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December 8, 2014

Director
Loan Making Division, FLP/FSA
U.S. Department of Agriculture
1400 Independence Avenue SW., Stop 0522
Washington, DC 20250-0522

RE: Farm Loan Programs - Entity Eligibility, RIN 0560-AI25, Federal Register Volume 79, No. 195, Wednesday, October 8, 2014, Pages 60739-60745

Dear Director/Reviewers:

We are writing to express ICBA's[1] views and recommendations on the USDA's interim final rule (IFR) regarding Farm Loan Programs (FLP) treatment of newly eligible entities as revised in the Agricultural Act of 2014 (i.e. farm bill).

Background

Prior to the farm bill, USDA's Farm Service Agency (FSA) could only extend farm loans to entities specified in existing authority (CONACT). The farm bill gave the Secretary of Agriculture broader authority to extend FLP loans to entities and so-called embedded entities owned and operated by family farms. These entities are often formed by family farms due to estate planning and other needs.

ICBA generally agrees with the changes in the USDA's IFR and USDA's rationale. ICBA's greatest concern is to reinforce all provisions that help ensure that USDA's FLPs exclusively serve the financial interests of family farmers. ICBA also believes USDA's modified definition of "family farm" as referencing the farm business operation and "farm" as referencing the farm's real estate makes sense for clarity's sake.

USDA seeks to ensure the agency's mission to serve family farmers is maintained by requiring family farms to own seventy-five percent of all embedded entities. ICBA strongly agrees with the seventy-five percent ownership requirement. However, ICBA suggests USDA also consider adding a provision to ensure non-farm investors that are not relatives do not have an inappropriate degree of control or influence over the family farm's operations through their financial involvement in the remaining

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twenty-five percent of the entity or entities. While the 75 percent test is important to help ensure active owners/operators of family farms are recipients of USDA FLP loans, outside investors, due to financial contributions, could still hold significant sway over the farm's activities.

USDA will allow operating entities to qualify for farm ownership (FO) loans provided the owners of the farm real estate own at least 50 percent of the farm operating entity. USDA notes the 50/50 ownership shares are common ("frequent") arrangements. In many situations, individuals owning the farm real estate and those operating the farm business are identical even though multiple entities are involved. ICBA's concern is to ensure owners/operators receiving FLP loans are family farmers.

USDA's IFR excludes from eligibility entities that are estates or nonprofit organizations. ICBA agrees with USDA's rationale that these organizations are formed for temporary purposes or are not truly family farm organizations. ICBA also agrees with the IFR's requirement that debt instruments for FLP loans show evidence for liability of any embedded entity or other individuals receiving loans to protect the government's interest and ensure collectability.

USDA is also increasing direct operating loans (OL) in the micro loan (ML) program from $35,000 to $50,000. ICBA urges USDA to also implement a ML program for guaranteed loans. Such a program would complement the existing guaranteed operating loan program. USDA would also lessen current eligibility standards to provide for less than three years of farming experience if the applicant has offsetting experiences that would allow them to be successful farmers. We request that USDA explain in the final rule the agency's rationale in terms of why the specifically proposed non-farm types of experiences are an appropriate offset for owning/managing family farms.

Conclusion

USDA notes the IFR's changes, driven by changes in the CONACT, will increase loan eligibility to approximately 2,200 additional farm operations. ICBA agrees with many of the IFR's provisions. However, if USDA were to make significant alterations to these proposals based on public comments, then ICBA requests that USDA reissue this proposal for public comment based on any major revisions to this proposal. ICBA's main concern, as stated above, is to ensure the USDA's FLP loans are received exclusively by family farmers.

Should you have further questions regarding this letter please feel free to contact Mark Scanlan at 202-659-8111 or mark.scanlan@icba.org. Thank you for consideration of our views.

Sincerely,

Mark Scanlan

Mark Scanlan
Senior Vice President, Agriculture and Rural Policy