



SOUTHERN AGCREDIT

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August 15, 2022

Ms. Autumn R. Agans
Deputy Director, Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

Re: Proposed Rule – 12 CFR Parts 614 and 620 – RIN 3052-AD54; Loan Policies and Operations; 87 Federal Register 36261-36266

Dear Ms. Agans:

Southern AgCredit, ACA appreciates the opportunity to comment on the Farm Credit Administration's ("FCA") Notice of Proposed Rulemaking regarding Loan Policies and Operations that was published in the *Federal Register* on June 16, 2022 ("YBS Proposed Rule").

We fully support the comments made by the Farm Credit Council ("FCC") on behalf of Farm Credit System institutions ("System") in response to the YBS Proposed Rule. While we agree with the goals stated by the FCA for the YBS Proposed Rule, for the reasons more fully explained in the FCC's comment letter [and herein], we do not believe that the YBS Proposed Rule provides any additional means for accomplishing these goals, but rather only adds administrative burden that will cost time and money which would be better utilized through direct support for young, beginning, and small farmers and ranchers ("YBS").

SOUTHERN AGCREDIT'S CURRENT SUPPORT OF YBS

Within our Association's territory, based upon each county or parish's YBS information, as reported in the 2017 agricultural census, through June 30, 2021, 85.2% of the agriculture producers are small, 63.9% are beginning and 24.3% are young. Small and beginning increased slightly from 2019 while young decreased, but only by .4% from 2020.

In contrast, the Association's loan portfolio characteristics have remained consistently comparative in the ratio of loans for YBS farmers. As of December 31, 2021, the 76.05% of the Association's loans were to small producers, 56.39% were provided to beginning producers and 23.67% were to young producers. This level of saturation in classified YBS borrowers within our territory, subject to the competitive forces of commercial banking, other farm credit associations,

Farmer Mac and USDA has only been limited by our ability to provide financing for less than credit worthy YBS borrowers. Our YBS statistics provided in our annual report each year indicate the Association is fulfilling its mission regarding this cohort of borrowers.

Our Association finances a considerable number of young and beginning farmers. The percentage of our portfolio considered small (less than \$250K of gross ag income), has remained stable. Based on the information available, the average borrower age of the Association is 51.3 years old as of August 31, 2021, 51.1 years old as of June 30, 2020, and 51.3 as of June 30, 2019.

Our Association staff participates in YBS Farmer activities to enhance our opportunities to serve those farmers and ranchers better. In particular, our lending officers actively cultivate and mentor YBS farmers by way of being involved with the Farm Bureau Young Farmer and Rancher Committees in our territory and by working with state colleges and universities. We work with and support minority programs, such as the Federation of Southern Cooperatives. We also work with the Farm Service Agency Guaranteed Loan Programs and FSA to improve the graduation rates of some of their direct loan customers.

We are involved with and considerably sponsor local 4-H Clubs and FFA chapters, and this includes speaking engagements with local Universities and Community Colleges. We annually give out considerable funds for ag related scholarships and provide achievement awards to exhibitors of the Livestock Shows leading up to the Dixie National Rodeo Sale of Champions, and have a long-standing presence at the Sale of Champions.

Young Farmer and Youth Related Functions that our Association sponsors and participates in include, but are not limited to the following:

- Dixie National Junior Champion Livestock Sale
- Farm Bureau Ag in the Classroom Skeet Match
- Louisiana State Fair
- MS Council of Cooperatives Young Couples' Conference
- MS/LA Farm Bureau Young Farmer Discussion Meet Sponsorship
- Delta Area Young Farmers Club
- MS/LA Farm Bureau Young Farmers and Ranchers Committee Events
- MS/LA Farm Bureau Young Farmer and Rancher Achievement Awards Judges
- Louisiana Farm Bureau Young Farmer and Rancher Achievement Awards Judges
- MS Future Farmers of America Annual Convention and Sponsors Breakfast
- Local FFA and 4-H Club Livestock and Public Speaking Contests and Awards Programs
- Scholarships awarded annually to students who are attending 11 Community Colleges and 5 Universities
- Scholarships offered to children and grandchildren of Association stockholders totaling \$25,000/year
- MS FFA
- Youth Livestock Council
- Various 4H programs
- Louisiana Council of Farmers Cooperatives 4H Coop Camp
- Spring Shreveport Ducks Unlimited Crawfish Boil

- 2021 Junior Livestock Sale
- Internships

All of this information and data is included in our Association's Strategic Business Plan & Capital Adequacy Plan for current reporting purposes.

SOUTHERN AGCREDIT'S OBJECTIONS AND CONCERNS REGARDING THE PROPOSED RULE

In addition to supporting the positions of the FCC and the Farm Credit Bank of Texas regarding the YBS Proposed Rule, Southern AgCredit, ACA submits the following comments for your consideration:

It appears that FCA is procedurally attempting to modify §618.8440 through the Proposed Rule.

The Section by Section analysis of the Proposed Rule states, "YBS components will no longer be required as part of §618.8440." However, §618.8440 currently requires YBS components to be included in the content of the business plan. Accordingly, the statement or interpretation that the YBS components will no longer be required under §618.8440 means that FCA is trying to modify §618.8440 singularly through the Proposed Rule. We understand this to be impermissible.

"With the proposed requirement of a YBS strategic plan, we also propose adding bank review and approval of such plan . . . and remove exiting limitations on the bank to only review for the presence of the required elements. This would provide funding banks with the opportunity to become more involved with their respective associations' efforts to enhance YBS programs."

We firmly believe that removing the restrictive review language of 614.4165(c)(4)(d) would result in a usurpation of our Association's board governance and oversight. FCA emphasizes that all system boards of directors are responsible for (1) ensuring mission achievement, (2) providing business planning and strategic direction, (3) making policy, and (4) providing oversight. These are fiduciary duties. Placing the ultimate approval of our Association's YBS program with the Farm Credit Bank of Texas essentially means that the funding bank will have the governing authority over our Association's YBS program.¹ Unfettered approval authority implicitly comes with unfettered authority to deny any plan approved by our Association's board.

For example, it is reasonably foreseeable that a circumstance will arise where our Association's board of directors approves a "YBS strategic plan", including budgeting considerations and business planning, but our funding bank may not approve it for reasons such as the amount of resources allocated under the budget for the YBS program. With the unqualified

¹ We are also concerned that FCA is shifting its oversight to our funding bank.

final approval of a YBS strategic plan residing with the funding bank, by and through the Proposed Rule, the funding bank will then be placed in a position of dictating our Association's YBS strategic plan, together with the unintended consequences of determining our budget and business plan. The proposed change as discussed above, while well intended, when viewed through a governance lens demonstrates that it is impermissible.

The aforementioned example is not a stretch in any manner, especially where FCA's proposed change is grounded upon the statement and unsupported conclusion that "[w]ithout this assessment, plans are unlikely to target deficient areas (e.g., outreach, budget resources, terms of extended credit) for improvement." There is no statutory or regulatory authority granting to the funding banks, or FCA for that matter, the explicit discretion to determine the amount of budget resources our Association dedicates towards meeting the YBS statutory or regulatory requirements. However, the Proposed Rule change, followed to its logical conclusion, does this. Disagreements between the funding bank and the Association regarding YBS programs could considerably affect the strategic direction, technology investment, budgeting and business planning of the Association and be financially detrimental to the Association and directly in contradiction to the Association's board oversight.

BL-040 REVISED contemplates the very example and issue we raise. It states,

Setting aside capital for the YBS mission

In order to provide for the types of credit enhancements needed to adequately serve the YBS markets (which typically pose more risk), System institutions should consider setting aside capital that they are willing to put at risk to support programs that meet the credit needs of these YBS farmers. **The amount of capital made available should be based on the strength of the institution's financial position, risk management tools, and safety and soundness controls.** The Agency recognizes that **designating capital for YBS lending will require considerable judgment by the System lender** to ensure that it balances the credit needs of YBS farmers with the association's risk-bearing capacity.

FCA recognizes that it is our Association, by and through the board, which has the ultimate decision-making authority as to how much capital it will allocate and/or budget for the YBS program, and the same holds true for any YBS strategic plan. The authority cannot reside with our funding bank by and through unlimited approval / disapproval authority.

BL-066 likewise supports our position. It states,

[a]t the same time, the association's board and management should ensure that staff compensation and incentive programs support both the association's commitment to its YBS program and its outreach efforts to new and emerging agricultural markets (as required by pending FCA regulation 620.31(b)).

Yet another unintended consequence of removing the limiting language, as demonstrated above, is that our funding bank will have the ability to dictate our Association's staff compensation and incentive programs to the extent that they involve a YBS strategic plan. Again, this is true because the funding bank will have blanket ability to disapprove any Association board approved YBS plan, and this could include a disagreement with how our Association manages staff compensation and incentive programs regarding support for YBS. Disagreements between the funding bank and the Association regarding compensation related to YBS programs could be financially detrimental to the Association and directly in contradiction to the Association's board oversight.

A plain read of 614.4165(c)'s "Direct lender association YBS programs" mandate further demonstrates the inherent overreach and abrogation we have called to your attention. Under this subsection, our Association's board "must establish a program to provide sound and constructive credit and services to YBS farmers and ranchers in its territory." Giving our funding bank unlimited approval and denial authority over a YBS strategic plan approved by our Association board rewrites this mandate. In other words, removing the current limiting language of our funding bank's review changes this sentence to say "must establish a [direct lender approved] program to provide sound and constructive credit and services to YBS farmers and ranchers in its territory."

Moreover, removing the restrictive review language of 614.4165(c)(4)(d) creates internal inconsistency or tension within the Proposed Rule pertaining to corporate governance as shown in proposed sub-subsection (d)(2)(D)(ii), which states as follows, "[b]oard of directors approval and review. Goals must be approved by the direct lender association's board of directors and reviewed quarterly with adjustments made as needed." If our Association's funding bank has an unrestricted regulatory ability to disapprove of our YBS strategic plan and so exercises that ability after the plan is approved by the Association board, then the Association's board will be faced with either subordinating or substituting its common law and regulatory duties (including approval and review), together with its independence pertaining to oversight of our YBS strategic plan; or standing by its approval and finding itself in an unenviable position of a regulatory finding due to the funding bank's disapproval.

Moreover, granting such unlimited approval authority to a funding bank opens the door for potential leveraging of direct lenders in ways unintended by this Proposed Rule. This grant of broad power can be used to punish, rather than an "opportunity to become more involved with . . . respective association's efforts to enhance YBS programs."

Finally, all of these observations beg the question, what happens if our Association approves a YBS strategic plan, but our funding bank refuses to approve it? The proposed regulation is silent on that point. The absence of any language in the Proposed Rule outlining how such a dispute between an association and its direct lender renders the Proposed Rule ambiguous, deficient, and detrimental to associations' efforts to support YBS programs.

A competitive disparity can result from the proposed change in funding bank oversight.

No two funding banks or direct lenders are the same. As such, in over chartered territories such as ours, the System direct lender we compete with will have different YBS strategic plan

approval oversight than we do. Because of this, there is a distinct likelihood that our Association could be placed at a competitive disadvantage in the event our funding bank places greater financial demands upon us than are placed on our System competition.

Bank administrative employees should not have authority to subjugate the will of cooperative elected Association board of directors.

In accordance with regulations and Association by-laws, a board of directors from amongst the Association stockholders, representing a cross section of the Association's lending territory, demographics and agriculture production is elected to set the Association's strategic direction, including YBS efforts. The Proposed Rule would result in hired administrative funding bank employees having ultimate authority over the strategic direction of the Association and supplanting the duly elected board of directors of our Association. This is true because any future YBS strategic plan will not be mutually exclusive from our strategic plan. Therefore, funding bank employees will have the power to dictate our Association's strategic direction and planning.

Background behind the proposed regulation changes.

A review of the March 2002 GAO Report to the Ranking Minority Member, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate finding that "FARM CREDIT ADMINISTRATION Oversight of Special Mission to Serve Young, Beginning, and Small Farmer Needs to be Improved" in relation to the proposed regulation changes causes our Association great concern. This concern arises from the fact that even a cursory review of the GAO's findings in the Report indicates it is a roadmap for what the future holds if some of the Proposed Rule changes are implemented. For example, the GAO observed the following in making its recommendations:

- (1) FCA "publicly disclose the results of the examinations for YBS compliance for individual System institutions."
- (2) "Such disclosure can afford an incentive for entities to better their performance while providing privacy for individuals."
- (3) By virtue of the Bank Holding Company Act of 1956 and CRA, regulators have a statutory responsibility to take into account an institution's record of community credit performance when evaluating an application for merger and otherwise. Gramm-Leach-Bliley Act of 1999 requires similar regulatory responsibilities when considering bank permission to engage in activities newly authorized under the Act.²
- (4) However, "CRA does not provide regulators with enforcement authority on the basis of their compliance with findings."
- (5) "Given the challenge of identifying any unmet need for credit to YBS and the limited data on YBS, it would seem appropriate for FCA to focus on qualitative rather than quantitative standards."

² We are unaware of any similar statutory requirements in the Farm Credit Act of 1971, as amended. However, these are examples of how the undefined "rating system" can be used by FCA as a stick going forward should these proposed changes be adopted without further explanation.

- (6) “For example, such standards could include requiring System institutions to establish or participate in education and community outreach programs for YBS and to use FSA guarantees where appropriate.”
- (7) “One of the many specific concerns of bankers, we reported then, was that the vagueness of the statute and subjectivity of the examination process made compliance difficult.”
- (8) “Without measurable goals or specific qualitative standards to help define compliance with mission requirements, System institutions and FCA face challenges similar to those faced by banks and thrifts and their regulators in connection with their obligations under the Community Reinvestment Act (CRA) of 1977.”
- (9) “. . . FCA officials stated that year-to-year comparisons of an institution’s service to YBS may be the best available indicators of the institution’s performance in that regard, given the lack of meaningful data on the on the unmet credit needs of YBS.”

Concerns caused by the contents of the GAO Report in relation to the proposed regulation changes.

One of the main reasons the observations and statements made in the GAO report cause great concern is FCA’s statement about oversight in the ‘Section by Section’ analysis, where it says that “[f]unding banks can use this knowledge to encourage associations to enhance their YBS programs through best practice sharing among their direct lender associations.” Best practice is a broad, undefined, and vague term in relation to YBS programs. Absent a regulatory definition of “best practice” within the YBS program regulatory compliance context, both within the current and Proposed Rule, it reasons that the some of the aforementioned observations from the GAO report will be considered in whole or in part as best practices which will be imposed upon our Association in the future.

Thus, we can foresee that the removal of the restrictive language to the scope of our funding bank’s approval authority, when viewed together with the GAO report and other proposed changes within 614.4165, will result in the following:

- (1) FCA and our funding bank will be examining our Association and any YBS strategic plan for undefined “performance” and “effectiveness.”
- (2) FCA will regulate and examine our funding bank’s YBS policies to ensure that those policies incorporate undefined best practices to be imposed upon our Association, without any restriction, in an effort to force our Association to reach unquantifiable results, particularly if the results and effectiveness have no relation to an existing Association customer.

We not only believe this represents an overreaching manner of governance of our Association through the Proposed Rule, but we also believe that the proposed changes evidence a governance of our Association through heretofore undefined and ambiguous criteria. The best evidence of our position lies within the GAO report, where FCA stated that there was a “lack of meaningful data on the on the unmet credit needs of YBS” and nothing in the proposed regulatory

revision changes that fact which is still true today. It is possible to track quantifiable data such as loan volume, loan numbers, and percentages as generally outlined in proposed section 614.4165(d)(2). Yet, our Association is unaware of any generally accepted objective method for correlating YBS program efforts with “results.” Accordingly, our Association echoes the concerns identified by bankers in the GAO Report in the context of the CRA, the vagueness of the statute and subjectivity of the review process at the funding bank level and FCA examination process will make compliance with these proposed rule changes difficult at best.

Moreover, assuming that our funding bank wants to “become more involved with [our] [A]ssociation’s efforts to enhance YBS programs,” we do not see how imposing a performance based requirement upon our Association, subject to YBS strategic plan approval or disapproval by our funding bank, will further the System’s YBS mission of facilitating the transfer of agricultural operations from one generation to the next. Nor do we see how such a merit based, past performance analysis requirement will mitigate the identified challenges of the impacts of rising costs on profitability; urbanization and the availability of resources like land, water and labor; globalization; and competition from larger or more established farms. These challenges exist and will continue to exist regardless of the proposed past performance rating system.

“The board of directors of each direct lender association must establish a program to provide sound and constructive credit and services . . . such a program must include the following minimum requirements . . . (B) Coordination with other system institutions in the territory and other governmental and private sources who offer credit and services to YBS farmers and ranchers.”

The proposed regulation change found in 614.4165(b)(ii) mandating coordination is unfeasible in practical application. The change in the proposed language goes from mandating that we “take full advantage of opportunities for coordinating credit services offered with other System institutions in the territory . . .” to mandating “[c]oordination with other System institutions in the territory” Again, our Association, like some others, has overlapping territorial jurisdiction and the other direct lender is not in our District. We are friendly competitors with the other direct lender and a requirement of ensured coordination is simply unattainable in practice. It is certainly possible to take advantage of some opportunities to coordinate with the other direct lender. However, it is an unrealistic demand and expectation that two competing direct lenders from two different Districts will coordinate on every YBS program.

It is patently unfair and prejudicial that the Proposed Rule contemplates a rating system in the absence of a statutory requirement and in the absence of any regulatory codification.

As we pointed out above, it is clear to our Association that FCA’s proposed oversight changes, together with the strategic plan qualitative and effectiveness result requirements, are an attempt by FCA to adopt the GAO findings and in so doing, regulate the YBS programs in the same manners as the CRA is regulated. In the absence of any additional information in the proposed regulation changes, this is the only reasonable assumption we can reach.

The referenced rating system is likewise problematic in that the proposed regulation is unclear as to whether it will be the funding banks or FCA who will give the rating. Any rating

system is also detrimental to YBS programs because if disclosed, any rating falling below a system competitor in an over chartered territory can be used against a direct lender such as our Association. Surely it is not the intent of the proposed rule change to have a rating system established which “afford[s] an incentive for entities to better their performance” via negative perceptions of an association?

Our territory is demographically unique and as such, an undefined performance based analysis standard requirement and “rating system” will not strengthen our Association’s YBS program.

Despite the FCA comment recited in the GAO Report regarding past performance, even a “year-to-year” comparison of our Association’s service to YBS is not a reliable indicator of our “institution’s performance in that regard,” given the continuing lack of meaningful data on the unmet credit needs of YBS. Any such performance standard, whether it be a year-to-year analysis or a direct lender to direct lender rated performance standard, will not further the YBS program mission. We further find a rating system troublesome where, according to a study conducted by the University of Wisconsin and sponsored in part by the Department of Agriculture, for the period of 2000 - 2010, almost every county or parish in our territory is experiencing a negative migration pattern. See [Net Migration Patterns for US Counties \(wisc.edu\)](http://www.wisc.edu). Added to this, according to the 2017 Census of Agriculture, “the average age of all U.S. farm producers in 2017 was 57.5 years, up 1.2 years from 2012, continuing a long-term trend of aging in the U.S. producer population” and “on average, producers are older in southern states and younger in Midwestern states.” Taken together, we consider it patently prejudicial to have a qualitative, results based, and undefined rating system applied to our Association.

YBS strategy should complement our overall strategy, not compete with it.

It must be understood that our Association’s resources are limited. Requiring a separate and distinct YBS strategic plan, as contemplated in the Proposed Rule, will consume precious Association resources in both time and money. This is particularly true where the rule requires analytics of “results,” “effectiveness,” and “variances” which will require our Association to engage third-parties who are better qualified than we are to conduct cause and effect evaluations for each component of our YBS efforts.

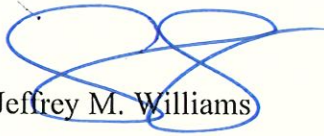
We appreciate the FCA’s review of the existing regulations for opportunities to increase direct lender associations’ YBS activity, however for the reasons set forth in the FCC comment letter [and herein], we do not support the YBS Proposed Rule as currently presented. We also point out that “the absence of evidence is not necessarily the evidence of absence” and this is applicable to the justifications advanced by FCA for the portions of the regulatory change discussed herein.

Accordingly, we respectfully request that the FCA withdraw the YBS Proposed Rule, or alternatively, we request an opportunity for System representatives and industry experts to further meet with the FCA to explore possible improvements that could be made to existing regulations to accomplish the stated goals of the YBS Proposed Rule.

Thank you again for the opportunity to comment on the YBS Proposed Rule, and we hope that our comments herein, as well as those submitted by the FCC and other System institutions, will assist the FCA in reevaluating the YBS Proposed Rule.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Jeffrey M. Williams

General Counsel