705-01-P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 620

RIN 3052-AD54

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) is amending regulations governing young, beginning, and small farmers and ranchers (YBS). The final rule clarifies the responsibilities of funding banks in the review and approval of direct lender association YBS programs, strengthens funding bank internal controls, and bolsters YBS business planning.

DATES: This regulation will be effective the later of February 1, 2024, or at least 30 days after publication in the *Federal Register* during which either or both Houses of Congress have been in session. We will publish a notice of the effective date in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Objectives of the Final Rule

The objectives of this final rule are to:

- Increase direct lender associations' YBS activity to a diverse population of borrowers;
- Reinforce the supervisory responsibilities of the funding banks, authorized by section 4.19 of the Farm Credit Act; and
- Require each direct lender association to enhance the strategic plan for their YBS program.

When developing YBS programs, direct lender associations should consider marketing to all populations of YBS farmers and ranchers. Underserved communities and groups can be overlooked or excluded from marketing efforts and education outreach, leaving out a potential borrowing base.

Underserved groups include those who have been subjected to racial, ethnic, or gender prejudice because of their identity as members of the group without regard to their individual qualities. Examples of underserved communities include, but are not limited to, Black or African American, American Indian and Alaskan Native, Hispanic, Asian and Pacific Islander, LGBTQIA+, women, veterans, and persons with disabilities. These are examples of communities with a high potential for individuals who may fall into the Y, B, and/or S categories of borrowers, and direct lender associations should target such communities specifically to reach the entire universe of potential borrowers. Underserved communities can often be reached in schools and universities, professional and social organizations, at community gatherings, and local events.

Every effort should be made to reach the entire universe of potential Y, B, and S borrowers. Direct lender associations should also work with their local Farm Service Agency representatives to assist the Farm Credit System with its directive to serve all creditworthy Y, B, and S borrowers by breaking down bureaucratic barriers to entry.

II. Background

The Farm Credit Act of 1971, as amended (Act),[1] establishes the Farm Credit Administration as the safety and soundness regulator of the Farm Credit System (FCS or System). As stated in the FCA Strategic Plan for FYs 2018 – 2023, our mission is to ensure that System institutions are safe, sound, and dependable sources of credit and related services for all creditworthy and eligible persons in agriculture and rural America. The System has a unique mission to serve YBS farmers and ranchers. Section 4.19 of the Act[2] requires each direct lender association to establish a program to furnish sound and constructive credit and related services to YBS farmers and ranchers.

[1] Pub. L. 92-181, 85 Stat. 583.
[2] 12 U.S.C. 2207.

We continue to believe the System's YBS mission is important to enable small and start-up farmers and ranchers to make successful entries into agricultural production. Also, we believe it is important to ensure marketing and outreach efforts include all eligible and creditworthy persons, with specific outreach to achieve diversity and inclusion. The System's YBS mission is also critical to facilitate the transfer of agricultural operations from one generation to the next. We remain committed to ensuring the System fulfills its important mission to YBS farmers and ranchers.

We published a proposed rule on June 16, 2022 (NPRM), recommending updates to FCA’s YBS regulations, which were last updated almost 20 years ago. This final rule largely adopts the proposal with certain changes made in response to comments, with a particular focus on reducing an increased administrative burden. Comment letters, along with our responses are discussed below.

III. Comments and Our Responses

The comment period ended August 15, 2022. We received 67 comment letters. Most comments came from System institutions or persons affiliated with the System, with one letter from the Farm Credit Council (Council) acting on behalf of its membership. We also received three letters from trade groups representing commercial banking.

Most commenters requested we withdraw the proposed rule and keep the existing regulations in place. Some commenters offered solutions to bolster practices such as continued collaboration with FCA and System workgroups without changes to the existing regulation. Commenters stated that the rule was administratively burdensome, human capital intensive, difficult for smaller direct lenders to implement, and did not achieve the shared goal of increasing YBS activity.

We also received comments in support of the proposed rule that agreed with the framework and accountability the rule requires, stating the rule changes should be done with more than incremental progress in mind. Another comment supported the idea of increased reporting.

Specific Issues

A. YBS Program Uniformity

System commenters expressed concern that the prospect of a YBS rating system and the proposed requirements relating to funding bank oversight may encourage all YBS programs to "look alike" or to fit into a "cookie cutter" mold. While one of the proposed rule's stated objectives was to provide elements that will be evaluated as part of a rating system to measure year-over-year YBS progress, we did not propose to create any such rating system itself through the rulemaking. For clarity, however, this final rule omits rating system matters in its statement of objectives.

Next, we disagree that the proposed changes to bank oversight responsibilities will lead to “cookie cutter” YBS programs. We have long encouraged direct lender associations to tailor YBS programs to serve the specific needs of borrowers in the different lending territories. Existing FCA regulation § 614.4165(c), which is redesignated paragraph (d) in this final rule, states that each direct lender association “must establish a program to provide sound and constructive credit and services to YBS farmers and ranchers in its territory.” The reference to “its territory” illustrates that each YBS program should reflect the credit and service needs of YBS borrowers within that lending territory. While this rulemaking enhances and strengthens bank oversight responsibilities and direct lender association YBS program standards, it does not prescribe or encourage uniformity of content among YBS programs. We continue to expect varying approaches among the direct lender associations, appropriate to the needs of borrowers in each lending territory.

B. Definitions [§ 614.4165(a)]

The proposed rule had no substantive changes to the definitions in current paragraph (a). We proposed grammatical changes, including removing the word “and” between farmers and ranchers, and adjusting punctuation. We received one comment on the definition of a “beginning” farmer; however, that term is not defined in regulatory text. The definitions in paragraph (a) will be finalized as proposed.

C. Farm Credit banks oversight [proposed § 614.4165(b)].

Commenters frequently raised concerns on the topic of bank oversight. Two non-System commenters supported the concept of increased bank oversight, stating they would like to see reform in reporting and tracking, and that they believe bank review and approval will help with this. System commenters opposed increased bank oversight for a variety of reasons, which will be discussed as they relate to each section of the rule text. The proposed preamble stated that we believed funding banks were in a unique position to know the YBS activities of their affiliated direct lender associations and see how those associations respond to the needs of their respective borrowers. Commenters strongly disagreed, stating funding banks do not have “boots on the ground” and are not familiar with local YBS markets and needs. We considered this feedback as we drafted the final rule, which removes certain elements of the proposed bank oversight requirements.

Proposed paragraph (b)(1) required each bank, among other things, to adopt written policies directing direct lender associations to establish YBS programs, ensure direct lender association coordination with others, and report to FCA. A bank trade group commented that the proposed rule lacked a requirement for direct involvement or representation of YBS farmers and ranchers in the process of creating and reviewing YBS programs. To address this, the commenter recommended that each bank be directed to adopt a written policy requiring the bank and any affiliated direct lender association to form a committee comprised of local YBS farmers and ranchers. The commenter further recommended that these committees be vested with authority over YBS programs, independent of the board of directors of each institution. We decline to adopt this recommendation because it is outside the scope of the proposal. Moreover, because Farm Credit is a cooperative system run by member-borrowers who elect their respective System institutions' boards of directors, YBS farmers and ranchers are structurally situated to be heard and represented at the board level. We also note that as a matter of practice, many direct lender associations have various YBS committees and advisory groups that provide input and are involved in program development. We do not believe this additional involvement and representation from YBS farmers and ranchers is necessary at the bank level given the current involvement of member borrowers in System governance at their direct lender associations.

Proposed paragraph (b)(1)(i) required each funding bank to adopt written policies that direct their affiliated direct lender associations to establish an annual strategic YBS plan. While we did not receive comments on this specific paragraph, we received many comments on the YBS strategic plan itself, which are addressed in section *D. Direct lender association YBS strategic plan*. Because the proposal for an independent YBS strategic plan is not being adopted in this final rule, the requirement for bank policy direction on such plan has been removed.

The proposed rule redesignated paragraph (b)(2) of the current regulation as paragraph (b)(1)(ii). The text of this coordination requirement remained unchanged, but nonetheless we received three comments from the System stating it is unclear how much coordination between organizations is acceptable and how coordination can be objectively evaluated. Although these comments are outside the scope of the proposal’s substantive changes, coordination efforts are generally sufficient if they accomplish the objective that YBS programs “shall assure that such credit and services are available in coordination with other institutions of the Farm Credit System serving the territory and with other governmental and private sources of credit.” Act § 4.19(a). We expect that specific coordination efforts will be devised on an institution-by-institution basis. Paragraph (b)(1)(ii) will be finalized as proposed.

Proposed paragraph (b)(1)(iii) required each bank to establish a policy to direct each affiliated direct lender association to submit a YBS strategic plan and any other information regarding its YBS program deemed necessary by the bank. We received two System comments and one comment from the Council on this requirement. In summary, the comments stated that "any other information deemed necessary by the bank" was vague, arbitrary, and therefore burdensome. There was concern over inconsistency of requirements between the banks and the stifling of creativity for the direct lender. Further, there was commenter concern on the relationship with the direct lender and bank being damaged, with various reasons listed. We received many comments on the strategic YBS plan itself, which are addressed in that section. Because we are not adopting the proposal's requirement for an independent YBS strategic plan, we are removing proposed paragraph (b)(1)(iii) from this final rule.

Proposed paragraph (b)(1)(iv) is redesignated as paragraph (b)(1)(iii) and finalized as proposed. Although we only proposed a redesignation from the current paragraph (b)(4) and a replacement of "agency" for "FCA," we still received four comments. Commenters agreed that no changes were needed to the data reporting requirement of "complete and accurate" in the rule text, but they did mention concerns surrounding subjectivity of criteria, which has not been a material issue in the past. Commenters did not provide reasons this would be a concern going forward.

A trade group for commercial banks commented that “achievements” may be interpreted as denoting completion and success. The commenter stated that since success should not be presumed, we should add “shortfalls” as an element for the bank to report on in addition to “operations” and “achievements.” We decline to adopt this specific change because paragraph (c)(2)(ii) as finalized requires the operational and strategic business plan to discuss variances and reasons for the results. We expect that both positive and negative variances will be discussed in the plan. Reporting of negative variances thus addresses the commenter’s suggestion.

We received 46 comments on proposed paragraph (b)(2). Two commenters supported funding bank oversight and approval while the rest opposed this requirement. Those in favor wanted to see reform in reporting and tracking and believed that bank oversight would help in that area. They stated that oversight and accountability are necessary, and this rule is a step in the right direction for critical accountability.

Those opposed to the proposed changes relating to funding bank oversight raised the following issues:

- cost and administrative burden;

- negative impacts on cooperative structure and local control;
- no appeal or resolution process;
- expansion of current funding bank duties;
- lack of funding bank personnel expertise regarding individual YBS markets;
- biased, preferential, or inconsistent evaluation among the four funding banks;
- lack of guidance on goal standards or what is considered acceptable/successful;
- no value added to YBS programs;
- homogenization of YBS programs resulting from a "uniform" bank approval process; and
- exam findings and communication to the System not warranting increased bank oversight.

To address these comments, we made changes to the rule by:

- removing the requirement for an independent YBS strategic plan and associated funding bank approval and review,
- providing that funding bank review and approval shall solely be to determine whether the YBS program contains all required components,
- updating the reference from paragraph (c) in the current regulation to paragraph (d) in the final rule, and

- stating that funding bank communication of an incomplete plan must be in writing and sent to FCA within 30 days.

The statute provides that association YBS programs are "[u]nder the policies of the Farm Credit Bank board," and that "[e]ach program shall be subject to review and approval by the supervising bank." The System's comments and representations about funding bank lack of expertise, staff knowledge and capability with respect to YBS programs suggest there is room for the banks to improve their capabilities in this area.

As in the existing regulation, banks will still be required to review and approve each direct lender association's YBS program. This rule clarifies that such review and approval must be performed annually. We find this requirement complements—and is logically connected to—the bank's responsibility for creating and submitting the operations and achievements report to FCA. Specifically, annual review and approval of direct lender association YBS programs will give each bank a better understanding of the programs in their territories and ultimately result in more accurate reporting to FCA.

To address concerns about the scope of bank review, however, we are revising the regulatory text so that review and approval shall solely be to determine whether the YBS program contains the components of finalized paragraph (d).

As a result, the finalized text more closely tracks the scope of review specified in the current regulation. Notwithstanding the revision, we encourage open dialogue between the bank and direct lender to continually improve program content.

With slight changes from the proposal, this final rule provides that where a bank concludes a YBS program is incomplete, it must communicate that fact in writing to both the direct lender association and FCA within 30 days.

Proposed paragraph (b)(3) required internal controls. Since banks are the main YBS reporting entity to FCA, having a strong internal control environment is critical to safety and soundness. We received four comments from the System, the Council, and a commercial bank trade group. The commercial bank trade group stated that, in the past, internal controls over YBS data reporting processes have been weak. They stated this resulted in inaccurate reporting to FCA. They went on to state weak reporting is a concern they'd like to see addressed. The System and Council stated that establishing new internal controls will create redundancy and inefficiencies. As discussed in sections above and below, direct lenders are not required to have an independent YBS strategic plan in the finalized rule. Therefore, bank internal control requirements in the proposed rule for direct lender YBS plans have been removed. The Council commented that banks should be able to rely on the internal controls of the direct lender. The bank's responsibilities for review and approval of YBS programs and data compilation and reporting to FCA are independent of direct lenders. For this reason, it is necessary that each bank has internal controls over the processes they perform, just as direct lenders do. Each organization in the System should have internal controls over their respective YBS responsibilities.

D. Direct lender association YBS strategic plan [proposed § 614.4165(c)].

Proposed paragraph (c)(1) required each direct lender association to adopt an independent 3-year YBS strategic plan to guide the direct lender's required YBS program. We received 31 comments on this requirement from the System and a commercial bank trade group, all of whom were opposed for a variety of reasons.

Many stated that YBS borrowers are critical to the System's sustainability, are an integral part of direct lender's operations, and are a key component of the overall business plan. As such, YBS components are woven into almost every aspect of a direct lender's annual business plan. Commenters went on to say that YBS borrowers should be considered in the context of the whole business and included as part of the overall business plan rather than separated out. The FCS commenters stated that creating an independent plan outside of the business plan would create disconnected, redundant, and unnecessary administrative burdens. The FCS commenters noted that staff’s time could better be used serving YBS borrowers directly rather than duplicating the business plans.

We considered this input and will not finalize the requirement for an independent YBS strategic plan. We agree that YBS is an integral part of direct lenders’ operations and should be incorporated as part of overall business planning. The intent of our proposal was that an independent planning document would put increased emphasis on YBS. However, the same goal can be achieved without creating a separate document. It is our intent that direct lenders give thoughtful consideration into their strategic lending to YBS borrowers, in both current and potential markets.

While we are not changing the existing requirement for a 3-year planning period in the operational and strategic business plan, we still received comments on this area. Some commenters stated that a 3-year plan is not reasonable given volatility and uncertainty, making future years a guess. We believe it is important to be forward looking and innovative in strategic business planning. Three years has been established as a minimum planning period. We continue to believe that three years is appropriate for planning. Some commenters stated the requirement to adopt a 3-year plan within 30 days after the commencement of the year is not enough time to analyze the past year's data and conflicts with other business planning activity. While we understand that the period around the new calendar year may be particularly busy, the timeframe for adoption of the plan is specified in the existing regulation, and we have not proposed a change in this regard. We believe the new calendar year continues to be an appropriate time to conclude activity and begin reporting processes.

Paragraph (c)(2) of the proposed rule required that the strategic plan must detail the operations of the YBS program including all components in paragraph (d). We received no comments specific to this section. This requirement has been combined into the finalized (c)(1).

In proposed paragraph (c)(3)(i), direct lenders were required to analyze performance from the previous year in achieving components of their YBS program listed in proposed paragraph (d). We received a comment from a banking trade group that analyzing only performance and effectiveness but not identifying areas to improve upon is not a balanced approach. While we understand the commenter’s point, it is our expectation that direct lenders take a balanced approach when analyzing performance. If a goal is not achieved, it must still be reported on.

Proposed paragraph (c)(3)(ii) received no comments. We redesignated and finalized it as paragraph (c)(2)(ii).

Proposed paragraph (c)(3)(iii) received no comments, and we redesignated and finalized it as paragraph (c)(2)(iii). We replaced the word, "efforts," with "qualitative factors and quantitative goals." We added the words, "expand access to," which derived from proposed paragraph (c)(3)(iv).

We received seven comments from the FCS opposing proposed paragraph (c)(3)(iv). The requirement proposed that direct lenders assess the effectiveness in providing efforts resulting in credit provided to new and expanding YBS operations. Commenters discussed the high subjectivity of such data and stated they are unclear how effectiveness is measured. Examples were given of a person attending a seminar and several years later becoming a borrower. How would direct lenders track and record such activity? Commenters stated databases are not currently in place to collect such data and it is cost prohibitive with little value added to create a database. Commenters also believed that tracking this data provided no value to YBS borrowers. After assessing comments, we added the words "and expand access to" which derived from proposed paragraph (c)(3)(iv) to finalized paragraph (c)(3)(iii) and removed the other requirements of proposed paragraph (c)(3)(iv). We believe that tracking such data and identifying how direct lender association YBS programs are assisting and expanding access to credit and education for YBS farmers and ranchers does provide value to YBS farmers and ranchers by strengthening and improving lender's YBS programs. To comply with this provision, direct lenders must assess how their YBS program components assist and expand access to credit and education for YBS farmers and ranchers.

E. Direct lender association YBS program [proposed § 614.4165 (d)].

We received one comment on proposed paragraph (d) from a commercial banking trade group in support of the requirement. There were no opposing comments. The comment stated that the components have been long awaited and both qualitative and quantitative factors play important roles in YBS lending. Paragraph (d) is finalized as proposed.

We received one comment from a commercial banking trade group regarding the mission statement requirement in proposed paragraph (d)(1)(i)(A). The commenter stated that the mission statement should explicitly recognize the importance of YBS and ensure support at the direct lender level. We believe the requirement is satisfactory as drafted in accomplishing this purpose, and finalized it as proposed.

Proposed paragraph (d)(1)(i)(B) is finalized as proposed. We received two comments on the direct lender internal controls requirement in proposed paragraph (d)(1)(i)(B). One System commenter stated that adding internal controls adds additional time, energy, and costs to reporting. Internal controls are an existing requirement that direct lenders should already have in place. Another commenter asked that internal controls clarify the extent to which staff must take stakeholder input into account. While encouraged, the rule does not require stakeholder input, nor is it necessarily a component of an internal controls system.

There was one comment from a commercial banking trade group, supporting the use of credit enhancement tools. Proposed paragraph (d)(1)(ii)(A) is finalized as proposed.

Proposed paragraph (d)(1)(ii)(B) is finalized as proposed. It requires credit and related services coordination with System institutions, governmental and private sources. This is a continuation of requirements in existing paragraph (c)(3)(ii). We received nine comments on this requirement. One comment from a commercial banking trade group supported third-party coordination on credit and related services. Eight commenters, all from the System, opposed this existing requirement. Commenters stated that where direct lender associations are over-chartered within the same market, coordination efforts will entice competition rather than healthy collaboration. Another System commenter stated that the prospect of interterritorial competition was untenable and would potentially damage their association and members. Some commenters stated that collaboration is already occurring, and a regulatory requirement is not needed. System commenters were worried that this requirement may be interpreted by funding banks to force best practices for one lender onto another lender, even if the practices may not apply or work, to achieve bank approval. Commenters stated that statutory borrower rights requirements were not in the commercial banks' interest and, as such, posed a barrier to coordination. Another commenter mentioned that agencies such as FSA or other national YBS organizations already experience time constraints. When multiple direct lender associations request collaboration at the same time, particularly in over-chartered areas or small towns, these resource issues will be compounded. Lastly a commenter stated that the System does not have an adequate portal to capture and highlight the depth of the collaboration efforts that occur. As an existing requirement, we have seen the importance and benefit of third-party coordination. The requirement leaves the option open to direct lenders in choosing with which parties they coordinate. We understand that some relationships work better than others. Nonetheless, we encourage direct lenders to continue outreach and third-party coordination, for the betterment of YBS farmers and ranchers.

Proposed paragraph (d)(1)(iii) is finalized as proposed. It requires implementation of outreach programs, which may include marketing and education. This is a continuation of requirements in existing paragraph (c)(3)(iii). We received seven comments on this requirement. One comment from a commercial banking trade group supported minimum requirements for marketing, outreach, and education. Six commenters, all from the System, opposed this existing requirement. Commenters stated that the rule is silent on criteria to determine effectiveness and that measuring effectiveness is subjective. One commenter stated that it would frustrate and confuse potential customers and business partners when a direct lender comes to an event with predetermined measurers for effectiveness. Another commenter asked if the board, management, or banks would be determining the effectiveness of activities, going on to say that this requirement is redundant and burdensome. In the existing requirement, the agency has not identified material weaknesses with direct lenders implementing effective outreach, marketing, and educational programs.

We are unclear as to why carrying this requirement forward into the finalized rule would be burdensome. Results have shown for a direct lender YBS program to be successful, it is critical to have more components than merely the extension of credit. Some of these components include marketing to underserved segments, providing new borrower education, and listening to feedback from YBS farmers and ranchers.

Proposed paragraph (d)(2)(i) strikes the word "reasonably" and is finalized as proposed. It requires using reliable demographic data in developing quantitative goals, along with identifying the sources of the data. We received seven comments on this requirement. One comment from a commercial banking trade group stated that quantitative goals must be bolstered with additional requirements and that more than one goal should be used. This commenter did not like basing the understanding of goals on reasonably reliable demographic data and stated that sources should be recognized and not arbitrary. The six opposing commenters were all from the System. Commenters who opposed this requirement shared concerns on the term "reasonably reliable," saying it provides uncertainty and results in highly subjective interpretations, asking who is to have final determination if the data is reasonably reliable or not. Validation of such data and timeliness were also raised as concerns. Opposing commenters stated validating data would raise significant time and resource concerns. They also stated that USDA census data is several years old before release, not making it the most up-to-date and reliable. Commenters questioned whether direct lenders would be expected to contract with third parties while awaiting USDA data availability to meet this requirement.

Opposing commenters also raised concerns that requiring additional quantitative goals will increase the potential for compromises to be made to existing programs that are effective as a means to meet new goals, adding that there is no incentive for direct lenders to set aggressive goals which may not be met and then result in a lower FCA rating. We believe that striking the word "reasonably" addresses these comments. Reliable data is a key component in developing effective goals. It is our expectation that the direct lender associations obtain the best data available to them when developing goals.

Proposed paragraphs (d)(2)(i)(A), (d)(2)(i)(B), (d)(2)(i)(C), and (d)(2)(i)(D) are finalized as proposed. They identify the minimum quantitative goals that a direct lender must establish annually. These requirements carry over unchanged from existing paragraphs (c)(2)(i) through (iv). We received one comment from a commercial banking trade group on proposed paragraphs (d)(2)(i)(A) through (C), stating the goals are arbitrary and unmoored and should be bolstered with additional requirements. We did strengthen this existing requirement by requiring direct lenders to use at least one of the goal categories listed as opposed to the existing requirement that states that such targets may include one of the goal categories listed. Historically, direct lenders rarely used categories other than those listed in the regulation. Keeping the same categories ensures that data can be compared consistently over a range of time periods. Further, databases are already in place in the System to track these categories, which helps minimize regulatory burden and costs. We note these are only minimums and some direct lenders can and do use a combination of these goals or other categories.

Proposed paragraph (d)(2)(i)(D), pertaining to goals for capital committed to loans made to YBS borrowers, is finalized as proposed. It is an unchanged requirement compared with existing paragraph (c)(2)(iv), however, we did receive two opposing comments from a commercial bank trade group and the System. Both commenters had similar observations that the requirement was arbitrary and unmoored. One commenter went on to say there is a lack of criteria to determine how much capital a direct lender should allocate to YBS. There was concern that both FCA and the funding bank will have difficulty determining where a program is deficient in the capitalization goal. The final rule does not require direct lenders to have a capital goal. Paragraph (d)(2) only requires each direct lender to have one of the listed goals, not all. Nonetheless, we believe a capital commitment is a best practice and is one method of allowing direct lenders to serve YBS borrowers who may have a higher risk profile, while at the same time mitigating the lender’s overall risk in the credit relationship.

F. Annual report information concerning YBS [proposed § 620.5(k)(2)].

We received no comments on the renumbering changes in proposed § 620.5(k)(2). It will be finalized as proposed.

G. Other Matters.

One system commenter concluded that because the NPRM states that "YBS components will no longer be required as part of § 618.8440," FCA is impermissibly trying to modify § 618.8440 through the proposed rule. No part of this rulemaking revises § 618.8440 or changes its requirements. Our statement in the NPRM merely observed the effect of the proposed deletion of paragraph (e) of § 614.4165, which requires each direct lender association's YBS program targets and goals to be included in its operational and strategic business plan (as separately required under § 618.8440). In any case, since the final rule does not adopt the proposed rule's wholesale deletion of paragraph (e) of § 614.4165, and instead moves it with minor changes to paragraph (c)(1), the substantive requirement to include YBS program components in the operational and strategic business plan will remain intact. As a result, the commenter's concern is addressed.

IV. Regulatory Flexibility Act and Congressional Review Act.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), FCA hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated direct lender associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not “small entities” as defined in the Regulatory Flexibility Act.

Under the provisions of the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Management and Budget’s Office of Information and Regulatory Affairs has determined that this final rule is not a “major rule,” as the term is defined at 5 U.S.C. 804(2).

List of Subjects
12 CFR Part 614

Agriculture, Banking, Banks, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 620

Accounting, Agriculture, Banking, Banks, Reporting and recordkeeping requirements, Rural areas.

PART 614 - LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13B, 4.14, 4.14A, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2201, 2202, 2202a, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279c-1, 2279f, 2279f-1, 2279aa, 2279aa-5); 12 U.S.C. 2121 note; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. Section 614.4165 is revised to read as follows:

§ 614.4165 Young, beginning, and small farmers and ranchers.

(a) Definitions.

(1) For purposes of this subpart, the term “credit” includes:

(i) Loans made to farmers, ranchers, and producers or harvesters of aquatic products under title I or II of the Act; and

(ii) Interests in participations made to farmers, ranchers, and producers or harvesters of aquatic products under title I or II of the Act.

(2) For purposes of this subpart, the term “services” includes:

(i) Leases made to farmers, ranchers, and producers or harvesters of aquatic products under title I or II of the Act; and

(ii) Related services to farmers, ranchers, and producers or harvesters of aquatic products under title I or II of the Act.

(b) Farm Credit banks oversight.

(1) Each Farm Credit Bank and Agricultural Credit Bank must adopt written policies that direct:

(i) The board of each affiliated direct lender association to establish a program to provide sound and constructive credit and related services to young, beginning, and small farmers, ranchers, and producers or harvesters of aquatic products (YBS farmers and ranchers or YBS);

(ii) Each affiliated direct lender association to include in its YBS program provisions ensuring coordination with other System institutions in the territory and other governmental and private sources of credit; and

(iii) The bank to provide the FCA a complete and accurate annual report summarizing the YBS program operations and achievements of its affiliated direct lender associations.

(2) Annually, the YBS program of each direct lender association must be reviewed and approved by its funding bank, provided review and approval shall solely be to

determine whether the YBS program contains all required components as set forth in paragraph (d) of this section. Any conclusion by the bank that a YBS program is incomplete must be communicated in writing to the direct lender association and to the FCA within 30 days.

(3) Each Farm Credit Bank and Agricultural Credit Bank must implement internal controls for requirements in paragraphs (b)(1)(iii) and (b)(2) of this section.

(c) Direct lender association YBS plan.

(1) YBS program components outlined in paragraph (d) of this section must be included in each direct lender association's operational and strategic business plan for at least the succeeding 3 years (as set forth in § 618.8440 of this chapter).

(2) The YBS portion of the operational and strategic business plan must:

(i) Analyze the direct lender association’s performance in the previous year toward achieving the components in paragraph (d) of this section;

(ii) Discuss variances and reasons for the results; and

(iii) Identify how the qualitive factors and quantitative goals in paragraph (d) of this section assist and expand access to credit and education for YBS farmers and ranchers.

(d) Direct lender association YBS programs. The board of directors of each direct lender association must establish a program to provide sound and constructive credit and services to YBS farmers and ranchers in its territory. Each YBS program must operate in a safe and sound manner and within the direct lender association's risk-bearing capacity, while meeting the unique needs of YBS farmers and ranchers. Such a program must include the following minimum components:

(1) Qualitative factors—

(i) Corporate governance.

(A) A mission statement describing program objectives and specific means for achieving such objectives.

(B) Internal controls that establish clear lines of responsibility for YBS strategic plan development and the corresponding YBS program implementation, tracking YBS program performance, and YBS quarterly reporting to the direct lender association's board of directors.

(ii) Credit and related services.

(A) Efforts to offer credit and related services, either directly or in coordination with others, that are responsive to the needs of the YBS farmers and ranchers in the territory. Examples include customized loan underwriting standards, loan guarantee programs, fee waivers, or other credit enhancements commensurate with the credit risk approved by the board of directors.

(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.

(iii) Marketing, outreach, and education. Implementation of effective outreach programs to attract and retain YBS farmers and ranchers, which may include the use of advertising campaigns, educational programs, and advisory committees comprised of YBS farmers and ranchers and/or a YBS mentoring program to better serve and understand the needs of this lending segment.

(2) Quantitative goals—

(i) Annual quantitative goals. Annual quantitative goals for credit to YBS farmers and ranchers based on an understanding of reliable demographic data for the lending territory. Direct lender associations must identify the sources of data used to establish the goals. Such goals must include at least one of the following:

(A) Loan volume and loan number goals for YBS farmers and ranchers in the territory;

(B) Percentage goals representative of the demographics for YBS farmers and ranchers in the territory;

(C) Percentage goals for loans made to new borrowers qualifying as YBS farmers and ranchers in the territory; or

(D) Goals for capital committed to loans made YBS farmers and ranchers in the territory.

(ii) Board 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.

PART 620 - DISCLOSURE TO SHAREHOLDERS

3. The authority citation for part 620 continues to read as follows:

Authority: Secs. 4.3, 4.3A, 4.19, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2154, 2154a, 2207, 2243, 2252, 2254); sec. 424, Pub. L. 100-233, 101 Stat. 1568, 1656 (12 U.S.C. 2252 note); sec. 514, Pub. L. 102-552, 106 Stat. 4102, 4134.

4. Revise § 620.5 (k)(2) to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(k) * * *

(2) Each direct lender association must provide a description of its YBS program, including a status report on each program component as set forth in § 614.4165 (d) of this chapter and the definitions of "young," "beginning," and "small" farmers and ranchers. The discussion must provide such other information necessary for a comprehensive understanding of the direct lender association's YBS program and its results.

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Dated: December 14, 2023.

Ashley Waldron,
Secretary,
Farm Credit Administration.
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