

**For:** Washington, DC and Kansas City FOIA Offices and State and County Offices

**Federal Funding Accountability and Transparency Act of 2006 (FFATA)  
and FOIA Requests for Farm Loan Information**

**Approved by:** Administrator



**1 Overview**

**A Background**

FFATA (Pub. L. 109-329) was enacted in September 2006 to increase the transparency and accountability of Federal Government expenditures by providing access to information on Federal awards made to **entities other than individuals** through contracts, grants, loans, and other forms of financial assistance through a single, searchable, publicly available web site. OMB launched **www.USAspending.gov** in December 2007.

Under FFATA, FSA must disclose the following information about farm program payments and farm loan awards on the web site:

- name of the entity receiving the award
- amount of the award
- information on the award, including the following:
  - transaction type, such as direct or guaranteed loan, grant, cooperative agreement, contract, or other
  - funding agency
  - North American Industry Classification System code or Catalog of Federal Domestic Assistance number, where applicable

<b>Disposal Date</b>  December 1, 2010	<b>Distribution</b>  Washington DC and Kansas City FOIA Offices and State Offices; State Offices relay to County Offices
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## Notice INFO-45

### 1 Overview (Continued)

#### A Background (Continued)

- program source, which is an account from which money is drawn
- award title descriptive of the purpose of each funding action
- location of the entity receiving the award and the primary location of performance under the award, including the city, State, congressional district, and country
- unique identifier of the entity receiving the award and of the parent entity of the recipient, should the entity be owned by another entity.

**Note:** FSA is **not** required to disclose SSN's.

FSA farm loan data is covered by a Privacy Act Systems of Records Notice: USDA/FSA-14, "Applicant Borrower File". Before the enactment of FFATA, access to data maintained in this file concerning certain types of entities when requested under FOIA was generally denied according to exemption 6 (personal privacy) of FOIA (5 U.S.C. 552 (b)(6)).

#### B Purpose

This notice provides guidance on how to respond to FOIA requests seeking access to farm loan data for **entities other than individuals** following the enactment of FFATA.

### 2 Definitions

#### A Definition of Entity

Under FFATA, an entity includes all of the following, whether for profit or nonprofit:

- corporation
- association
- partnership
- limited liability corporation
- limited liability partnership
- sole proprietorship

## 2 Definitions (Continued)

### A Definition of Entity (Continued)

- any other legal business entity that is **not**:
  - an individual recipient of Federal assistance
  - a Federal employee
- any State or locality.

**Note:** For FSA purposes in this notice, an entity is an operation that is identified with TIN or EIN. An individual is an operation that is identified with SSN.

### B Definition of Closely Held Family Farms

Since the privacy interests under exemption 6 of FOIA pertain only to individuals, business entities do **not** possess protectable privacy interests. However, Federal courts have recognized that closely held family farms in which the following occur, do have protectable privacy interests under exemption 6 of FOIA:

- agricultural operations are individually or closely held
- releasing their financial records would necessarily reveal at least a portion of the protected financial records of the individual owners of these operations.

For this reason, before FFATA, FSA's policy, with respect to FOIA requests seeking access to farm loan records about either individuals or individual members of closely held family farms, has been that the privacy interest of these individuals in the information requested is greater than any public interest in the information. Under this balancing test required by FOIA in the application of exemption 6 of FOIA, information about these farm loan records requested under FOIA would generally be withheld, according to exemption 6 of FOIA.

FFATA does **not** recognize the legal distinction established under FOIA that closely held family farms have privacy interests. The definition of "any other legal business entity" under FFATA encompasses closely held family farms. For this reason, after the passage of FFATA, FSA will process FOIA requests for farm loan information about closely held family farms unlike past practices and unlike FOIA requests for information about loans to individual borrowers.

### 3 Guidance for Responding to Farm Loan FOIA Requests

#### A General Guidance for Responding to Farm Loan FOIA Requests

FOIA requests for farm loan data and information must be responded to on a case-by-case basis. By analyzing the specific wording of individual requests, employees responding to them should be able to determine precisely which records are being sought. When FOIA requests are ambiguous or otherwise unclear, requesters should be asked to clarify their requests, in writing, sufficiently such that employees familiar with farm loan files are able to identify which records are being requested.

In this context, it is important to determine whether the requester is seeking:

- statistical or aggregate information about farm loans made to multiple producers
- only that limited amount of information about an individual entity's loan that is required to be released to the public under FFATA
- specific documents within an individual entity's farm loan file, or the entire contents of the file
- records about multiple farm loan borrowers
- electronic records about multiple farm loan borrowers.

**Note:** Privacy Act requests seeking access to an individual producer's farm loan data should generally be processed under the Privacy Act. However, when farm loan files contain documents compiled in anticipation of litigation, as, for example, when foreclosure proceedings have been initiated, exemption (d)(5) of the Privacy Act (5 U.S.C. 552a (d)(5)) does **not** permit individuals access to these documents. For this reason, these requests must also be processed under FOIA to provide the individuals to whom the records pertain the maximum possible access to their records. However, when doing so, releasing this information is generally prohibited by the following:

- exemption 5 (attorney work-product privilege)
- exemption 6 (personal privacy)
- exemption 7(C) (personal information compiled for law enforcement purposes).

Additionally, before FOIA requests seeking access to farm loan data may be processed, all issues about FOIA fees must be satisfied.

### 3 Guidance for Responding to Farm Loan FOIA Requests (Continued)

#### B Changes in FOIA Analysis Introduced by FFATA

Passage of FFATA alters the outcome of the balancing test required in determining the applicability of exemption 6 of FOIA to farm loan data maintained by FSA concerning closely held family farming operations. FFATA effectively establishes that the FOIA public interest in disclosure of the data elements required to be released under FFATA, listed in subparagraph 1 A, is greater than the privacy interest in this data belonging to the individuals whose farm loan records are the subject of a FOIA request. This means that upon receipt of a FOIA request seeking information about a farm loan, **FSA must first determine whether the loan was made to an individual or an entity, as defined by FFATA. Additionally, if it is determined that the loan was made to an entity:**

- FSA can no longer use a Glomar response to a request that seeks only that limited amount of data about loan awards that is required to be released to the public under FFATA

**Note:** A Glomar response is a response to a FOIA request that states that FSA can neither confirm nor deny the existence of responsive records, because denying access to responsive records under exemption 6 compromises the privacy of the individual whose records are being sought.

- FSA can no longer routinely withhold in full “any and all documents, data, or information” about individual farm loans, according to exemption 6 of FOIA, if these documents include any of the data that is required to be released to the public under FFATA
- FSA must analyze and segregate documents responsive to FOIA requests for farm loan information, releasing that information:
  - for which the public interest outweighs the privacy interest
  - that is **not** protected by Section 1619 of the 2008 Farm Bill.

## 4 Specific Guidance for Processing Farm Loan FOIA Requests

### A FOIA Requests Seeking Statistical or Aggregate Data

The Privacy Act does **not** prohibit FSA from releasing statistical or aggregate data about farm loans. FOIA requests seeking statistical or aggregate data about farm loans should be routed to the office that is most likely to maintain the requested data.

If a FOIA request seeks access to statistical or aggregate data about farm loans currently being maintained, this information is generally releasable under FOIA. However, if a FOIA request seeks access to statistical or aggregate data about farm loans in a form currently **not** being maintained by FSA, or access to historical data about farm loans in a form in which the data was **not** maintained at the time it was collected and compiled, FSA is **not** required, under FOIA, to:

- collect this information from individual farm loan files
- compile it into a new document.

FSA should respond to requests seeking statistical or aggregate data concerning farm loans in forms other than which it was or is being maintained by advising requesters that the data being sought is **not** available because:

- it is **not** being maintained in this form by FSA
- FSA is **not** required to create new documents to respond to FOIA requests.

**Note:** FSA should provide requesters with appeal rights when issuing such a response.

### B FOIA Requests Seeking Only That Limited Amount of Information About an Individual Farm Loan That Is Required To Be Released to the Public Under FFATA

On receipt of FOIA requests seeking only that limited amount of information about an individual farm loan that is required to be released to the public under FFATA, FSA:

- must first determine whether the loan was awarded to an individual or entity
- may continue to respond with a Glomar response if the loan was awarded to an individual, unless this type of response would **not** be appropriate because the fact that the loan in question had been awarded to the individual was already a matter of public record

**Note:** If, for example, FSA published a Finding of No Significant Impact notice in the local newspaper, along with an application from an individual borrower for a guaranteed loan, it would **not** be appropriate for FSA to respond to a FOIA request for a copy of the loan application with a Glomar response. Instead, FSA should deny the responsive records under exemption 6.

**4 Specific Guidance for Processing Farm Loan FOIA Requests (Continued)**

**B FOIA Requests Seeking Only That Limited Amount of Information About an Individual Farm Loan That Is Required To Be Released to the Public Under FFATA (Continued)**

- may refer the requester to the **www.USAspending.gov** web site for the information if the loan was awarded to an entity if:
  - in fact, the information requested is available on the web site
  - the requester has access to the Internet or asks for the information in electronic format

**Note:** Always check **www.USAspending.gov** to ensure that the information requested is actually posted on the web site before referring a requester to this web site.

- must release this information if the loan was awarded to an entity if **not** referring the requester to the web site.

**C FOIA Requests Seeking Specific Documents Within an Individual Producer's Farm Loan File or Access to the Entire File**

On receipt of FOIA requests seeking specific documents within an individual producer's farm loan file or access to the entire file, FSA:

- must first determine whether the loan was awarded to an individual or entity
- may continue to respond with a Glomar response if the loan was awarded to an individual, unless this type of response would **not** be appropriate because the fact that the loan in question had been awarded to the individual borrower is already a matter of public record
- may continue to respond with a Glomar response if a loan was awarded to an entity that qualifies as a closely held family farming operation if the request seeks access to:
  - loan servicing documents
  - documents indicating that the borrower is in foreclosure status, unless this type of response would **not** be appropriate because the fact of the foreclosure is already a matter of public record
- may withhold all responsive documents in full if **not** responding with a Glomar response if the loan was awarded to an individual

#### 4 Specific Guidance for Processing Farm Loan FOIA Requests (Continued)

##### C FOIA Requests Seeking Specific Documents Within an Individual Producer's Farm Loan File or Access to the Entire File (Continued)

- must analyze and segregate documents responsive to the FOIA request:
  - if the loan was awarded to an entity
  - if the request is **not** limited to seeking documents for which a Glomar response for an entity is still appropriate, as described in this subparagraph, when a Glomar response is provided
  - releasing any portions of the responsive documents:
    - for which the public interest outweighs the privacy interest, including, but not limited to, that information required to be released to the public under FFATA
    - that are **not** protected by Section 1619 of the 2008 Farm Bill.

##### D FOIA Requests Seeking Records About Multiple Farm Loan Borrowers

On receipt of FOIA requests seeking records about multiple farm loan borrowers, FSA must first determine whether the request seeks:

- specific documents within the files of named farm loan borrowers
- summary data about farm loans, such as loans made to borrowers within a particular geographic area.

If the request seeks specific documents within the files of named farm loan borrowers, FSA must follow subparagraph C with respect to the farm loan files of each individual or entity that is the subject of the request.

If the request seeks summary data about farm loans made to borrowers within a particular State or county, FSA may:

- respond to the request if the data is readily available and processable in the responding office
- route the request for processing to the Kansas City National FOIA Office if the:
  - data is **not** readily available in the responding office
  - office is **not** able to distinguish between loans awarded to individuals and loans awarded to entities when dealing with summary data in electronic format.

#### 4 Specific Guidance for Processing Farm Loan FOIA Requests (Continued)

##### E FOIA Requests Seeking Electronic Records About Multiple Farm Loan Borrowers

On receipt of FOIA requests seeking electronic records about multiple farm loan borrowers, FSA must route the request to the Kansas City National FOIA Office for response, which will process it under FOIA:

- releasing any portion of that limited amount of information about farm loans awarded to entities that is required to be released to the public under FFATA that is responsive to the particular request
- withholding any data that must be protected under any of the FOIA exemptions.

##### F FOIA Requests Seeking Records About Commodity Loans, LDP's, and Farm Storage Facility Loans

Commodity loans are marketing tools. They include:

- nonrecourse MAL's
- recourse MAL's.

LDP's are also marketing tools. Farm storage facility loans are loans made to producers to build or upgrade farm storage and handling facilities.

Records about these types of loans are **not** covered by Privacy Act Systems of Records Notice: USDA/FSA-14, "Applicant Borrower File". Instead, they are covered by Privacy Act Systems of Records Notice: USDA/FSA-2, "Farm Records File (Automated)".

FOIA requests for records about these loans are processed in a manner similar to FOIA requests for records about other farm programs covered by FSA-2, as, for example, records about DCP. Correspondingly, commodity loan disbursements and disbursements related to LDP's and farm storage facility loans are treated as payments under FOIA. For this reason, the distinction for FFATA between "individuals" and "entities" does **not** apply when determining the releasability of payment information. See Notice INFO-41 for guidance as to the releasability of farm program payment information.

## Notice INFO-45

### 5 Action

#### A State Office Action

State Offices shall:

- comply with this notice
- train County Offices in the changes to FOIA processing introduced by this notice
- ensure that County Offices comply with this notice.

#### B County Office Action

County Offices shall comply with this notice.

#### C Contacts

For questions about this notice, contact Sue Ellen Sloca, FSA FOIA Officer, by either of the following:

- e-mail at [sueellen.sloca@wdc.usda.gov](mailto:sueellen.sloca@wdc.usda.gov)
- telephone at 202-720-1598.