Sent via email to: reg-comm@fca.gov

August 12, 2022

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

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

Dear Ms. Agans:

Farm Credit of Florida, ACA (the "Association"), is grateful for the opportunity to submit comments to Farm Credit Administration ("FCA") in response the Proposed Rule regarding Young, Beginning, and Small Farmers and Ranchers that was published in 87 Federal Register 36261-36266 (the "Proposed Rule"). The Association has reviewed the Proposed Rule with management, members of its Board of Directors, its employees, outside agents, and our funding bank, AgFirst Farm Credit Bank ("AgFirst"). The Association also participated in meetings and discussions with other system institutional lenders, including Farm Credit associations, as well as district banks and Farm Credit Council ("FCC") to review the Proposed Rule in the background of existing regulations, the Preamble to the Proposed Rule, relevant FCA-published materials, materials and authorities relevant to other lending institutions regarding such matters, and authorities relating to the interpretation and application of laws and regulations to gain a perspective of the impact of the Proposed Rule on the Association and its borrowers.

As a system institutional lender, for the reasons set forth in comments submitted by FCC and AgFirst as well as the Association's comments set forth below, the Proposed Rule will not achieve the Agency's stated objective of improving service to young, beginning, and small farmers, ranchers, and producers or harvesters of aquatic products ("YBS") borrowers and in fact, the Association, its borrowers (including potential YBS borrowers), and its funding bank will be directly and adversely impacted if the Proposed Rule is adopted. The Association respectfully requests that the Proposed Rule be withdrawn.

The Association fully supports and adopts the comments on the Proposed Rule submitted by FCC and by AgFirst. Such comments are incorporated by reference as if fully set forth in this letter.

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Background of the Association's YBS Program: A History of Success

Florida's agricultural economy is one of the most diverse in the United States and the Association provides financing in over twelve (12) different major commodity sectors. Start up capitalization requirements in these sectors can require input costs for massive combines, tree plantings with multiple year maintenance requirements before yields can cash flow operations, construction of costly packing sheds that meet strict food safety criteria, carrying costs for labor from sow to harvest, and the procurement of land of suitable acreage to support the necessary commodity volume for a profit. Yet even with these significant economic start up hurdles, through diligent efforts and hard work, the Association has established a long-standing and successful Young, Beginning and Small Farmer program. Grounded in the roots of its predecessor institutions in North Florida, Southwest Florida and South Florida, and continuing as the successor merged institution, the Association has assembled a portfolio of qualified YBS borrowers that constitute 56.8 % of the Association's total designated borrowing entities, comprises 39.0% of the Association total originated portfolio, and embraces 85.7% of the Association's total of all commodities financed by the Association. Further, the Association for more than five (5) years has financed 23.1% of the Association YBS borrowers. Over the last five (5) years, YBS lending has grown in total volume by an average of 2.45% per year. These numbers are truly remarkable given the diversity of commodities financed in the lending territory of the Association. The average loan size of an originated YBS loan is $212,122.26.

As part of its overall commitment to its borrower stockholders, the Association has three advisory groups strategically situated throughout its geographic territory that serve as sources of referral and input on community lending needs, with a special emphasis on the needs of young, beginning and small farmers. These groups meet semi-annually and each time they commit a half day to these endeavors. The group further provides an opportunity for education to all local farmers in areas of emerging technology, financial market updates and association policy initiatives, all of which provide critical insight to existing and potential YBS farmers.

Lack of Necessity for Rule.

The empirical data presented in the preceding paragraph reflects the Association's existing steadfast commitment to development of a diverse pool of future farmer borrowers for Florida. It further clearly demonstrates the Association's motivation to grow this sector of lending, not only for the benefit of long-term Florida farming stability, but also for the Association's self-preservation by positioning itself to provide lending and other financial services to future generations of borrowers.

Further, the Association has programs in place to help its YBS farmers gain a foothold in the complex Florida agricultural marketplace. For example:

i. The Association's lending programs are sensitive to the need for YBS borrowers to have manageable interest rates and loan fees and the Association makes a conscientious effort to provide affordable credit for the YBS borrower.

ii. To provide credit quality enhancements, the Association Partners with Farm Services Agency, Small Business Administration and USDA to help Young, Beginning, and Small farmer producers purchase farmland and to gain access to operating capital. With this collaborative partnership the Association not only can receive referrals from those agencies of additional loan business, the Association is further able to secure mitigation of risk of loss through agency guarantees of up to 95 percent of financial loss of principal and interest.

iii. The Association further partners with the University of Florida, Institute of Food and Agricultural Sciences to provide hands on learning labs providing education on record keeping, management of debt to income ratio, and weather and pest risk mitigation. These topics are beneficial in cultivating preferred YBS borrowers for the Association.

Some of our sister associations have a uniform catalogue of financed commodities in which a one size fits all YBS program has a better chance to succeed. However, Farm Credit of Florida, ACA requires and has a fluid and adaptable program that can pivot to meet an ever-changing agricultural commodity landscape. For example, in the last 5 years, blueberry production in Florida has grown by over 85% from 7,300 tons per year in 2016 to over 13,250 tons per year in 2021. While a YBS program criteria that would be good for start up Iowa corn farms might have some analogy in Florida sweet corn startups, it clearly would not be able to address the changing landscape of start up blueberry farming. For Florida, one size will not fit all.

Lack of Clear Guidance in Proposed Rule for a Funding Bank's Review of an Association Plan.

As reflected below, the creation of uncertainty in the implementation of its YBS programs and the addition of increased financial burdens for sake of statistical data assembly under the Proposed Rule, will do nothing to add to the Association's current strong program nor will it add any enhanced motivation for growth in this market sector. To the contrary, it diverts valuable resources from the very mission of service to this sector of our agricultural community.

Present YBS regulations provide for a very limited role of the funding bank in the oversight of an association's YBS program. The existing rule clearly provides that the funding bank's review is "***limited to a determination that the YBS program contains all the required components".*** It does not require the evaluation of the effectiveness of the program or any of its components. It is essentially a "check the box" duty. The Proposed Rule, however, requires the funding bank to determine if not only components are missing, but also whether the plan is ***deficient***.

The Proposed Rule provides no standard for the funding bank to measure whether any quantitative goal is deficient. It does not even provide the funding bank with any guidance on how to gain practical knowledge to establish quantitative goals for associations. For example, under the Proposed Rule, how will the funding bank determine what is a proper YBS loan volume for an association? Is it to be a fixed total percentage of the association's total loan volume? If it is variable, what index should be provided to an association to set its goal to at least know the minimum objective to avoid a deficiency determination? Will the goal (or even the index, if applicable) vary from association to association? Should the goal vary from association to association? What if there is disagreement between the funding bank and the association on the loan volume goal? How is it resolved given there is no appeal or other dispute resolution process within this Proposed Rule for any dispute between a funding bank and its associations on funding bank imposed standards for goals?

These same failings apply to all the remaining quantitative goals. As a further exacerbation of the problem, the funding bank is placed in a position of having to effectively invent the goal standards on its own, as under the Proposed Rule, each funding bank ***must implement internal***

controls that establish clear lines of responsibility for approving, reviewing, and monitoring ……. association YBS strategic plans, programs and reporting.

Under the Proposed Rule, there is no opportunity for association input on any goal criteria. Without the creation of standards, how can any association's plan or program be fairly reviewed by a funding bank to determine if it is deficient? What happens if funding banks themselves differ in their selection of a standard for a goal or goals? How is the conflict to be resolved to insure harmony and a level playing field within the system itself? To suggest this can be resolved by FCA bookletter, informational memorandum, or exam manual update, will result in a rulemaking action without the opportunity for fair comment by the affected parties.

Lack of Clear Guidance in Proposed Rule for a Rating System.

As extensively noted in the FCC comment letter, the Proposed Rule contains commentary referencing a rating system for an association's YBS program performance under the Proposed Rule. No such rating system requirement exists in the present rule. If there is to be a rating system, then the use of language from the old rule relating to "goals" fails to provide clear guidance in numerous areas to provide a basis for FCA examiners or the funding bank assessment personnel's evaluation of appropriateness of the goal and the level of success in meeting the goal. For Example:

A. **Loan Volume**. While metrics for things such as loan growth will be readily available, does the rating system require an absolute goal number for an association's total YBS loans? Likewise, how is the goal for loan mix over the different commodities and loan mix for differing classes of farmer (that is, Young, Beginning and Small) in this program determined for this rating system? The association may have large loan volume growth in beginning farmer's classification by virtue of a new major player entering into a market with a large loan, but no growth in the young farmer category or the small farmer category. Will there be a deficiency assessment made by funding bank assessment personnel in the association's goal, even if the new beginning farmer's loan amount exceeds the total YBS goal for loan volume? How will this rating system for goals account for failed loans? There may be a large number of deals closed for young and small farmers that are unsuccessful. Under this rating system, will the association be deemed deficient in its efforts by virtue of a market down turn that has a disproportionate impact on small or young farmers?

B. Capital Commitment. For the contemplated environment with a rating system, there is a total lack of criteria to determine how much capital an association should allocate to its YBS program. This needs to be determined on an association-by-association basis. Clearly, any criteria for the determination of a capital commitment standard must account for association asset base, association geographic territory size, and association commodity mix. That does not exist. As a practical matter, there is a higher risk of default and risk of loss associated with YBS borrowers, yet no standard is included to account for an association's loss experience in both a commodity and class of YBS borrower in determining if it was deficient in achieving its capital goal for YBS loans. These issues beg the question: What yardstick is to be employed by either FCA examiners or the funding bank assessment personnel, of whether a program is deficient for this capitalization "goal"? Clearly, both FCA examiners and the funding bank assessment personnel would take the position that an arbitrarily set percentage of capital as a YBS goal is an unsound practice. Yet somehow, **some unspecified value** will be incorporated in **some yet undefined rating system**.

C. **Marketing, Outreach, and Education.** For an environment with a rating system, the Proposed Rule is devoid of criteria to determine how to measure an association's success of its marketing, outreach and education program. Do you measure the success of education of potential YBS candidates strictly by the empirical count of attendees at a program? If so, will FCA examiners or the funding bank assessment personnel eliminate programs from consideration if they believe they are just a "free dinner" program concept to get bodies in the door to meet YBS goal numbers? Under this rating system, will FCA examiners or the funding bank assessment personnel ask for testing of attendees on program content to determine the effectiveness of a program? Will FCA examiners or funding bank assessment personnel want copies of educational materials so that they can independently determine if it was in fact educational?

Under the Proposed Rule, the assessment of these so-called "quantitative goals" to determine if they are deficient will be the product of a completely subjective analysis on the part of FCA examiners and the funding bank assessment personnel.

<u>Proposed Rule's Failure to Take into Account the Inability to Find Financial Partners.</u>

While the concept of coordinating with governmental and private partners is a laudable one, FCC provided extensive commentary on the failings of the concept of coordinating with governmental and private partners. However, there are other obvious barriers to this concept. First, if the associations were to look to commercial banks to collaborate in a deal, the association will be competing for a prime commercial bank borrower pool, which clearly is not in the commercial bank's interest. Secondly, commercial banks will not want to be bound by borrower's rights to restructure a YBS borrower's distressed loan. These two issues alone create insurmountable barriers to doing deals with commercial banks.

<u>Impacts to Association and Funding Banks and Alteration of their Relationship:</u>

Assembly of data is never cheap. In the Proposed Rule's scheme, that cost is well past any marginal return as it will have not only a negative economic impact on funding banks and associations, but also a negative impact on the relationship between funding banks and their associations. For example, as to each funding bank, there will be: (i) the expense of the initial development of a supervisory program in an environment that lacks clearly defined parameters[1]; and (ii) the consequential expense of the burden of acting as watchdog over its member associations; including the expense of hiring and training of personnel to carry out that supervision**.**

From the cost perspective at the association level, the association will be saddled with the cost of: (i) an increased human capital commitment to engineer a program that lacks clearly defined

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[1] For example, as set forth in the comment to the Proposed Rule:

"we believe funding banks should implement internal controls that establish clear lines of responsibility for approving, reviewing, and monitoring of their affiliated associations' YBS reporting and activities"

And further:

Since a strategic plan is a newly proposed requirement for direct lender associations, it is appropriate that the bank adopt written policies directing affiliated associations to establish a plan.

parameters with an ongoing need to pivot to adjust to "interpretative decisions" of examination staff of FCA, and the funding bank assessment personnel; (ii) redesigning and implementing marketing programs; (iii) training and maintaining staff for continuous data gathering; (iv) creation and staffing for the additional internal audit program for regulatory compliance answerable to both the funding bank and FCA.

The Association sees the necessity of allocation of additional human capital to meet the regulatory burden imposed for creating the detailed formalized YBS program contemplated by the Proposed Rule, the voluminous formal reporting contemplated by the Proposed Rule, dealing with dueling examinations of FCA and AgFirst under the Proposed Rule, as well as the increased marketing efforts contemplated by the Proposed Rule throughout our large geographic territory and over our diverse commodity base. We perceive these obligations may require as many as three full time equivalent employees of senior staff level (assistant vice president and above).

Separate and apart from the direct economic impacts listed above, there is the creation of a new paradigm between the association and its funding bank. Previously, the funding bank acted as a conduit to transmit YBS data.

The Proposed Regulation will provide:

The funding bank's review and approval must determine if the YBS strategic plan and program contain all required components as set forth in paragraphs (c) and (d) of this section.

Any conclusion by the bank that a YBS strategic plan or program is deficient must be communicated to the direct lender association in writing.

This creates new assessment criteria outside a funding bank's normal financial audit arena. [2] It begs the question of what action the funding bank is to take when it perceives the association program is deficient. With the power to evaluate and criticize, comes the implied power to issue punitive measures. [3] Will the General Funding Agreement between the association and funding bank be altered to contain YBS covenants that carry economic penalties for a "breach" as measured by standard that does not exist in the Proposed Regulation? This new relationship places the parties in

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[2] The comment notes that:

In addition, each affiliated association's YBS program is subject to review and approval by their respective funding bank, which must report annually toFCA on the operations and achievements of their associations' programs;

This would provide funding banks with the opportunity to become more involved with their respective associations' efforts to enhance YBS programs; and

As a result of this structure and crucial data reporting, funding banks are positioned not only to help FCA in our YBS oversight but also to provide assistance to associations seeking to bolster their YBS programs

[3] The comment notes that:

With the proposed requirement of a YBS strategic plan, we also propose adding bank review and approval of such plan.Further, we propose that the bank's review ensure all elements in proposed paragraphs (c) and (d) are contained in the plan and program, and **remove existing limitations on the bank to review only for the presence of the required elements**.

potentially adversarial roles with funding bank criticism being levied against associations in an environment with no rules.

We are appreciative of the opportunity to comment on the Proposed Rule and to present our highest-ranking concerns to FCA for its consideration. However, even though we raise 21 questions in this letter that have no regulatory guidance or answers, our comments are by no means exhaustive of all of our grave reservations concerning the impact of the Proposed Rule. We respectfully disagree the Proposed Rule will enhance our ability to serve our YBS customers and fulfill our YBS mission.

For the reasons stated herein and those set forth in the FCC comment letter and the comment letter from AgFirst Farm Credit Bank, we respectfully request that FCA withdraw the Proposed Rule.

Very Truly Yours,

W. Eric Hopkins
Chairman, Board of Directrors

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