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Submitted electronically to: http:// www.regulations.gov

May 22nd, 2019

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

Re: 12 CFR Part 614 RIN 3052–AD32 Advance Notice of Proposed Rulemaking—Young, Beginning, and Small Farmers and Ranchers, *Federal Register* /Vol. 84, No. 35/Thursday, February 21, 2019, pg 5389

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the advance notice of proposed rulemaking (ANPR) concerning the Farm Credit Administration's (FCA's) young, beginning, and small farmers (YBS) regulations. The ANPR points out that the Farm Credit Administration (FCA, Agency) is requesting comments on ways to collect, evaluate, and report data on how the Farm Credit System (FCS or System) is fulfilling its mission to finance and provide services to YBS farmers, ranchers, and producers or harvesters of aquatic products. Additionally, FCA seeks comments on how to define or clarify key terms associated with the collection and reporting of YBS data.

The Farm Credit Act of 1971, as amended (Act), requires each System association to prepare a program for furnishing sound and constructive credit and related services to YBS Farmers. However, the Act does not require FCS to meet any specific obligations or standards in servicing YBS farmers. The basic requirement is for each district bank to annually report to the FCA on the activities of the associations under their YBS programs. The information in the collected data is reported in accordance with FCA stipulations. FCA then provides a summary and analysis of these results in their annual report to Congress on the condition of the FCS. FCA's regulations that implement these requirements are located at 12 CFR 614.4165.

ICBA Comments

As the ANPR notes, it has been approximately twenty years since FCA has revised its YBS regulation. ICBA agrees the FCA should review the methods used to collect and report YBS data to ensure that it is accurate, complete, and can be used reliably in conjunction with other related data reported by the System.

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. For more information, visit ICBA's website at www.icba.org.

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ICBA believes the FCA is at a critical juncture with the reporting of information related to the FCS's YBS programs. Quite frankly, the FCA/FCS has not aggregated the YBS data and reported this data in an accurate and useable manner in previous years. Therefore, FCA can either decide to implement a reporting system that accurately reflects the number of YBS farmers and ranchers borrowing from the System or FCA can implement a reporting scheme that continues to misrepresent the FCS's YBS activities and continues to intentionally confuse and distort the FCS's YBS activities to Congress and the general public.

ICBA urges FCA to stop worrying about the System's fears regarding their potential reputational risk regarding a lack of YBS lending. The ANPR notes that FCS institutions are not required to make a certain amount of YBS loans and the FCA and FCS's statutory obligation is only to have a YBS program in place and accurately report on the program. Therefore, the FCA's focus should be on a YBS reporting system that promotes transparency, accuracy and understanding.

Counting YBS Loans Multiple Times. As FCA states, the three categories (young-beginning-small), while separate and distinct, allow counting of a single borrower multiple times. A loan to one borrower may meet the definition for a single category or for all the categories, allowing a single farmer to be counted three times. Even worse, if another FCS institution lends to the same farmer, the loan could be counted an additional three or more times, leading to further duplication in counting single borrowers when the YBS numbers are aggregated.

Non-Uniform Data and Inflated YBS Statistics. It appears the data used by FCA and other FCS sources differs, sometimes considerably. In looking at the "small farmer" (annual gross sales of less than $250,000) category, for example, the total number of loans reported by the Federal Farm Credit Banks Funding Corporation (funding corporation or FFCBFC) for year-end 2016[2] was 1,062,364. But the total number of YBS loans outstanding according to the FCA[3] was 971,888, a difference of 90,476 loans, or about 10 percent!

Further, the FCA reported year-end 2016 total loan volume for "small farmers" was $47.7 billion, while FFCBFC reported that year-end 2016 loan volume outstanding for "small farmers" was $252.5 billion, a difference of approximately $205 billion!

It is concerning the FFCBFC reports that of the $252.582 billion in outstanding loans to "small farmers" at year-end 2016, $197.617 billion is attributable to loans of over $250,000 – nearly 80 percent. Farmers with gross income of less than $250,000 would likely not be the ones taking out loans of more than $250,000. This data suggests that FCA is counting farmers as "small" even when they no longer have less than $250,000 in annual gross sales but are borrowing much larger amounts. FCA is allowing FCS to count large farmers as small farmers because the large farmers at one time received a loan from FCS when they had smaller operations.

[2] FFCBFC's 2016 Annual Information Statement of The Farm Credit System, page 174
[3] 2016 Results: FCA's Annual Report on The Farm Credit System's Young, Beginning and Small Farmer Mission Performance, FCA Board Meeting June 8, 2017, page 5

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FCS admits to using this inflation of the numbers tactic in the FFCBFC's annual reports, which define a "small farmer" as "A farmer, rancher or producer or harvester of aquatic products who normally generates less than $250 thousand in annual gross sales of agricultural or aquatic products at the date the loan was originally made (emphasis added).[4]

Counting large farmers as small farmers completely turns the purpose of YBS reporting on its head. FCA and FCS are "gaming the system" by manipulating and inflating numbers to present FCS in the best possible light for YBS lending. Again, this is unnecessary since there is no statutory obligation to achieve measurable metrics for YBS lending. Therefore, FCA should just report YBS activity in a straightforward manner that is easily understood by the general public.

Conclusion

ICBA believes the FCA's reporting of YBS data should include a column or data reflecting the single counting of the actual number of YBS farmers without counting these farmers and ranchers multiple times. This data could also include the dollar volume of loans borrowed by these producers without counting the borrowings multiple times as well. An individual farmer's relationship with FCS should be counted only once.

ICBA believes current criteria (young – under 35 years old; beginning – less than 10 years in farming; small – under $250,000 annual gross sales) should be maintained, not increased. ICBA strongly disagrees with efforts to index current YBS categories to allow the current criteria to increase over time as this renders the purpose of the YBS programs meaningless as FCS focuses on larger, older, well established producers while calling them small, young and beginning producers. ICBA urges FCA to report YBS data correctly, in an easily understood manner with a minimum of categories as long as an accurate picture of YBS activity is presented.

Attached to this letter are ICBA's specific responses to the 23 questions FCA poses in the ANPR. If you would like to discuss this letter further, please feel free to contact me at mark.scanlan@icba.org or 202-659-8111.

Sincerely,

/Signed/

Mark Scanlan
Senior V.P., Agriculture and Rural Policy

Attachment

[4] FFCBFC, *op. cit*., page 173.

ICBA Responses to Questions Regarding FCA's YBS ANPR

May 22, 2019

FCS Question: (1) Should loans continue to be reported in all the existing categories in which they fit? Alternatively, should loans be reported in seven mutually exclusive categories: Young; beginning; small; young and small; young and beginning; beginning and small; and young, beginning, and small?

ICBA Recommendation: FCA should not count loans to a single farmer multiple times as is currently done but count each borrower as one relationship. There should be one column or data set in FCA's annual report that counts only the number of farmers once even if they qualify in more than one category. It would also be useful to know how many FCS borrowers, regardless of the number of loans they have, would fit in all three categories. Additionally, farmers who qualified in a category many years ago should not be counted currently. For example, FCA should not count farmers who have been farming for twenty years simply because they were once a beginning farmer or were once a small farmer but may now have annual gross sales far in excess of $250,000 (i.e., a farmer who has annual gross sales of over $1 million should not be considered a "small farmer" just because he was a small farmer 15 years ago when he first borrowed from the FCS).

FCA should not have seven categories even if they are mutually exclusive as the sheer volume of categories would make the report confusing and useless. The categories should only include the three YBS categories and an additional category counting FCS borrowers only once regardless of which YBS categories they may fit in.

FCS Questions: (2 - 5) When reporting YBS Farmer program performance, which would be more useful, a focus on the dollar volume of loans, the number of loans, the number of YBS farmers that received credit and services**,** a combination of these, or all? How appropriate is it for lease activity to be reported for YBS purposes? Should leases and services be reported together with or separately from loans? What are ways Institutions could pool resources to ensure all eligible YBS Farmers are being served?

ICBA Recommendation: As noted above, there should only be four reporting categories **–** one for young, one for beginning and one for small with an additional category that counts farmers only once regardless of how many categories they may fit into. If FCA wants to count leases, they should be part of the credit extended as one of the three categories and should not have their own categories to prevent additional counting of such credit as more "borrowers" for purposes of inflating the overall number of borrowers.

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FCS Question: (6) In what ways could Institutions use investment authorities to assist YBS Farmers, and should such investments be reported separately from YBS Farmer loan data?

ICBA Recommendation: Investment authorities should be counted separately from YBS activities for the sake of simplicity, to prevent excess counting of YBS activities and because FCA's investment authorities are controversial and subject to future questioning given that FCA has tended to approve "investments" for purposes that exceed the loan making authorities of the Farm Credit Act.

FCS Question: (7) Given the trends in the average age of farmers, ranchers, and aquatic operators and the transfer of operations from one generation to the next, does the current age limit remain appropriate? If not, what would be a more meaningful age threshold for a ''young'' farmer and why?

ICBA Recommendation: The current age limit of borrowers under 35 years old should be retained. It is appropriate because the YBS designation is supposed to reflect "young" farmers, not middle-aged farmers and not older farmers. The transfer of operations between generations has little to do with the age of the young farmers themselves, but rather the age, financial condition, health and other factors of their parents in conjunction with their succession plan.

FCS Questions: (8) Should the young farmer designation change for a borrower's outstanding loans once they age beyond the threshold?

ICBA Recommendation: Yes, a farmer over the age of 35 should not be counted as a young farmer for YBS reporting just because they took out an initial loan when they were under the age of 35. Counting farmers who are older than the "young" designation (i.e. over 35) as if they were 35 or younger distorts the accuracy of the YBS data and undermines the purpose of Congressional intent in mandating YBS reporting.

FCS Questions: (9) What additional clarification is needed on who qualifies as a young farmer? For example, should the following criteria apply to the determination of whether a person is a young farmer and to what extent: a. Ownership in the agricultural or aquatic operation. b. Ownership of agriculture land only. c. Financial control in the agricultural or aquatic operation. d. Exposure to production risk in the agricultural or aquatic operation.

ICBA Recommendation: A young farmer should have all three components (ownership; financial control; production risk exposure) to be considered a legitimate borrower for YBS reporting purposes. Otherwise, a son or daughter living in a distant city who inherited a farm and rents it out could be considered a YBS farmer even though they are not contributing their personal labor to the farming enterprise. FCS was created to extend credit to *bona fide* farmers.

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FCS Question: (10) Is the 10-year threshold still appropriate, and if not, what would be an appropriate threshold and why?

ICBA Recommendation: Although the 10-year threshold is consistent with other federal programs for classifying a beginning farmer, it is essentially too long of a time period. If someone has been farming for 8, 9, or 10 years, is it accurate to suggest they are a "beginning" farmer? After a half decade running their farm or ranch, producers certainly have gained the skill and expertise to sustain a viable operation.

FCS Question: (11) Should the beginning farmer designation change for a borrower's outstanding loans once the years of experience exceed the threshold?

ICBA Recommendation: Just as with a young farmer exceeding the age of 35, an FCS borrower with 10 years or more of farming or ranching experience should no longer be considered a "beginning" farmer/rancher just because they obtained an initial loan from the FCS many years ago. To count farmers with more than 10 years' experience as beginning farmers/ranchers makes a mockery of FCA's YBS reporting and grossly distorts the accuracy of the reported data.

FCS Question: (12) What additional clarification is needed on who qualifies as a beginning farmer? For example, should the following criteria apply to the determination of whether a person is a beginning farmer and to what extent: a. Ownership in the agricultural or aquatic operation. b. Ownership of agriculture land only. c. Financial control in the agricultural or aquatic operation. d. Exposure to production risk in the agricultural or aquatic operation.

ICBA Recommendation: Regarding the question of additional clarification for beginning farmers, our response would be the same as our response to question 9, but applicable to beginning farmers. A beginning farmer should have all three components (ownership; financial control; production risk exposure) to be considered a legitimate borrower for YBS reporting purposes for the same reasons as we stated in answering question 9.

FCS Question: (13) What criteria should FCA consider in determining whether to maintain or change the $250,000 threshold? For example, should we consider thresholds adopted by other government agencies for their definition of "small'' farmers?

ICBA Recommendation: The $250,000 threshold should remain the same. FCS institutions claim they are not "government" lenders. Therefore, they should not diminish the small farm threshold by raising the annual gross sales criteria above $250,000. Government programs can have benefits not available in the private sector such as grants and direct government loans and other benefits afforded oftentimes to recipients that would not qualify for commercial credit. FCS repeatedly claims their main lending criteria is only that borrowers are "credit worthy."

There is also a well-established history with using the $250,000 threshold and raising this threshold will further distort the true activities of FCS lenders and their actual YBS borrowers by

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significantly magnifying the number of loans or dollar volume of loans while removing FCS's focus from true YBS borrowers. Additionally, changing the income threshold will make it impossible to compare future YBS lending activities with historical YBS lending activity.

FCS Question: (14) Would it be appropriate to index or benchmark the economic measure used at specified points in the future to ensure the threshold is current and a reasonable measure? If so, what would be an appropriate interval and benchmark?

ICBA Recommendation: No. FCA appears to be asking whether to tie the YBS criteria to a type of inflation index. Such an index would be ridiculous as it would continue to inflate the number of YBS borrowers, their loan volume and their borrowing activity beyond any accurate and meaningful standards. The YBS reporting data would be completely useless and meaningless. The result would be to allow FCS's large borrowers to be considered YBS borrowers. One could envision FCA reporting that 60-year-old farmers who have farmed for 30 years and have annual gross incomes of over $2 million would be considered YBS borrowers.

FCS Question: (15) Should the terminology ''normally generates'' be more clearly defined for reporting purposes? Would a multi-year median or Olympic average be a more meaningful measure?

ICBA Recommendation: Once again, the FCA appears to be looking for ways of watering down their YBS reporting using schemes that redefine or render meaningless the use of existing YBS criteria. Farmers should have meaningful annual gross sales of commodities that are typically grown or sold on an annual basis. Obviously, forests would not be expected to generate annual income and adjustments could be made to fit the typical growing nature of various commodities.

FCS Question: (16) Should the measurement for farm or aquatic income reflect a more stable metric compared to the current measure of annual gross sales of agricultural or aquatic products?

ICBA Recommendation: No. Annual gross sales is a very recognizable metric to measure the size of farming operations.

FCS Question: (17) Should a borrower be considered a small farmer if: a. They have not yet generated agricultural or aquatic income? b. They only own agricultural land and no agricultural income is produced?

ICBA Recommendation: ICBA believes the law requires FCS farm borrowers to either be bona fide farmers or be in the process of becoming bona fide farmers. Landowners who have no contribution to running a family farm or contribute no labor can be anything but actual farmers. The purpose of loans obtained by FCS borrowers must be for the purpose of generating agricultural income. Simply owning land that produces no agricultural income does not make someone a farmer and such individuals should not be counted as YBS "farmers."

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FCS Question: (18) Should there be a time period established over which no agricultural or aquatic income is generated that would disqualify the classification of ‘‘small farmer’’ from continuing?

ICBA Recommendation: Yes. Producers should be required to earn income in a manner typical of the commodity for which the money is borrowed. Farmers who raise crops such as corn or soybeans should be required to generate income within a year, or the typical cycle for the commodity being grown. For annual crops, producers should receive annual income.

FCS Question: (19) Should the small farmer designation change for a borrower’s outstanding loans if they grow beyond the threshold?

ICBA Recommendation: Once again, no! Adopting this methodology allows FCA/FCS to count borrowers whose annual gross income far exceeds the $250,000 small farmer threshold, making a mockery of the YBS reporting requirement. This methodology would allow for dramatically inflating the actual YBS farmers being counted and would allow very large FCS borrowers to be counted as small borrowers simply because they were once small farmers.

FCS Question: (20) Should the small farmer measure account for such items as amount of acreage farmed as well as the production value generated?

ICBA Recommendation: No. Production value reflects what is happening on the farm whereas factors such as acreage farmed are extremely varied depending on what type of acreage the farmer/rancher has, the geographic location, etc. Keeping track of such additional and varied factors would amount to an endless task with little to no real value.

FCS Question: (21) Other Reporting Definitions —Material Ownership and Closely Held Entity—Determining whether an entity is a young or beginning farmer. What family connections among individuals who own/operate an entity should be considered to determine whether the entity meets the age or years of experience thresholds?

ICBA Recommendation: Farmers should have a significant degree of financial control, ownership and risk exposure while being actively involved in the farming enterprise. They should certainly be more than hired farm workers or paid farm managers that have no or little ownership control and have little personal risk exposure in the operation(s). They should also not be far removed from the daily operations of the enterprise.

FCS Question: (22) With respect to farming, ranching, and aquatic operations performed through legal entities: a. What young or beginning farmer ownership thresholds should be used to determine that an operation/entity is a young or beginning farmer? b. How should the percentage of ownership in the entity by individuals that meet the requirements for a young or beginning farmer affect the threshold? c. If a single person’s ownership share is not sufficient to meet the threshold, should more than one person be allowed to jointly meet the threshold?

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d. What, if any, overall income threshold should be considered for an entity to be classified as a young or beginning farmer?

ICBA Recommendation: a) the same criteria for YBS categories should apply as currently required. b) Our response to the previous question would also apply here. c) Two or more people should not be allowed to jointly meet the YBS threshold if their combined, not individual, gross annual sales exceed $250,000. Otherwise, farms with several stakeholders and hundreds of thousands of dollars or even millions of dollars of annual gross sales could qualify as small farmers. d) For an entity, the individuals FCS intends to classify as YBS borrowers should fit one of the three YBS categories and the combined income of the YBS farmers should not exceed $250,000 in annual gross sales,

FCA Question: (23) In determining whether an entity is a young or beginning farmer, over what minimum time period should the Agency provide for an association to make the determination, or should the determination be made at a specific point, for example, at the time the loan is applied for or closed?

ICBA Recommendation: The FCS lender should make the determination at the time the loan is closed but they need to update the information on an annual basis and exclude from the YBS category any lender that has "aged-up" for farmers who are then older than 35 or who subsequently have more than 5 – 10 years of farming exp

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