



National Sustainable Agriculture Coalition

December 8, 2014

Chris Beyerhelm
Director, Loan Making Division, Farm Loan Program
U.S. Department of Agriculture-Farm Service Agency
1400 Independence Avenue SW, Mail Stop 0522
Washington, DC 20250-0522

Re: NSAC Comments on Proposed Rule RIN 0560-AI25 (Federal Register Vol. 79, No. 195, Oct. 8, 2014, page 60739)

Submitted via www.Regulations.gov

Dear Mr. Beyerhelm:

The National Sustainable Agriculture Coalition (NSAC) welcomes the opportunity to provide input to the Farm Service Agency (FSA) as the agency moves forward in finalizing regulations to implement changes to farm loan programs mandated by the 2014 Farm Bill.

NSAC is a national alliance of 40 family farm, food, rural, and conservation organizations that together take common positions on federal agriculture and food policies to advance sustainable agriculture. Our work focuses on federal policies that contribute to creating a more sustainable food and farm system – including federal credit policies and loan programs that seek to expand farming opportunities for beginning and socially disadvantaged farmers and small and mid-sized, diversified family farms.

In response to the agency's Interim Final Rule to expand eligibility for FSA farm loan programs, NSAC is supportive of these efforts so long as they do not fundamentally change the way in which the agency makes direct farm loans nor the focus on lending to family farmers who are actively engaged and substantially involved in the operation of the farm, with a strong emphasis on increasing the ranks of owner-operators. We do have some concerns with the rule as it is written; specifically regarding the expanded eligibility for operating-only and embedded entities. In this light, we make the following recommendations with the goal of ensuring that federally-financed farm loans are strictly targeted to working farmers who have a significant interest and involvement in the farming operation and seek to own the land they farm.

We thank you for serious consideration of our recommendations, and would welcome the opportunity to provide any additional feedback.

Sincerely,

Ferd Hoefner, Policy Director
National Sustainable Agriculture Coalition

Juli Obudzinski, Senior Policy Specialist
National Sustainable Agriculture Coalition

RECOMMENDATIONS

1. Prioritize loans to owner-operator borrowers

FSA has played a critical role in helping farmers – both new and established – buy land to start or build their farming operation. The purchase of farmland is a critical step in building a stable farm business and one that encourages a long-term commitment to both land stewardship and viable rural communities, and provides a security in building a successful farm business.

Unfortunately, more and more farmers are finding it harder to afford to purchase land outright and are instead relying on rental agreements and if they're lucky, long-term lease arrangements. This trend is due in part to rising land prices across the country as well as fewer landowners, including retired farmers and non-farming heirs, who are willing to give up their most valuable (and profitable) asset. It is exacerbated by the intense demand for farmland among outside investors. The situation places new and beginning farmers, especially those not in a position to inherit land, at a severe disadvantage.

The move towards a nation of farmers who don't own the land beneath their feet is a dangerous trend that puts our rural communities and natural resources at risk. It also creates a fundamental shift in the structure of farming from one of self-sufficient, independent, family farmers who have a long-term commitment to the land they farm and communities they serve, into an agricultural system that supports absentee landlords and passive investors who own our nation's most productive farmland over the dedicated and hard-working farmers who have no long-term security in the land they farm.

FSA lending activities should therefore ultimately aim to increase the number of owner-operators, not those who operate but don't own the actual "farm." The statutory changes made in the Farm Bill to expand eligibility to farm loans to so-called "operating-only entities" and the agency's subsequent rule and forthcoming regulations, must make every effort to ensure we do not move the country in the wrong direction, and away from encouraging farmers to own the land they wish to farm now and in the years to come.

While we recognize that FSA is required to make these regulatory changes per statutory changes made in the Farm Bill, FSA should use all other tools at their disposal to ultimately increase, not decrease, the number of owner-operators farming in this country. This includes a mechanism that allows FSA to give priority to loans to owner-operators (over operating-only or embedded entities) if loan funds are limited or backlogged in any way. We urge you to add a statement to that effect in the final rule and in directives to state and county offices.

2. Any loan applicants, including operating-only and embedded-entities, should still meet all the requirements set forth in the definition of a "family farm"

The 2014 Farm Bill also authorizes FSA to lend to business entities that are owned in whole or in part by another business entity, so long as the landowners of the farm have a substantial majority interest in the so-called "embedded entity."

We have serious concerns that expanding eligibility for FSA farm loans to these complex legal structures raises the potential for abuse by non-farming or passive investors who are not "family

farmers” in any sense of the word. The threshold for the ownership share required for any embedded entity should be higher than 75 percent, as a quarter of any embedded business entity owned by non-farming investors is not insignificant. We recognize, however, that FSA is required to comply with these statutory changes.

While these changes were made to address the more complex legal structures in which farmers are organizing their businesses today, this change may also open up the potential for FSA to finance operations that no longer meet the requirements of a family farm that is “controlled by farmers and ranchers and engaged primarily and directly in farming or ranching in the United States” (7 U.S.C. 1922(a)) and one that is not larger than family-sized (as defined by 7 U.S.C. 761.2).

Although the Farm Bill does expand loan eligibility for embedded and operating-only entities, it does not change overarching eligibility requirements to qualify as a “not larger than family farm” and we support the agency’s decision to maintain its current definition of a “family farm.”

As such, we expect that all FSA direct and guaranteed loans will still be made to farming operations where the majority of day-to-day, operational decisions, and all strategic management decisions, and a substantial amount of labor is provided by the members responsible for operating the farm – including the individual owners of operating-only and embedded entities.

This requirement that all operating-only and embedded entity applicants should be able to prove that they still in fact meet this definition of “family farm” should be explicitly stated and emphasized in training materials and directives to the state and field offices when implementing these new changes to loan eligibility requirements.

3. Employ strict definition of “active management”

In addition to strictly enforcing the definition of “family farm” and taken steps to ensure that all operating-only and embedded entities meet this definition, FSA should also utilize strict criteria for what is required to be considered “actively involved in managing or operating the family farm.”

The proposed language included in Part 762.120(k)(4) of 7 CFR Chapter VII states that “If the applicant has one or more embedded entities, at least 75 percent of the individual ownership interests of each embedded entity must be **owned by members actively involved in managing or operating the family farm.**”

In implementing these eligibility changes for embedded entities, and **in the final rule**, FSA should define active management in such a manner that requires regular, continuous, and substantial management activities including significant on-site management activities. As it currently stands, this lack of clarity on how individual FSA loan officers will make the decision of whether the individuals who own the embedded entity are actively managing the farm is likely to cause confusion and inconsistencies in the application of this new eligibility standard.

In addition to clarifying that newly eligible operating-only and embedded entities must be ones in which the farmer has total management control, **in implementing documents and in the final rule** FSA should also require that the owners of the farm that make up the required share of the entity also receive the majority of the operating income that the business generates. While the statutory changes are primarily aimed at helping small, primarily or entirely family LLCs with no

investors, there would of course be a wide variety of other types of entities and ventures that might want to make use of the newly provided flexibility. FSA should therefore take care to build in as many protections as possible to avoid any unintended consequences.