



October 6, 2009

Arthur Hall  
Director, Loan Servicing and Property Management Division  
Farm Service Agency  
1400 Independence Avenue SW, Stop 0523  
Washington, DC 20250-0523

**Re: Proposed Rule -- Farm Loan Programs (Fed. Reg. Vol. 74, No. 151, pages 39565-69)**

Dear Mr. Hall:

On behalf of its 39 member organizations, the National Sustainable Agriculture Coalition is pleased to make these brief comments in response to the proposed rule in the August 7, 2009 Federal Register (Vol. 74, No. 151, pages 39565-69). Our comments are limited to the graduation rules pursuant to 5304 of the 2008 Farm Bill.

**1. Term Limits.** Our first comment pertains not to the proposed rule itself, but rather to the reason the graduation provision was included in the Beginning Farmer and Rancher Opportunity Act of 2007 (HR 2348/S 1460) and then carried over into the credit title of both the House and Senate versions of the last Farm Bill. That reason, of course, was to highlight a fairer, more effective, and less arbitrary approach to graduation than the policy represented by term limits. The two bills introduced in 2007 also, simultaneously therefore, eliminated term limits. Sadly, from NSAC's perspective, the term limits elimination side of the coin dropped out of the package before the Farm Bill was finalized (except for the 3-year suspension of term limits for loan guarantees), with only the graduation provision left standing.

As you well know, the term limits for direct loan programs are seven for operating loans and ten years for ownership loans. There is also a 15-year term limit on guaranteed loans, though Congress has temporarily waived the provision until December 31, 2010. Once the term limit is reached a borrower must be able to graduate to private, commercial lender at commercial rates or risk being unable to sustain their operation. Term limits do not have any exclusions or extensions for events such as natural disasters or export bans or other circumstances beyond a producer's control.

In our view, the basic idea behind term limits is good – that farmers will be able to graduate from direct loans to guaranteed loans to commercial loans over a period of time. Congress passed term limits in part due to past abuses in which some producers simply became lifelong government borrowers by default. However, the hard and fast limits are arbitrary and an overly rigid in light of the low profit margins, sudden price swings, and increasingly unstable weather patterns, not to mention the ongoing financial crisis.

Our view is that properly functioning borrower training, loan supervision, loan assessments, market placement and graduation procedures, plus the basic family-sized farm and no credit elsewhere eligibility tests, are sufficient to ensure the public purpose served by the loan programs is carried out in a fair and conscientious manner. Properly applied, the existing graduation-related provisions and eligibility requirements are effective in ensuring FSA credit is playing its proper role of providing temporary assistance. With the proper protections and directives in place, farm loan

officers should be allowed to do their jobs and make sound loans to qualified borrowers on a temporary basis without the imposition of arbitrary term limits.

We therefore, first and foremost, recommend that the agency propose to the Secretary that he promote a legislative proposal to fix the term limit problem. Such a request will be most credible when the agency has promulgated a final rule with respect to the graduation provision of the 2008 Farm Bill and has issued the performance criteria required by the farm bill provision that will ensure all of the existing elements of the overall graduation effort -- supervised credit, borrower training, loan assessment, market placement, and graduation requirements -- are being fully utilized.

We urge you to get those elements in place as quickly as possible and to immediately thereafter send to Congress an implementation report on Section 5304 and a legislative proposal to eliminate term limits.

**2. New Introductory Purpose Statement.** We strongly support the new statement of purpose the proposed rule would add to 7 CFR 761.1(c) -- *“The programs are designed to allow those who participate to transition to private commercial credit or other sources of credit in the shortest period of time practicable through the use of supervised credit, including farm assessments, borrower training, and market placement.”*

However, we recommend two improvements. First, we would add “borrower graduation requirements” to the sentence, so that it would read: *“The programs are designed to allow those who participate to transition to private commercial credit or other sources of credit in the shortest period of time practicable through the use of supervised credit, including farm assessments, borrower training, market placement, and borrower graduation requirements.”*

Second, we suggest the paragraph makes more sense if this new sentence is inserted between the existing second and third sentences rather than following the existing third sentence.

**3. New Farm Assessment Language.** We also strongly support the proposed addition to 7 CFR 761.103(a) that reads *“(3) Develop a plan of supervision to assist the borrower in achieving financial viability and transitioning to private commercial credit or other sources of credit in the shortest time practicable.”*

We ask you to consider whether a parallel addition should possibly be made to subsection (b) by add at the end of the list, following “(10) Training plan” a semicolon and “(11) Transition plan.” or “(11) Graduation plan.” This strikes us as a reasonable idea, making (b) parallel to (a) and also including the concept of a graduation plan, as provided in statute by Section 319 of the Con Act, in the regulations.

**4. Borrower Training Waivers.** We recommend consideration of additional graduation-related language to 7 CFR 764.453 (Agency waiver of training requirements). We believe the existing language would be improved by the rewording of (b)(2) to include the following underlined phrase: *“(b)(2) The applicant submits evident which demonstrates to the Agency’s satisfaction the applicant’s experience and training necessary for a successful and efficient operation, including, with respect to financial management, sufficient experience and training for a successful transition to private commercial credit.”*

The addition of this language in the regulation, and more importantly in the actual practice of agency field and state personnel with respect waivers, will help ensure that customers are “bank-ready” with respect to credit and financial management skills.

**5. Performance Criteria.** Given that Congress had already directed that graduation plans should be developed individually for each direct and guaranteed borrower with the passage of Section 319 of the Con Act, and notwithstanding the important improvements to regulatory language in this pending proposed rule, the single most important item in the language of Section 5304 of the 2008 Farm Bill is in our view the requirement for the establishment of performance criteria with respect to supervised credit, borrower training, loan assessment and review, and market placement.

The Federal Register notice indicates that FSA is developing an “internal” plan to fulfill this statutory requirement and that therefore the criteria are not included in the proposed rule. We concur with the decision to not include the actual performance criteria, which by definition can change from year to year and indeed should do so in a progressive manner, in the regulation.

However, we believe the regulations should simply reference the statutory requirement for performance criteria. We believe it is important to state the agency’s intent to regularly produce those criteria in the regulations and believe that can be simply and easily accomplished with the addition of a sentence in 761.1 and/or 765.101.

We also strongly urge the agency to share the draft performance criteria with stakeholders and to invite stakeholder comments by way of a listening session or net conference and/or by means of a short written comment period. We look forward to the opportunity for review and comment.

Moreover, as we mentioned at the beginning of our comments, we believe the performance criteria should be explained in detail to Congress and packaged with the final rule, a clear explanation of the agency’s goals and objectives with respect to graduation policy, a statistical report (including the stories of the real people represented by the statistics) on the impact of term limits on borrowers, and draft legislation proposed by the Administration to the Congress to eliminate term limits and replace them with sound and well-administered graduation policies and procedures.

We urge you to discuss this proposed strategy with the Administrator, the Under Secretary, and the Secretary and Deputy Secretary in the very near future. We look forward to offering our strong support to this legislative proposal when it is sent to the Hill and we hope that opportunity will emerge by early next calendar year.

Thank you for your consideration of our views and recommendations.

Sincerely,



Ferd Hoefner  
Policy Director  
National Sustainable Agriculture Coalition

cc: Jonathan Coppess, Chris Beyerhelm, Jim Radintz, Nancy New