

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 620

RIN 3052-AD54

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The purpose of the proposed rule is to increase direct lender associations' Young, Beginning, and Small farmer and rancher (YBS) activity and reinforce the supervisory responsibilities of the funding banks, authorized by section 4.19 of the Farm Credit Act. The proposed rule requires direct lender associations to adopt an independent strategic plan for their YBS program. The direct lender association's funding bank will approve each YBS strategic plan, annually. The direct lender association's YBS strategic plan must contain specific elements that will be evaluated as part of a rating system to measure year-over-year internal progress. The rating system will enable the FCA to compare the success of the direct lender association's extension of credit and services to the YBS borrowing population to its peers both within and outside its bank district.

DATES: You may send us comments on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: We offer a variety of methods for you to submit comments. For accuracy and efficiency, commenters are encouraged to submit comments by e-mail or through FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, as amended, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- E-mail: Send us an e-mail at reg-comm@fca.gov.
- FCA Web site: <http://www.fca.gov>. Click inside the "I want to..." field near the top of the page; select "comment on a pending regulation" from the dropdown menu; and click "Go." This takes you to an electronic public comment form.
- Mail: Autumn R. Agans, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090

You may review copies of comments we receive at our office in McLean, Virginia by appointment by contacting the Office of Regulatory Policy contact listed below, or on our Web site at <http://www.fca.gov>. Once you are on the Web site, click inside the "I want to..." field near the top of the page; select "find comments on a pending regulation" from the dropdown menu; and click "Go." This will take you to the Comment Letters page where

you can select the regulation for which you would like to read the public comments. We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this proposed rule are to:

- Increase direct lender associations' YBS activity;
- Reinforce the supervisory responsibilities of the funding banks, authorized by section 4.19 of the Farm Credit Act;

- Require each direct lender association to adopt an independent strategic plan for their YBS program; and,
- Provide elements that will be evaluated as part of a rating system to measure year-over-year YBS progress, allowing FCA to compare the success of the direct lender association to its peers with regard to extension of credit and services to the YBS borrowing population.

II. Background

The Farm Credit System (System) is the oldest of the financial Government-sponsored enterprises (GSEs). The objective of the System is to improve the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely-related services to them, their cooperatives, and selected farm-related businesses.¹ The System has a unique mission to serve YBS farmers and ranchers. Section 4.19 of the Farm Credit Act of 1971, as amended (Act),² requires each System association to establish a program to furnish sound and constructive credit and related services to YBS farmers and ranchers. In addition, each affiliated association's YBS program is subject to review and approval by their

¹ 12 U.S.C. 2001.

² 12 U.S.C. 2207.

respective funding bank, which must report annually to FCA on the operations and achievements of their associations' programs.

YBS farmers and ranchers, like all those in agriculture, face a wide range of challenges, including access to capital and credit; the impact of rising costs on profitability; urbanization and the availability of resources like land, water, and labor; globalization; and competition from larger or more established farms. Although all agricultural producers face these challenges, the hurdles that YBS farmers and ranchers face are often greater due to their lack of an agricultural production history, inexperience in production agriculture, low capital position, or limited credit history. The FCA continues 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, FCA believes it is important to ensure marketing and outreach efforts include all eligible and creditworthy persons, with specific outreach toward diversity and inclusion. The System's YBS mission is also critical to facilitate the transfer of agricultural operations from one generation to the next. FCA remains committed to ensuring the System fulfills its important mission to YBS farmers and ranchers.

Since FCA's YBS regulation was first implemented in 1981, the agency has periodically strengthened the YBS framework through regulatory amendments,³ Board policy statements, bookletters, exam manual updates, public statements, and other initiatives to promote compliance and to highlight the System's efforts to provide service to YBS farmers and ranchers. In recent years, a focus on YBS has been a regular feature of FCA strategic and performance plans. Nonetheless, there remain opportunities for further improvement.

Pursuant to existing regulations, FCA receives YBS program information through associations' operational and strategic business plans.⁴ To meet the requirements of the regulation, these plans must discuss forward-looking information such as program objectives, annual quantitative and qualitative targets, and proposed methods to ensure credit and services are provided in a safe and sound manner.⁵ However, as part of the existing planning process, there is no requirement for associations to report on past performance. Without this assessment, plans are unlikely to target deficient areas (e.g., outreach, budget resources,

³ The regulation was last amended in 2004. 69 FR 16460 (Mar. 30, 2004).

⁴ 12 CFR 614.4165(e).

⁵ 12 CFR 614.4165(c)(1)-(4).

terms of extended credit) for improvement. This information would help the funding banks and FCA to identify trends. For these reasons, we believe associations should include assessments of their past performance in their YBS plans.

As noted, a direct lender association's funding bank serves a role in YBS plan development. Indeed, the Act assigns to the banks the role of reviewing and approving their affiliated direct lender associations' YBS plans.⁶ Given this, and to parallel what is required of direct lender associations, 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.

On August 12, 2021, the FCA Board Chairman announced the agency's work on a proposed YBS rule. The statement noted that while the System has made consistent efforts to serve YBS farmers, the average age of American farmers has continued to rise.⁷ On November 8, 2021, FCA and the University of Nebraska-Lincoln held a symposium to enhance YBS decision-making at System institutions. More recently,

⁶ 12 U.S.C. 2207(a).

⁷ The Department of Agriculture reported in 2017 that the average age of U.S. farm producers was 57.5 years, up 1.2 years from 2012. *USDA NASS, 2017 Census of Agriculture*.

on March 23, 2022, FCA and Colorado State University (CSU) co-hosted a national forum on serving the credit and related needs of YBS farmers and ranchers. The event covered a range of topics of interest to YBS producers and their lenders, with presentations by top industry stakeholders, experts from CSU, Farm Credit System representatives, and local agricultural producers.

III. Section-by-Section Analysis

A. Overview

FCA proposes revisions to our regulations located in 12 CFR 614.4165 to reinforce the supervisory responsibilities of the funding banks, require each direct lender association to adopt an independent strategic plan for its YBS program, and provide elements that will be evaluated as part of a rating system to measure year-over-year YBS progress. This proposed rule reflects FCA's expectation of bolstering YBS program planning and increasing both lending and non-lending YBS activity. FCA also proposes to revise § 620.5(k)(2) to update referencing.

B. Definitions [proposed § 614.4165(a)]

No substantial changes are proposed for the definitions in paragraph (a). We propose grammatical changes, including removing the word "and" between "farmers" and "ranchers," and

adjusting punctuation. Similar changes are made to the term throughout the regulatory text.

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

We propose changing the paragraph heading in paragraph (b) from "Farm Credit bank policies" to "Farm Credit banks oversight." While direct lender associations have autonomy from their funding banks, section 4.19(a) of the Act clearly states that YBS programs are subject to bank review and approval. As such, this paragraph is more appropriately titled to include such oversight. We believe funding banks are in a unique position to know the YBS activities of all their affiliated direct lender associations and see how those associations respond to the needs of their respective borrowers. Funding banks can use this knowledge to encourage associations to enhance their YBS programs through best practice sharing among their direct lender associations. Further, funding banks serve as the YBS data collection center for their direct lender associations and, ultimately, are responsible for reporting to FCA. 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.

Proposed paragraph (b) (1) (i) requires each funding bank to adopt written policies that direct their affiliated associations to establish an annual strategic YBS plan. The creation of a YBS strategic plan is explained further in the discussion about proposed paragraph (c). 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. It is also consistent with the statutory structure of Section 4.19 of the Act, which requires associations to have YBS programs "under policies" of Farm Credit Bank boards. We propose grammatical edits to the reference to "young, beginning, and small farmers, ranchers, and producers or harvesters of aquatic products," which will continue to be referred to in the shorthand as "YBS farmers and ranchers" or "YBS."

Paragraph (b) (3) of the existing regulation requires each funding bank to adopt written policies that direct each affiliated direct lender association to provide a YBS operations and achievements report to the funding bank. Proposed paragraph (b) (1) (iii) replaces references to the operations and achievements reports with the proposed YBS

strategic plan, along with any other information deemed necessary by the bank. The strategic plan should contain the elements previously submitted in the operations and achievements reports; thus, the intent of the requirement continues forward through the YBS strategic plan. Receiving the YBS strategic plan should also aid the funding bank in its oversight role as described previously, as well as supplementing data collection and reporting. In paragraph (b) (1) (iv), we propose a grammatical change from "agency" to "FCA." We propose moving the review and approval requirements from existing paragraph (d) to proposed paragraph (b) (2). The existing regulation requires bank review and approval of each direct lender association's YBS program, but limits the review and approval to a determination that the YBS program contains required elements as set forth in existing paragraph (c). 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 only review for the presence of the required elements. This would provide funding banks with the opportunity to become more involved with their respective associations' efforts to enhance YBS programs.

Existing paragraph (f) requires internal controls for direct lender associations. In paragraph (b) (3), we propose that banks also have internal controls in place to establish clear lines of responsibility in fulfilling their role regarding direct lender association YBS strategic plans, programs, and reporting. In the past, internal controls over YBS data reporting processes have been weak, resulting in inaccurate reporting to FCA. As the primary collectors, reviewers, and submitters of YBS data, internal controls are key to the funding banks' ability to provide reliable data. As with every area of operations, a strong internal control environment is essential.

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

The existing YBS regulation requires the YBS program to be included in the direct lender association's annual operational and strategic business plan under § 618.8440. Proposed paragraph (c) requires the adoption of an independent strategic plan specific to the direct lender association's YBS program. While direct lender associations have long been required to have a YBS program, limited emphasis has been placed on strategically planning, analyzing, and assessing such a program. Just as most direct lender associations

require YBS borrowers to submit a business plan for their operation, we believe that business planning is important when it comes to YBS programs. Direct lender associations plan their YBS programs to varying degrees. This proposed strategic plan requirement will add consistency to longer-term planning and program development at each institution, while also requiring performance analysis, all of which should strengthen the direct lender association's YBS program.

The Farm Credit System, as a GSE, maintains a special responsibility to YBS, which is a mission-critical lending segment. For this reason, we propose the creation of an independent document that stands alone and separate from the operational and strategic business plan. Similar to the operational and strategic business plan required by § 618.8440, we propose that the YBS strategic plan must be forward looking by 3 years and submitted no later than 30 days after the commencement of each calendar year. This should allow direct lender associations to complete their entire planning process at one time.

We propose that the YBS strategic plan contain minimum elements detailed in proposed paragraph (d). Paragraph (e) of the existing regulation requires targets and goals be included in the direct lender association's strategic operational plan for the succeeding 3 years. We propose moving this requirement

to paragraph (c) (2), and instead of including such goals in the operational and strategic business plan, they will be included in the standalone YBS strategic plan. YBS components will no longer be required as part of § 618.8440.

Further, we propose that the YBS strategic plan analyze performance. It is important for the direct lender association to use actual results when setting goals and developing the future years' YBS program. We also propose that the direct lender association discuss variances that occurred between actual performance and goals and provide the reasons for such variances. This analysis should also be helpful in ensuring the YBS program is relevant and appropriately serving the needs of the YBS segment. In proposed paragraph (c) (3) (iii), we propose that the YBS strategic plan identify how the efforts of the direct lender association, through its YBS program, are assisting YBS farmers and ranchers with receiving both credit and education. Also, under proposed paragraph (c) (3) (iv), we propose that the YBS strategic plan also assess the effectiveness in providing credit and services. This should discuss how the direct lender association's YBS planning, and program efforts are resulting in new and expanding YBS borrower operations and how the credit is being provided to these YBS borrowers.

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

We propose redesignating existing paragraph (c) as paragraph (d) and reorganizing and revising its containing paragraphs. The YBS strategic plan outlined in proposed paragraph (c) will guide the development and implementation of the direct lender association's YBS program.

We propose moving language in existing paragraph (c) (4) that reads, "safe and sound manner and within a direct lender association's risk-bearing capacity," to the main body of paragraph (d). In addition to the requirement that each YBS program must operate in a safe and sound manner within the direct lender association's risk-bearing capacity, such operation must be done "while meeting the unique needs of YBS farmers and ranchers." There can be actual and perceived risk in lending to the YBS segment. These borrowers often lack certain credit elements such as abundant repayment capacity, liquidity, or collateralization. Generally, loans to YBS borrowers can be made in a safe and sound manner despite some increased risk relative to non-YBS borrowers.

Next, we propose adding paragraph headings to paragraphs (1) ("Qualitative Factors"), (1) (i) ("Corporate Governance"), (1) (ii) ("Credit and Related Services"), (1) (iii) ("Marketing,

Outreach and Education”), and (2) (“Quantitative Goals”). We propose moving the mission statement requirement in existing paragraph (c) (1) to proposed paragraph (d) (1) (i) (A), as a component of the Corporate Governance. Other than relocation, the requirement has not changed. We also propose moving the internal control requirement in existing paragraph (f) of current regulations to proposed paragraph (d) (1) (i) (B) and adding to its coverage the YBS strategic plan. We propose moving the related services requirement in existing paragraph (c) (3) (i) to proposed paragraph (d) (1) (ii) (A), and moving coordination requirements in existing paragraph (c) (3) (ii) to (d) (1) (ii) (B). We also propose streamlining this requirement by striking the words, “take full advantage of opportunities for coordinating,” and replacing it with “coordination.” We propose to move outreach requirements in existing paragraph (c) (3) (iii) to proposed paragraph (d) (1) (iii). We propose minor changes to this requirement by replacing “Implement” with “Implementation” and adding the word “retain.” Further, we propose adding the consideration of a YBS mentoring program to the list of examples of outreach programs to better serve and understand the needs of this lending segment.

Within proposed paragraph (d) (2), we propose replacing instances of “targets” with “goals” to be more consistent with the terminology used in the remainder of the quantitative text

section. We also propose adding the requirement that direct lender associations identify the sources of data used to establish the goals. Lastly, we propose replacing "targets may" with "goals must." The regulatory text in proposed paragraphs (2)(i)-(ii) remains the same as existing paragraphs (c)(2)(i)-(iv).

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

FCA proposes to revise § 620.5(k)(2) to update referencing. Specifically, we propose to change the paragraph's cross-reference from § 614.4165(c) to instead point to § 614.4165(d) which reflects the proposed reordering of text in that section. The rest of § 620.5(k)(2) remains unchanged.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed 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 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.

List of Subjects

12 CFR Part 614

- Agriculture
- Banks, banking
- Flood insurance
- Foreign trade
- Reporting and recordkeeping requirements
- Rural areas

12 CFR Part 620

- Accounting
- Agriculture
- Banks, banking
- Reporting and recordkeeping requirements
- Rural areas

PART 614

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 an annual strategic plan, which includes the details of 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;

(iii) Each affiliated direct lender association to submit to its funding bank its annual YBS strategic plan as described in paragraph (c) of this section and any other information regarding its YBS program, as described in paragraph (d), deemed necessary by the bank to meet the requirements of this paragraph (b); and

(iv) 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 direct lender association's YBS strategic plan and program are subject to the review and approval of its funding bank. 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.

(3) The Farm Credit Banks and Agricultural Credit Bank must implement internal controls that establish clear lines of responsibility for approving, reviewing, and monitoring of affiliated direct lender association YBS strategic plans, programs, and reporting.

(c) Direct lender association YBS strategic plan.

(1) No later than 30 days after the commencement of each calendar year, the board of directors of each direct lender association must adopt a 3-year YBS strategic plan to develop and guide its YBS program. The YBS strategic plan is an independent document submitted to the FCA along with the annual operational and strategic business plan required by § 618.8440.

(2) At a minimum, the strategic plan must detail the operations of the YBS program, including all components in paragraph (d) of this section. Goals outlined in paragraph (d)(2) of this section must be included in each direct lender association's YBS strategic plan covering at least the succeeding 3 years.

(3) The YBS strategic plan must:

(i) Analyze the association's performance in the previous year toward achieving the components in section (d);

(ii) Discuss variances and reasons for the results;

(iii) Identify how the efforts in paragraph (d) of this section assist YBS farmers and ranchers with both receiving credit and education; and

(iv) Assess the direct lender association's effectiveness in providing these efforts that result in new and expanding YBS operations to which credit is now provided.

(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 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 reasonably 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

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 of Pub. L. 100-233, 101 Stat. 1568;
sec. 514 of Pub. L. 102-552, 106 Stat. 4102.

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.