

May 22, 2019

Mr. Barry F. Murdock
Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

RE: RIN 3052-AD32 – Advance Notice of Proposed Rulemaking—Young, Beginning, and Small Farmers and Ranchers — Federal Register Number 35 Fed. Reg. 5389 (February 21, 2019)

Dear Deputy Director Murdock:

The American Bankers Association (ABA)¹ appreciates the opportunity to provide comments on the proposed rule to amend regulations relating to the Farm Credit System's (FCS) mission to finance and provide services to young, beginning and small farmers, ranchers, and producers or harvesters of aquatic products (YBS). The advance notice issued by the Farm Credit Administration (FCA, the Agency) seeks public input on improving the accuracy and transparency relating to the collection of YBS data; on clarifying the definitions of terms related to the collection, reporting, and identification of YBS data; on ensuring the definitions of YBS and related terms remain relevant and reflective of the evolving agricultural economy; and on evaluating the effectiveness of each FCS institution's YBS program to achieve its mission of serving YBS.

We commend the FCA for its effort to update definitions for YBS categories in order to provide a more accurate accounting of whether the FCS fulfills its mission to finance YBS sufficiently. YBS deserve the FCS's support now more than ever. Despite a statutory mandate to furnish sound and constructive credit to YBS, the FCS has failed to fulfill its potential in serving these uniquely vulnerable populations. In 2017, the number of new loans to YBS fell approximately ten percent in each category. Consequently, the share of new loan volume also decreased. This concerning development stands at odds with the rationale provided for the FCS's tax-advantaged status; namely, that it deserves tax-advantaged status so that it can assume more risk in the form of loans to YBS and other vulnerable populations. The FCA's call for public comment to update definitions for YBS categories demonstrates its commitment to the success of YBS, and we thank the FCA for its consideration of our comment.

¹ The ABA is the voice of the nation's \$18 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2 million people, safeguard nearly \$14 trillion in deposits, and extend more than \$10 trillion in loans.

Reporting of YBS Data

Section 4.19 of the Farm Credit Act of 1971, as amended (Act) requires each System direct lender association to prepare a program for furnishing sound and constructive credit and related services to YBS. The current reporting structure provides that a loan is reported under all existing categories in which it fits. This practice distorts the efficacy of the System in furnishing credit to YBS, overstating the number of YBS served. In its place, the ABA recommends reporting practices which more accurately reflect an individual YBS relation to each of the relevant categories and any combination thereof. That is, an individual YBS may be reported in seven mutually exclusive categories: young; beginning; small; young and small; young and beginning; beginning and small; and young, beginning, and small. Such an accounting more accurately reflects the System's ability to furnish credit to YBS.

In reporting YBS program performance, the System's primary focus should be to report the number of individual YBS borrowers who received credit and services. That should not preclude, however, the reporting of the dollar volume of existing loans, the dollar volume of new loans, the number of existing loans, and the number of new loans. The System's reporting of YBS data, however, should not be limited to these categories.

The Farm Credit System would be well-served in reporting all data relevant to fulfilling its mission to furnish credit to YBS. In addition to the categories listed above, each direct lender association should include data indicating the number of operating loans to YBS and the number of real estate loans to YBS. Each category should include further breakdown by loan size, and whether the loan is secured by farmland. In order to demonstrate the Farm Credit System's compliance with section 4.19 of the Act, the total number of extant loans offered through each direct lender association's YBS program should be placed in direct comparison to its non-YBS lending activities. Under section 614.4165, each Farm Credit Bank must provide a report summarizing the YBS program operations of its direct lender associations on an annual basis.² In order to provide a more timely accounting of each direct lender association's adherence to and fulfillment of the purpose of the Act, each Farm Credit Bank should provide a report on its direct lender associations' YBS programs on a quarterly basis. Additionally, each Farm Credit Bank should complete an annual review of its direct lender associations' YBS programs to ensure maintained efficacy.

Definitions of Key Terms Associated With YBS Data

The key element to direct lender associations' programs for furnishing credit to young, beginning and small farmers is the definition of those categories themselves. The FCA's Bookletter 040—Revised “Providing Sound and Constructive Credit to Young, Beginning, and Small Farmers, Ranchers, and Producers or Harvesters of Aquatic Products” governs which farmers, ranchers and producers or harvesters of aquatic products may be considered YBS. Where applicable, the Agency should direct attention to existing statutory definitions of young, beginning and small farmers which govern the activities of the U.S. Department of Agriculture (USDA) and its subordinate agencies.

² 12 CFR 614.4165

Young Farmers

The designation of a loan as one extended to a young farmer, rancher, or producer or harvester of aquatic products (Young Farmer) should be contingent on a number of factors: the farmer's age at the transaction date of the loan; the farmer's age during the term of the loan; and the farmer's ownership of agriculture land, an agricultural or aquatic operation, and exposure to production risk thereof. At the transaction date of a loan to a Young Farmer, one who is 35 years of age or younger, the loan should be designated as one extended to a Young Farmer. Once the age of the Young Farmer exceeds 35 years, the existing Young Farmer loan should lose its designation as a Young Farmer loan. While a farmer is 35 years of age or fewer, owns agricultural land, an agricultural or aquatic operation, or is exposed to production risk from an agricultural or aquatic operation, that farmer should be designated as a Young Farmer. Having financial control in an operation can open the designation to many that are not involved in the actual operation and could be used to make ineligible individuals eligible for System loans.

Beginning Farmers

The same rationale for the designation of a loan as one extended to a Young Farmer applies to one extended to a farmer, rancher, or producer or harvester of aquatic products who has ten years or fewer of farming, ranching, or aquatic experience as of the loan transaction date (Beginning Farmer). So, at the transaction date of a loan to a Beginning Farmer, the loan should be designated as one extended to a Beginning Farmer. Once the experience of the Beginning Farmer exceeds ten years, the existing Beginning Farmer loan should lose its designation as a Beginning Farmer loan. While a farmer has ten years of experience or fewer, owns agricultural land, an agricultural or aquatic operation, or is exposed to production risk from an agricultural or aquatic operation, that farmer should be designated as a Beginning Farmer. Additionally, having financial control in an operation can open the designation to many that are not involved in the actual operation and could be used as a way to make ineligible individuals eligible for FCS loans.

Small Farmers

In determining criteria for the designation of a loan as one to a small farmer, rancher, or producer or harvester of aquatic products (Small Farmer), the Agency should consider foremost the gross annual receipts of the putative Small Farmer. The Agency's existing threshold of \$250,000 in gross annual receipts or fewer should be altered to be in accordance with USDA's definition, which requires a minimum of \$1,000 and a maximum of \$250,000 in gross annual receipts. Instituting a minimum in gross annual receipts ensures that the farmer sustains sufficient production to merit a reasonable observer's belief that the farmer consistently engages in agricultural or aquatic production. Should the Small Farmer fail to produce \$1,000 in gross annual receipts for two consecutive years after the transaction date, the loan should lose its designation as one to a Small Farmer. In addition, the Small Farmer loan shall lose its designation as such once the Small Farmer loses his or her designation. An acreage floor or ceiling should not be used as a determination for the designation.

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Other Reporting Definitions

An entity seeking to qualify as a Young/Beginning Farmer should have the loan in their own name and not cosigned under another member of their family, unless that individual also qualifies as Young/Beginning. Additionally, an entity seeking to qualify as a Young/Beginning Farmer should be one in which a Young/Beginning Farmer holds an ownership stake of at least 51 percent, and for which the principal operator is a Young/Beginning Farmer. If a single Young/Beginning Farmer's ownership share does not meet the 51 percent threshold, but the addition of another Young/Beginning Farmer's ownership share would satisfy the 51 percent threshold, then the entity should be considered as one meeting the standards required for a Young/Beginning Farmer loan. An income threshold should not be used to determine designation as a Young/Beginning Farmer. The determination of a loan as one to a Young/Beginning Farmer should occur at the closing date of the loan.

Conclusion

ABA appreciates the FCA's interest in improving the accuracy and transparency relating to the collection of YBS data, in ensuring the relevancy of YBS Farmer definitions and thresholds so that they reflect the realities of the agricultural economy, and in reexamining the effectiveness of each FCS institution's YBS program to achieve its mission of serving YBS. We look forward to working with the FCA to ensure America's young, beginning and small farmers are furnished with the sound and constructive credit they require. Should you have any questions about these suggestions, please do not hesitate to contact the undersigned at eelfmann@aba.com or 202-663-5018.

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