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January 20, 2026

The Internal Revenue Service
CC:PA:01:PR (Notice 2025-71)
Room 5503, P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Interim Guidance Regarding Interest on Loans Secured by Rural or Agricultural Real Estate Property under Section 139L of the Internal Revenue Code (Notice 2025-71)

To Whom It May Concern:

The Independent Community Bankers of America (ICBA) and its members appreciate the opportunity to comment on the interim guidance (guidance) addressing the exclusion of interest on loans secured by rural or agricultural real property under Section 139L of the Internal Revenue Code, which was added to the Code by the One Big Beautiful Bill Act (OBBBA), signed into law on July 4, 2025. We are pleased that the guidance contains positive features, consistent with our recommendations to Treasury and the IRS in advance of its publication.

Community banks extend nearly 80 percent of bank agricultural loans and are deeply committed to the success of American agriculture. This is why we strongly support Section 139L and urge you to implement the statute to ensure that it will bring needed interest rate relief to American farmers and ranchers and generate growth in surrounding rural communities.

Section 139L: Statutory Background

Section 139L is based on the Access to Credit for our Rural Economy (ACRE) Act which, among other provisions, would provide a 100 percent exclusion of interest income earned on agricultural real estate loans. ICBA worked closely with Congress over the course of several congresses to develop ACRE as a solution that would create lower-cost credit for American farmers and ranchers and thereby strengthen the prosperity of rural communities. The ACRE Act reflects input from thousands of agricultural community banks with decades of experience and honed expertise in working with American farmers and ranchers.

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ICBA is very pleased that a version of ACRE was included in the OBBBA as a permanent section of the tax code and takes a strong interest in its implementation. The OBBBA limits the income exclusion to 25 percent. We urge broad flexibility in the implementation of Section 139L to ensure its benefits flow through to American farmers and ranchers in an adverse economic environment. We believe that as many agricultural loans as possible, consistent with the statute and congressional intent, should qualify under Section 139L. An unreasonably narrow interpretation of Section 139L would shortchange the potential of the OBBBA. With appropriate implementation, the new law will support the viability of American agriculture.

Support for Provisions of the Guidance

We find that the guidance includes many features that allow lenders to rely on their discretion and judgment and minimize lender documentation and burden. These are discussed below.

Definition of "secured by agricultural real estate"

Under Section 139L(c)(1)(A), to qualify for the tax exclusion, a loan must be secured by "rural and agricultural real estate." The guidance provides that this condition is met when "the qualified lender holds a valid and enforceable security interest with respect to the qualified rural or agricultural property under applicable law." (3.04(1)(a))

The guidance provides that a lender may rely on a "reasonable belief" that the loan continues to be secured by qualified rural or agricultural property subsequent to the initial determination. We support this straight-forward definition and reliance on "reasonable belief."

Addition of Personal Property

We appreciate 3.04(3(b)), which allows a lender to "add to the fair market value of the rural or agricultural real estate the fair market value of any personal property used in the course of the activities conducted on such real estate… such as farm equipment and machinery or livestock." We believe this will reasonably broaden the utility of Section 139L for the benefit of borrowers.

Safe Harbor

We support the safe harbor described in 3.04(2) that allows a qualified lender to treat a loan as fully secured by a qualified rural or agricultural property if the fair market value of the property securing the loan is at least 80 percent of the issue price of the loan.

Use of Proceeds

We appreciate the clarification in 3.04(7) that "a borrower's use of loan proceeds does not affect whether a loan may be treated as a qualified real estate loan." We believe this is consistent with statutory intent.

Recommendations for the Proposed Rule

As you craft a proposed rule, we suggest changes below that would give Section 139L greater reach and qualify more loans for the benefit of American farmers and ranchers.

Coordination with Tax Code Section 265

The application of Section 265 and the TEFRA calculations required thereunder will have a significant impact on lenders' decision to extend Section 139L loans and thereby reduce borrower costs. However, we understand that there is widespread disagreement among tax advisory firms on the application of Section 265 to Section 139L loans and request that you provide clarification in the proposed rule.

Section 139L(d) provides for both (i) a discount of disallowed interest expense (139L(d)(2)) and (ii) a discount of the adjusted loan basis (139L(d)(3)). The pro rata methodology provided in Section 265(b)(2) should be applied to accommodate both of these provisions: a discounted loan basis for the calculation of the ratio of average tax-exempt holdings to average total assets and discounted interest expense for the purpose of determining disallowed interest expense. We believe this is the intended interpretation of Section 139L(d).

In addition, we believe it would be reasonable and appropriate to treat Section 139L loans to smaller agricultural borrowers as "qualified tax-exempt obligations" under Section 265(b)(3), commonly referred to as "bank qualified." This treatment would allow a bank lender to deduct 80 percent of interest expense incurred to purchase or carry tax-exempt debt provided the borrower expects to issue no more than $10 million of tax-exempt obligations in a given year.

We believe that bank qualified treatment would be consistent with the purpose of Section 265(b)(3), to create interest rate relief for smaller borrowers to promote the public interest. Section 139L loans provide a benefit to American farmers and ranchers and surrounding communities.

Flexibility in Application of "Refinancings" Disqualification

Section 139L(c)(2) disqualifies "refinancings" from the tax exclusion. Specifically, the paragraph provides that "a loan shall not be treated as made after the date of the enactment of this section (i.e., would be disqualified) to the extent that the proceeds of such loan are used to refinance a loan which was made on or before the date of the enactment."

The term "refinancing" is not formally defined in the tax code. Among agricultural bankers, a loan that includes "new money" beyond what is needed to pay off an existing loan is not a refinancing. It is common practice among agricultural lenders to modify loans as the borrower's circumstances change to include new money or new collateral or to change loan terms. Such loans should qualify under Section 139L. An overly broad interpretation of "refinancing," to include, and thus disqualify, all loans that restructure a pre-enactment loan would block the availability of interest rate relief for borrowers who need it most.

The guidance provides that "the amount of the new loan that may be treated as a qualified real estate loan is limited to the portion of the new loan that exceeds the outstanding balance of the pre-enactment loan as of the date of the refinancing." The guidance requires a pro-rata allocation of interest between the "portion of the new loan that is a pre-enactment loan and the portion that may be a qualified real estate loan."

In implementing Section 139L(c)(2), we urge you to reconsider this complex and uncertain exercise in allocating interest to calculate the tax exclusion. Agricultural bankers have told us that "pro-rata would be a nightmare to manage." Bankers state that pro-rata income determinations would be administratively difficult, especially for portfolio loans, loans with changing balances, and participation loans, for example. The limited tax benefit may not cover the cost of tracking loans for tax determinations,
In effect, we believe that many lenders would choose not to apply the exclusion to any loan that includes paydown of pre-enactment debt given the complexity of the calculations required.

To ensure that interest rate relief is broadly available to farmers and ranchers, Section 139L should be easy for agricultural lenders to apply and for the IRS to administer. Broadly speaking, an approach that resolves any uncertainties in the definition of refinancing in a way that qualifies more rather than fewer loans would, we believe, be true to the statutory intent of Section 139L and the OBBBA.

We strongly recommend that loans that consist "substantially" of new debt be qualified in full. Alternatively, the guidance could provide a "safe harbor" that would allow a qualifying loan to include some portion of pre-enactment debt repayment.

This approach would be consistent with that taken in other portions of the guidance, such as:

- The safe harbor of 3.04(2)
- The "secured to a substantial extent" condition used in 3.04(3)(b)
- The "substantial use requirement" of 3.04(7).06

We strongly approve and appreciate the flexibility of the above provisions and urge you to extend the same reasonable flexibility to the application of the prohibition on "refinancings."

In addition to the accommodations we seek above, we recommend you consider other exemptions including:

- Agricultural construction financing where two phases (construction loan and permanent financing) are present.
- Disaster-related financing (destruction and reconstruction from an "Act of God"); involuntary refinancing (non-renewal from lender, forced refinance due to a merger of financial institutions), or short-term bridge refinancing tied to Section 139L eligible credit.

Collateral Valuation

We note the legislative text of 139L does not require or mention a fair market value (FMV) procedure for determining the eligible loan amount. When a bank originates a real estate loan for agricultural purposes and secures it with real estate significantly used for agricultural purposes, the loan meets all underwriting guidelines (including cash flow metrics) set forth in the bank's policy. These underwriting guidelines undergo constant scrutiny and evaluation by the bank's prudential regulators. Generally, these loans have a maximum loan-to-value ratio of 50 to 65 percent based on an appraisal or internal evaluation.

Requiring tests for FMV in addition to the bank's typical underwriting adds unnecessary complexity and could be considered burdensome by bankers for the purpose of avoiding potential abuse.
We believe these underwriting procedures, designed to protect the safety and soundness of the bank, should be sufficient to qualify a loan under Section 139L. Banks have questioned why the guidance would add complexity. We recommend that the FMV approach outlined in the guidance be an option for determining the loan amount if the lender prefers to use it instead of their normal underwriting criteria approved by the lender's regulators.

Conclusion

ICBA appreciates your thoughtfully crafted guidance under Section 139L. We believe that you have sought to resolve uncertainties in the statute in favor of lenders and borrowers with the intention of extending the reach of Section 139L within the confines of the statute and consistent with congressional intent. Please see the attachment below which provides responses to questions raised in the guidance.

In closing, a primary reason a lender might **not** use ACRE is regulatory and administrative uncertainty. If definitions (e.g., substantial use; refinancings; agricultural real estate; etc.), ongoing compliance requirements, or post-origination monitoring are overly prescriptive or complex, the cost and risk of compliance may outweigh the benefit of the 139L tax exclusion, especially for smaller loans.

We believe it is important for the IRS's regulations to adhere to direction provided in Congress's letter of intent sent to Treasury Secretary Bessent on September 24, 2025. As you craft a proposed rule, we ask you to consider the recommendations set forth above which, we believe, will directly benefit American farmers and ranchers in the way intended by Congress.

Thank you for your consideration. We are happy to discuss this letter further.

Sincerely,

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Additional Responses to Specific IRS Guidance Questions

(1) To what extent should the forthcoming proposed regulations address the meaning of the terms rural or ag real estate, real property, ag products, fishing or seafood processing, or aquaculture facility? Should the forthcoming proposed regulations consider definitions and guidance relating to similar terms, including under § 2032A, § 1.199A-8, and § 1.856-10?

Response – We do not believe that there should be a separate definition of these terms in the Section 139L regulation as the definition of such terms are well understood within the agricultural sector. Lenders could be encouraged to consider the above legal citations, Farm Credit Administration definitions, or any generally accepted industry practice. We do not believe the IRS needs to develop new definitions.

(2) To what extent should the forthcoming proposed regulations address whether property is substantially used for the production of one or more agricultural products, or in the trade or business of fishing or seafood processing? For example, are factors such as time spent, amount of land used, or revenue relevant, and to what extent should seasonality or periods of non-use be further considered?

Response – This determination should be made by the lender. Agricultural lending is highly variable and often involves unique circumstances. We do not believe factors cited above (time spent, amount of land, revenue) are necessary particularly since they could needlessly expand the paperwork and regulatory burden needed for compliance, thus reducing the desire to utilize 139L.

Lenders already determine highest and best use and FMV at origination, incorporating land use, income generation, and market factors. Imposing rigid metrics risks conflicting with established appraisal standards, creating unnecessary compliance risk, and reducing lender participation. Allowing lenders to rely on ordinary underwriting and appraisal practices is consistent with safety-and-soundness principles and congressional intent.

Substantial use should be applicable even if agricultural activity occurs on a minor portion of the acreage, provided that a portion produces sustainable revenue, and the FMV of the property is within the safe harbor. This reflects real-world agricultural lending, where productivity and collateral coverage matter more than acreage percentages.

Code provisions related to tax-exempt state and local bonds require the issuer to certify eligibility. The proposed rule should apply the same procedure to Section 139L loans. If the borrower is able to certify to the bank that the loan is for an agricultural purpose, that should suffice.

(3) To what extent should the forthcoming proposed regulations address how the substantial use requirement applies to properties with mixed uses, such as farmland that is used to host events or other non-agricultural activity, or properties that are also used (in whole or part) for personal purposes?

Response – The substantial use test should focus on whether: a) agricultural production is a material driver of the collateral value, and b) the agricultural use of the property supports the repayment capacity of the loan. Mixed use properties with event spaces, personal use, or agritourism should not disqualify a property if agriculture still provides significant economic use of the property. A concert doesn't change a corn field's purpose.

(4) How should the forthcoming proposed regulations address changes involving qualified rural or agricultural property following the issuance of a qualified real estate loan, including changes in the use of the property, changes to the property, or changes affecting the collateral of a loan?

Response – Only the initial determination at origination should control qualification. Requiring ongoing monitoring of land use would increase paperwork and compliance costs, create uncertainty for lenders and borrowers, and discourage use of the program. Unless there is fraud or material misrepresentation at origination, post-closing changes should not retroactively affect eligibility.

(5) How should the forthcoming proposed regulations address how a qualified lender determines whether the loan remains secured by qualified rural or agricultural property?

Response – See question 4 above. The vast majority of agricultural property or buildings could not be changed into something commercial without additional funds being needed and those additional funds would not qualify for ACRE. Any future recategorization would be miniscule.

(6) To what extent should the forthcoming proposed regulations address how § 139L applies in securitization structures, including a securitization involving a trust for which holders of trust certificates are treated as holding an interest in the underlying loan assets?

Response – There is a robust secondary market that many lenders use to purchase and sell loans, including Section 139L- eligible loans. It is important to ensure loans held in a securitization structure preserve Section 139L eligibility. Securitization must not be treated as refinancing, which would adversely impact secondary market activity, erode liquidity for rural lenders, and undermine the access and availability of credit for rural and agricultural borrowers – the very objective Section 139L is intended to advance. The tax-exempt treatment should follow the qualifying loan through the securitization chain to the investor level and be recognized to the same extent as if the loan were

held directly.

(7) To what extent should the forthcoming proposed regulations address § 139L(d), regarding the application of § 265 to any qualified real estate loan?

Response – See our recommendations in the body of the letter above.