent as December of 2007 and go back to July of 2001. These delinquencies would indicate a general pattern of unsatisfactory or slow payment, which would indicate an inability to carry out the terms and the conditions of a new loan.

[NOTE: A unique potential next step for the customer.] If in the future your operation can demonstrate a reliable credit history and profitability, the Agency would be happy to look at this credit request again.

[NOTE: Introduction to the standard options for the customer.] If you do not believe this determination is in accordance with applicable program provisions, the following options are available.

Reconsideration [NOTE: Standard language for reconsideration. Use a header to break up the paragraphs for easier reading, and to identify each option clearly.]

You may request that the Farm Loan Specialist reconsider this determination by filing a written request not later than 30 calendar days after the date of this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. If you request reconsideration, you may have the right to an informal hearing with the Farm Loan Manager which you or your representative may attend either personally or by telephone. If you choose to seek reconsideration, you may later appeal the determination to the National Appeals Division. To request reconsideration, write to the County Office at the above stated address and explain why you believe this determination is erroneous.

Alternative Dispute Resolution (ADR) [NOTE: Standard language for mediation. Use a header to break up the paragraphs for easier reading, and to identify each option clearly.]

Mediation through the State mediation program is available as part of FSA’s informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. The State mediation program may require you to pay all or part of the cost of mediation. If you request mediation, the running of the time period in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request

mediation, you must submit the enclosed “Request for Mediation” not later than 30 calendar days after the date of this notice.

[NOTE: Add appropriate contact information.] To request mediation, write to the State mediation program at the following address and provide a copy to FSA.

Farmstate Mediation Service
1111 West North Road South
East Farmville, FS 54321
PH: (123) 555-6543
FAX: (123) 555-1234

In the alternative, you may seek another acceptable form of ADR.

Appeal to National Appeals Division (NAD) [NOTE: Standard language for NAD appeal. Use headers to break up the paragraphs for easier reading and to identify each option clearly.]

You may appeal this determination to NAD by filing a written request not later than 30 calendar days after the date you receive this notice in accordance with the NAD appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration and mediation. To appeal, you must write to NAD at the following address, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter. **[NOTE: Add appropriate contact information.]**

National Appeals Division, USDA
Northern Regional Office
P.O. Box 11111
Anytown, NS 22222-2222

[NOTE: Statement of time limit for reconsideration, mediation or appeal.] If you do not timely choose one of the preceding options, this shall be the final administrative determination with respect to this matter in accordance with the regulations at 7 CFR Part 780 and 7 CFR Part 11.

[NOTE: Standard nondiscrimination language.] The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter a binding contract); because all or part of the applicant’s income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual’s income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA’s TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to

USDA, Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, D.C. 20250-9410, or call toll-free at (866) 632-9992 (English) or 800) 8778339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

Sincerely,

Joe Voe
Farm Loan Specialist

CC: DD – Andrews