

PUBLICATION

Heirs' Property Relending Program Represents Substantial Investment in Resolution of Heir Property Issues

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The United States Department of Agriculture (USDA) is providing \$67 million to help resolve heir property issues. Heir property refers to "family-owned land that is jointly owned by descendants of a deceased person whose estate did not clear probate. The descendants, or heirs, have the right to use the property, but they do not have a clear or marketable title to the property since the estate issues remain unresolved."¹ Historically, farmers operating on heir property have faced an uphill battle in receiving vital assistance and benefits from USDA programs in part because of the belief that they cannot get such assistance without proof of ownership or control of land.

To help farmers owning or operating on heir property, Congress has provided assistance in the form of competitive loans to be distributed through the new Heirs' Property Relending Program (HPRP) created by Section 5104 of the [2018 Farm Bill](#). According to the [August 9, 2021 Final Rule](#), HPRP loans will assist heirs "with undivided ownership interests resolve ownership and succession issues on farms that are owned in common by multiple heirs ... [and] may be used by an ultimate recipient to purchase and consolidate fractional interests held by other heirs in jointly-owned property, to pay for costs and fees associated with developing and implementing a succession plan, and to pay for costs associated with buying out fractional interests held in tenancy in common by other heirs in jointly-owned property to clear the title (for example closing costs, appraisals, title searches, surveys, preparing documents, mediation, and legal services)."²

The program is set up in two phases: first, the Farm Services Agency (FSA) will select intermediary lenders, then heirs can apply directly to those selected intermediary lenders for loans and assistance.

Phase I: The FSA to Select Intermediary Lenders

Phase I of the implementation of the HPRP is the opening of the application period for qualifying intermediary lenders to submit their applications to the FSA.

Who is eligible to be an intermediary lender?

Cooperatives, credit unions, and nonprofit organizations may apply to be intermediary lenders under the HPRP so long as the institution:

- (1) is certified as a community development financial institution, and
- (2) has experience and capability in making and servicing agricultural and commercial loans that are similar in nature.

What loan terms are available to intermediary lenders?

Under the program, qualifying intermediary lenders can apply for loans of up to \$5 million at one percent interest. Those intermediary lenders selected by the FSA will determine the rates, terms, and payment

structure for loans to the ultimate recipients. The interest rates set by the intermediary lenders must be the lowest rate necessary for them to cover their costs in making the loan.

How do qualifying intermediary lenders apply?

Qualifying intermediary lenders can apply beginning on August 30, 2021. The intermediary lender can apply by:

- (1) completing [Form FSA-2637](#);
- (2) attaching the proposed relending plan describing how the applicant intends to distribute HPRP funds to ultimate recipients; and
- (3) attaching the last three years of audited financial statements or income tax records including a balance sheet. The application packet can be submitted to the FSA. The application period ends on October 30, 2021.

Phase II: Heirs to Apply Directly to Intermediary Lenders

Once the intermediary lenders are selected by the FSA, the ultimate recipients can then apply directly to the intermediary lenders to receive loans.

Who is eligible to receive HPRP loans as an ultimate recipient?

Intermediary lenders will make loans to heirs who:

- (1) are individuals or legal entities with authority to incur the debt and to resolve ownership and succession of a farm owned by multiple owners;
- (2) are a family member or heir-at-law related by blood or marriage to the previous owner of the property; and
- (3) agree to complete a succession plan.

The program's intent is to help families resolve title issues on heirs' property. Accordingly, the FSA requires that an ultimate recipient be a family member or heir-at-law related by blood or marriage to the previous owner of the real property.

How may the HPRP loan funds be used by the ultimate recipient?

The ultimate recipient may use the loan funds to resolve title issues by financing the purchase or consolidation of property interests and financing costs associated with a succession plan. This encompasses the costs of buying out fractional interests of other heirs to clear the title, including closing costs, appraisals, title searches, surveys, preparing documents, mediation, and legal services. Loan funds may not be used for any land improvement, development purpose, acquisition or repair of buildings, acquisition of personal property, payment of operating costs, payment of finders' fees, or similar costs.

Baker Donelson works diligently to stay up to date on the latest information and guidance related to programs such as this one and to assist clients in navigating these issues. For additional guidance, please contact [Marcus M. Maples](#), [Daniel Moss](#), or your Baker Donelson attorney.

¹ Farm Service Agency, *Guidance for Heirs' Property Operators Participating in Farm Service Agency (FSA) Programs*, UNITED STATES DEPARTMENT OF AGRICULTURE (July 2020), [BAKER DONELSON](https://www.fsa.usda.gov/Assets/USDA-</p></div><div data-bbox=)

[FSA-Public/usdafiles/FactSheets/guidance_heirs_property_operators_participating_in_fsa_programs-factsheet.pdf](https://www.fsa.usda.gov/~/media/FSAPublic/usdafiles/FactSheets/guidance_heirs_property_operators_participating_in_fsa_programs-factsheet.pdf).

² Heirs' Property Relending Program (HPRP), Improving Farm Loan Program Delivery, and Streamlining Oversight Activities, 86 Fed. Reg 43,381 (Aug. 9, 2021).