

**§ 617.7130 What initial disclosures must a qualified lender make to a borrower?**

(a) *Required disclosures—in general.* A qualified lender must disclose in writing:

- (1) The interest rate on the loan;
- (2) The effective interest rate of the loan;
- (3) The amount of stock or participation certificates that a borrower is required to purchase in connection with the loan and included in the calculation of the effective interest rate of the loan;
- (4) All loan origination charges included in the effective interest rate;
- (5) That stock or participation certificates that borrowers are required to purchase are at risk and may only be retired at the discretion of the board of the institution; and
- (6) The various types of loan options available to borrowers, with an explanation of the terms and borrower rights that apply to each type of loan.

(b) *Adjustable rate loans.* A lender must provide the following information for adjustable rate loans in addition to the requirements of paragraph (a) of this section:

- (1) The circumstances under which the rate can be adjusted;
- (2) How much the rate can be adjusted at any one time and how much the rate can be adjusted during the term of the loan;
- (3) How often the rate can be adjusted;
- (4) Any limitations on the amount or frequency of adjustments; and
- (5) The specific factors that the qualified lender may take into account in making adjustments to the interest rate on the loan.

**§ 617.7135 What subsequent disclosures must a qualified lender make to a borrower?**

(a) *Notice of interest rate change.* (1) A qualified lender must provide written notice to a borrower of any change in interest rate on the borrower's existing loan, containing the following information:

- (i) The new interest rate on the loan;
- (ii) The date on which the new rate is effective; and
- (iii) The factors used to adjust the interest rate on the loan.

(2) If the borrower's interest rate is directly tied to a widely publicized external index, a qualified lender must provide written notice to the borrower of the rate change within forty-five (45) days after the effective date of the change.

(3) If the borrower's interest rate is not directly tied to a widely publicized external index, a qualified lender must send written notice to the borrower of the rate change within ten (10) days after the effective date of the change.

(b) *Notice of increase in stock purchase requirement.* If a qualified lender increases the amount of stock (or participation certificates) a borrower must own during the term of a loan, the lender must send a written notice to the borrower at least ten (10) days prior to the effective date of the increase. The notice must state:

- (1) The new effective interest rate on the outstanding balance for the remaining term of the borrower's loan;
- (2) The date on which the new rate is effective; and
- (3) The reason for the increase in the borrower stock (or participation certificates) purchase requirement.

**Subpart C—Disclosure of Differential Interest Rates**

Sec.

617.7200 What disclosures must a qualified lender make to a borrower on loans offered with more than one rate of interest?

**Subpart C—Disclosure of Differential Interest Rates****§ 617.7200 What disclosures must a qualified lender make to a borrower on loans offered with more than one rate of interest?**

A qualified lender that offers more than one rate of interest to borrowers must notify each borrower of the right to request a review of the interest rate charged on his or her loan no later than the time of loan closing. At the request of a borrower, the lender must:

- (a) Provide a review of the loan to determine if the proper interest rate has been established;
- (b) Explain to the borrower in writing the basis for the interest rate charged; and
- (c) Explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

Dated: March 23, 2004.

**Jeanette C. Brinkley,**  
Secretary, Farm Credit Administration Board.  
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**FARM CREDIT ADMINISTRATION****12 CFR Parts 614, 620, 630****RIN 3052-AC07****Loan Policies and Operations;  
Disclosure to Shareholders;  
Disclosure to Investors in Systemwide  
and Consolidated Bank Debt  
Obligations of the Farm Credit System**

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA, agency, we, or our) issues this final rule amending our regulations governing the Farm Credit System's (System) mission to provide sound and constructive credit and services to young, beginning, and small farmers and ranchers and producers or harvesters of aquatic products (YBS farmers and ranchers or YBS). Additionally, with this final rule, the agency amends the System's disclosure to shareholders and investors to include reporting on its service to YBS farmers and ranchers.

**EFFECTIVE DATE:** This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

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**SUPPLEMENTARY INFORMATION:****I. Objective**

The objective of this rule is to ensure that the System provides sound and constructive credit and services<sup>1</sup> to YBS farmers and ranchers.<sup>2</sup> To accomplish this objective, the rule amends our existing regulations to provide:

1. Clear, meaningful, and results-oriented guidelines for System YBS policies and programs; and
2. Enhanced reporting and disclosure to the public on the System's performance and compliance with its statutory YBS mission (YBS mission or mission).

Through these amendments, the public will be better able to measure the

<sup>1</sup> The term "services" includes leases and related services to YBS farmers and ranchers.

<sup>2</sup> The Farm Credit Act of 1971 (1971 Act) gave the production credit associations and the banks for cooperatives the authority to finance "producers or harvesters of aquatic products" in addition to financing "farmers and ranchers." The 1980 amendments to the 1971 Act gave the Federal land banks expanded authority to finance "producers or harvesters of aquatic products" and put such producers and harvesters on the same footing as "farmers and ranchers." Thus, in accordance with the amendments to the 1971 Act, whenever we refer to "YBS farmers and ranchers" or "YBS borrowers" in this rule, we are including "producers or harvesters of aquatic products."

System's performance in fulfilling its YBS mission.

## II. Background

As discussed in the preamble to the proposed rule (*see* 68 FR 53915, September 15, 2003), section 4.19 of the Farm Credit Act of 1971, as amended (Act), requires each System association to prepare a program for furnishing sound and constructive credit and related services to YBS farmers and ranchers. Congress added this section to the Act in 1980 to focus the System's attention on the need to have programs for such borrowers. Our current YBS regulations restate the YBS requirements in the Act. Further interpretation of the Act's YBS requirements currently is found in agency policy guidance.<sup>3</sup>

As stated in our proposed rule, YBS farmers and ranchers, like all those in agriculture today, 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. 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. The System's YBS mission is also critical to facilitate the transfer of agricultural operations from one generation to the next. For all these reasons, the agency remains committed to ensuring that the System fulfills its important public purpose mission to YBS farmers and ranchers.

In the proposed rule, the agency set forth minimum components that each System direct lender association must include in its YBS program and added requirements to enhance the reporting and disclosure to the public of the System's YBS programs, compliance, and performance.

The content of the proposed rule was an outgrowth of an initiative undertaken by the agency to renew the System's commitment to its YBS mission. This initiative began in 1998, with the adoption of an FCA Board policy statement that provided guiding principles for enhanced service to YBS farmers and ranchers.<sup>4</sup> To implement

the policy statement, the agency issued a booklet that included revised YBS definitions and YBS reporting procedures.<sup>5</sup> The revised reporting procedures contained in the booklet require System institutions to submit detailed annual reports to the agency on all aspects of their YBS programs.

In furtherance of this initiative, in 1999, YBS lending programs became a "focus area" of agency examinations where, among other factors, the agency reviewed System institutions' YBS board policies and procedures; YBS credit enhancement programs and underwriting standards; YBS program coordination with Federal, state, System or other credit sources; demographic studies; marketing, advertising, and other outreach programs; and the quality of YBS reporting to System institutions' boards and FCA.

Additionally, for the past 3 years, the FCA recognized the exemplary YBS programs of several System associations.

In the proposed rule, we also discussed the March 8, 2002, General Accounting Office (GAO) report on our oversight of the System's mission to serve YBS farmers and ranchers.<sup>6</sup> The GAO report recommended, in part, that the agency strengthen its oversight role of the System's YBS lending, promote YBS compliance, and highlight the System's efforts to provide services to YBS farmers and ranchers by:

1. Promulgating a regulation that outlines specific activities and standards that constitute an acceptable program to implement the YBS statutory requirement;
2. Ensuring that examiners follow the guidance, complete the appropriate examination procedures related to YBS, and adequately document the work performed and conclusions drawn during examinations; and
3. Publicly disclosing the results of the examinations for YBS compliance for individual System associations.

In the proposed rule we noted that in its response to Congress, the FCA expressed its commitment to address the issues raised in the GAO report.

In continuance of our YBS initiative, the agency sought public input through an advance notice of proposed rulemaking (ANPRM)<sup>7</sup> and a public

meeting held on November 13, 2002, in Kansas City, Missouri.<sup>8</sup> We discussed that our objectives for the ANPRM and public meeting were to seek the public's suggestions on possible YBS regulatory approaches and policy initiatives and to hear about ways to enhance the System's service to YBS farmers and ranchers. The comments, in response to the ANPRM and from the testimony at the public meeting, reflected a multitude of opinions on the issue of whether the agency should provide more guidance to the System on YBS policies and programs. The preamble to the proposed rule provided an extensive discussion of those comments together with the agency's responses. Overall, the comments were generally divided between those that opposed the issuance of revisions to the agency's YBS regulation and those that supported additional regulatory requirements.

## III. General Comments Received

In response to the proposed YBS rule, the agency received 52 comment letters. Commenters included the Farm Credit Council, System institutions, commercial banks, the American Bankers Association, the Independent Community Bankers of America, and other associations or trade groups involved in agriculture, such as the Sustainable Agriculture Coalition and the Farmers' Legal Action Group. Many of these commenters included by reference their previous comments in response to the ANPRM. In fact, a majority of the comments received in response to the proposed rule were identical or similar to the comments on the ANPRM and testimony at the public meeting and are addressed in our responses to the comments below. The commenters generally can be divided into two groups—those that oppose the additional requirements in the proposed rule and those that believe the proposed rule should go further in delineating YBS program, reporting, and disclosure requirements. Our responses to all these commenters are included in this section on general comments and in the section-by-section response further on in part VI of this preamble.

A few commenters supported the proposed rule, stating specifically that it supports FCA's effort to help YBS farmers and ranchers and that the reporting requirements should help improve transparency and accountability. The agency agrees that the final YBS rule, which provides results-oriented guidelines for YBS policies and programs and enhanced reporting and disclosure requirements,

<sup>3</sup> FCA BL-040, Policy and Reporting Changes for Young, Beginning, and Small Farmers and Ranchers Programs, issued December 11, 1998, available on the FCA Web site, <http://www.fca.gov> (under Legal Info., FCA Handbook).

<sup>4</sup> Farm Credit Administration: Oversight of Special Mission to Serve Young, Beginning, and Small Farmers Needs to be Improved (GAO-02-304), available on the GAO Web site, <http://www.gao.gov/cgi-bin/getrpt?GAO-02-304>.

<sup>7</sup> *See* 67 FR 59479, September 23, 2002.

<sup>8</sup> *See* 67 FR 64320, October 18, 2002.

<sup>3</sup> *See infra*, notes 4 and 5.

<sup>4</sup> FCA-PS-75, Farm Credit System Service to Young, Beginning, and Small Farmers and Ranchers effective December 10, 1998, available on the FCA Web site, <http://www.fca.gov> (under Legal Info., FCA Handbook).

should ensure that the System continues to remain focused on and committed to its YBS mission.

Many commenters opposed the proposed rule, stating that:

- The requirements would create additional burdens and costs for System institutions without providing new tools for better servicing YBS farmers and ranchers or increasing the number of YBS loans;

- Additional costs resulting from a revised YBS rule would be passed on to the farmers and ranchers and is inconsistent with congressional directives to eliminate unnecessary and burdensome regulations;

- The System, which is tasked with serving all of American agriculture, recognizes the importance of and is already adequately serving the credit needs of YBS farmers and ranchers; and

- There is no evidence suggesting YBS farmers and ranchers are being denied access to credit by the System.

The commenters expressed concern that the proposed rule is the product of a GAO report on the agency's oversight of the System's mission to serve YBS farmers and ranchers and requested that FCA reconsider the issuance of a revised YBS rule, as well as its response to GAO. Many of these commenters suggested that, rather than issuing a revised YBS rule, the agency should use its enforcement authority to address any System shortfalls in meeting the credit needs of YBS borrowers.

Many of the foregoing comments are similar or identical to comments made in response to the ANPRM and the testimony at the public meeting on YBS guidance. As we stated previously, section 4.19 of the Act requires the System to pay particular attention to the credit and related services needs of YBS farmers and ranchers. Congress inserted section 4.19 of the Act, in part, as a response to a recognition that the family farm was declining in American agriculture at an alarming rate. This final rule is not a response to a perception that the System does not value or adequately serve YBS borrowers. Rather, the rule is a means to ensure that the System remains focused on this very important group of potential borrowers so that they can continue to have a future in agriculture. Thus, the agency does not believe that a regulation to ensure the System meets its YBS statutory mandate is unnecessary.

Further, we do not believe that this YBS final rule will result in significant additional burdens or costs for the System. Many of the rule's requirements already exist in current YBS guidance

and examination and reporting requirements to which the System must currently adhere. Although the 2002 GAO report focused attention on the agency's oversight role of the System's YBS mission, well before the issuance of the report, the agency had taken significant steps to direct the System to refocus on its YBS mission. Specifically, in 1998, the agency issued a policy statement and booklet on the YBS mission and, in 1999, the agency made YBS a focus area of agency examinations. In fact, since 1980, when Congress first added section 4.19 to the Act, the agency has had regulatory and policy guidance on the System's YBS mission to supplement the Act's general YBS requirements for System banks and direct lender associations. As seen by our efforts previous to the GAO report, the final rule is not simply a response to GAO, but a means to ensure that the System continues to actively and creatively seek ways to finance and service the needs of YBS borrowers.

Finally, FCA has taken a proactive approach to its oversight role of the System's YBS mission. By issuing this final rule, we strive to ensure that the System will successfully fulfill its YBS mission and diminish the need for ensuring mission accomplishment through the use of our enforcement authorities. We note, however, that by moving much of the current YBS guidance from a policy statement and a booklet to a rule, we are strengthening our ability to more effectively take an enforcement action against a System institution for its failure to meet its YBS responsibilities should it become necessary.

A number of commenters suggested the agency eliminate the scope of lending restrictions limiting lending to less than full-time farmers so that part-time farmers have more access to credit. This issue is currently under review as part of a separate agency rulemaking on scope and eligibility. However, even if FCA were to remove the scope of lending restrictions, a regulation on YBS would still serve to enhance the System's fulfillment of its YBS mission.

One commenter suggested that the removal of territorial restrictions would enable some System associations with a strong commitment to serving YBS farmers and ranchers to fill a need when a neighboring association fails to adequately serve its YBS market. A consideration to remove territorial restrictions is not currently listed in the agency's regulatory performance plan (available on the agency's Web site, <http://www.fca.gov>). However, with this final rule, the agency can better assess the effectiveness of an association's YBS

program and determine, through the examination process, whether an association is adequately serving its YBS market.

Some commenters suggested that the agency allow the use of System subsidiary entities, which, they believe, would make it easier for System associations to provide funding for higher risk YBS loans and increase lending to YBS borrowers. Efforts to create new corporate structures for System institutions have broad implications beyond service to YBS farmers and ranchers. Some System institutions have approached the agency to discuss their desire to create new entities for various purposes, including YBS-related purposes. The agency will continue to respond directly to those requests, but believes that the issue raised by the commenters goes beyond the scope of this rulemaking.

One commenter recommended that the agency require System institutions to expand their YBS programs by adding a fourth category for "socially disadvantaged" farmers and ranchers. Similarly, another commenter recommended that the System gather data about the gender and ethnicity of the borrowers they serve to ensure credit is being provided equally across such categories. Requiring the System to implement either of these recommendations is beyond the agency's authority because the Act neither includes a special mission to serve "socially disadvantaged" farmers or ranchers nor a directive to serve borrowers of a certain gender or ethnicity. We note, however, that these groups are not excluded from the System's overall mission. Section 1.1(a) of the Act requires the System to serve all eligible American farmers and ranchers. In fact, System YBS programs often include service to socially-disadvantaged, women, and minority farmers and ranchers, as these groups often comprise either young, beginning, or small farmers and ranchers. Thus, the enhanced YBS rule should also advance the System's service to these groups of potential borrowers.

Two commenters stated that the FCA needs to prohibit System institutions from engaging in below-market pricing of loans in order to avoid "cherry-picking" the best borrowers. This same comment was made in response to the ANPRM on YBS. At that time, we responded by explaining that sections 1.8(b) and 2.4(c)(2) of the Act provide that "it shall be the objective" of System lenders to set interest rates and other charges "at the lowest reasonable costs on a sound business basis" taking into consideration the lender's cost of funds,

necessary reserves, and the cost of providing services to its members. Thus, the System is fulfilling its public purpose under the Act when it provides interest rates at the lowest reasonable cost on a sound business basis. In addition, through the examination process, the agency routinely reviews each System institution's loan pricing to ensure that interest rates charged to borrowers cover costs and provide additional capital to ensure the institution's ongoing safety and soundness. Moreover, in our oversight and regulatory role, we ensure that the System is providing sound, adequate, and constructive credit and related services to all eligible American farmers and ranchers.

Finally, one commenter suggested that the agency remove any suggestions or recommendations from the final rule so that it is clear what the rule requires. The agency believes that the requirements in the rule are clearly marked by the use of the word "must." One section of the rule, namely § 614.4165(c) on *direct lender association YBS programs*, contains suggestions, marked by the use of the words "may" or "could." The agency deliberately used suggestive language in this section to allow a direct lender association maximum flexibility in designing a YBS program that best fits the needs of its territory and is within its risk-bearing capacity. Thus, although all System associations *must* develop annual quantitative YBS targets, the rule offers suggestions only on what such targets might look like. Similarly, although direct lender associations YBS programs *must* include annual qualitative YBS goals and methods to ensure that such programs are offered in a safe and sound manner and within their risk-bearing capacity, the way in which associations fulfill these components of the program is left up to them. We believe that through the use of the words "must" and "may," the final rule clearly delineates what is required from what is simply suggested as a way of meeting a particular program component requirement.

Another section of the proposed rule, namely § 614.4165(d) on *advisory committees*, is also not a requirement but only a suggested activity for an association's YBS program. However, because the formation of a YBS advisory committee is a type of outreach activity, we have moved this suggestion in the final rule to § 614.4165(c)(3)(iii) on *outreach programs* rather than retain it as a separate, suggested component. We believe this change in the rule will make it clearer that the formation of a YBS advisory committee is a suggested

activity, rather than a required component, of a YBS program.

Lastly, one commenter opposed any programs that support YBS farmers and ranchers, especially if such programs are financed with taxpayer dollars. This commenter appears to be unclear about the purpose of the proposed rule and the role of the System. Section 4.19 of the Act requires the System to serve the credit and related services needs of YBS farmers and ranchers. A regulation on System YBS programs serves to support the YBS statutory requirement. Further, we note that, as a Government-sponsored enterprise (GSE), the System does not operate with taxpayer dollars and so its YBS programs are financed with private funds rather than public monies.

#### IV. Comments on the Pass/Fail Rating

In the preamble to the proposed rule, the agency discussed its intention to assign a "pass" or "fail" rating to each direct lender association's overall YBS program. We further stated that this YBS compliance rating would be based on a review of the direct lender association's YBS program components during an examination of an association. We also mentioned the FCA Board's intention to publicly disclose the results of the System's YBS compliance.

Many commenters raised opposition to the implementation of any kind of YBS rating or the disclosure of compliance results to the public. These commenters stated that such disclosures would not be useful because the circumstances of each association are unique. These same commenters expressed further concerns that the agency had not clearly set forth the criteria it would use to determine a "pass" or "fail" rating, and therefore the determination of such ratings would be arbitrary. The commenters expressed concern that without clear criteria, a "pass" rating would not provide the public with any useful information, while a "fail" rating could unfairly damage an association's reputation and competitive position. These commenters questioned whether such disclosure was appropriate or even authorized by Congress, stating further that examination results are, and should remain, confidential. Finally, these commenters stated that such ratings were unnecessary because of the extensive reporting and disclosure requirements in the proposed rule.

Many other commenters expressed support for rating the YBS programs of direct lender associations. In addition, these commenters suggested that FCA not only require disclosure of each direct lender association's YBS rating,

but also disclosure of agency examination results of each association's YBS program. These commenters also asserted that the agency's YBS ratings should be expanded to be more comparable to the ratings other financial institutions are subject to under the Community Reinvestment Act (CRA) and the Home Mortgage Disclosure Act of 1975 (HMDA). These commenters point out that financial institutions subject to CRA and HMDA are required to disclose to the public their performance ratings in serving low and moderate income households. The commenters note that, under CRA, a financial institution's performance is rated as "outstanding," "satisfactory," "needs improvement," or "substantial noncompliance." The commenters stated that since the System is a GSE, the agency should impose YBS ratings at least as stringent as CRA ratings. Many of these same commenters also suggested that the agency make both the YBS rating and examination results of each direct lender association available to the public on the agency's Web site, similar to the practice of the other Federal financial regulators under CRA. Finally, several of the commenters state that many of their recommendations are consistent with the issues raised in the GAO report.

Many of these comments are similar, if not identical, to comments we received and addressed in response to the ANPRM. The commenters that remain opposed to the imposition and disclosure of a YBS compliance ratings and those that desire expansions to the "pass/fail" ratings provide little or no new arguments in support of their positions. The agency continues to believe it is important to measure and provide the public with a complete and accurate picture of the System's YBS compliance and performance. Again, we believe this will be best accomplished through disclosure of some form of rating that indicates each direct lender association's compliance with the minimum components for a YBS program, along with the requirement that each System institution report on and publicly disclose its YBS mission results.

In consideration of the comments on the "pass/fail" rating, we now want to clarify that the "pass/fail" rating is a compliance rating only that will simply indicate whether direct lender association YBS programs meets the requirements of this rule. In contrast, the enhanced YBS reporting and disclosure requirements in the rule will reveal the performance results of each association's YBS program. We also point out that the "pass/fail" rating

process, which has not been incorporated into the rule itself, is an internal examination function that we discuss in this preamble only to highlight the direction of FCA concerning its YBS examination efforts.

The agency is considering what type of examination procedures are necessary for evaluating each direct lender association's YBS program compliance with the provisions in this rule. Once developed, the YBS examination criteria also will be included in the agency's examination manual (available on our Web site at <http://www.fca.gov>).

The agency continues to believe that some form of disclosure of direct lender associations' YBS ratings, combined with the required YBS reporting and disclosure requirements in this final rule, will provide the public with a sound understanding of each association's YBS compliance and performance and will also help the System to better fulfill its YBS mission. Furthermore, the agency continues to believe that it not only has the authority, but also the responsibility in its oversight and regulatory role, to disclose YBS compliance ratings and to ensure that the System describes its performance results to the public. The agency will continue to assess the most effective way to make the YBS ratings available to the public.

As stated in the preamble to the proposed rule, the agency believes it is inappropriate to disclose confidential examination report information. In addition, we continue to believe the additional transparency provided by the enhanced reporting and disclosure requirements in the rule will give the public a sound understanding of the System's YBS compliance and performance results and will, therefore, preclude the need for disclosing the YBS sections of agency examination reports. If the agency determines that an institution's reporting and disclosure do not provide a sound understanding of the System's YBS compliance and performance results, the agency can remedy any shortcomings through its supervisory and enforcement authorities. As to the suggestions for implementing disclosures similar to CRA and HMDA, we note that the Act does not have the same requirements for YBS ratings and disclosure as those set forth in the CRA or HMDA. However, we believe that the enhanced rating, reporting, and disclosure requirements of this rule fulfill the YBS provisions in the Act and will provide effective disclosure to the public on the System's YBS programs, as well as mission shortfalls and accomplishments.

#### V. Comments on YBS Data Collection Issues

Many commenters once again made suggestions on ways to improve the accuracy of the YBS data collected by the agency from System institutions. Some commenters suggested the agency ensure that loans to father and son operations are counted as YBS loans only when the son is actively involved in the farm operation. Under current agency guidance, if a son is co-obligated on the father's loan or has an ownership interest with his father in the farm operations, the loan can qualify as a YBS loan as long as one or more of the YBS definitions is met. We believe this criteria is appropriate for counting the loan in any of the YBS categories. Requiring a YBS borrower to be actively involved in the farming operations is inconsistent with the purpose of YBS lending. The purpose of the YBS mission is to permit YBS farmers, who often are required to earn off-farm income to maintain their farming operations, to get started in agriculture by a variety of means. Thus, we do not see where additional criteria to assess a son's actual involvement in the farming operations would substantially improve upon the accuracy of the YBS data collected by the System or improve upon the System's service to YBS farmers and ranchers.

These commenters also suggested that the agency aggregate loans to one borrower to determine whether the borrower is a "small" farmer and that we add a category for "part-time" farmers to the YBS categories. Under current agency procedures, our determination of a "small" farmer is based on gross sales of agricultural or aquatic products rather than loan volume. As discussed at length in the preamble to the proposed rule, we believe the current definitions for the YBS categories, which were revised in 1998, properly reflect the changes in agriculture over the years and provide the most accurate picture of the System's service to YBS farmers and ranchers. Thus, we see no benefit to changing our definition of "small" farmer.

Similarly, we see no benefit to adding a separate category for part-time farmers. Congress mandated the agency to collect information on "young," "beginning," and "small" farmers and ranchers. The commenters provided no rationale for requiring System institutions to distinguish between part-time and full-time farmers in their YBS reporting. Moreover, we believe that part-time YBS farmers, who often need off-farm income to make ends meet, are

just as deserving of YBS credit and services as full-time farmers.

Other commenters reiterated their concern that the System be prevented from inflating its YBS numbers by allowing the same loan to be counted separately in each applicable YBS category. These commenters also expressed a preference for having the System count and report on the number of YBS *borrowers* rather than *loans*.

The foregoing comments are similar to comments we addressed in response to the ANPRM. We continue to disagree with the implications of these comments that the reported YBS information is inaccurate and misleading. As explained in the preamble to the proposed rule, the practice of reporting a loan in each applicable YBS category is consistent with other GSE mission-related reporting, such as the Federal National Mortgage Corporation (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) reports on their annual housing goals,<sup>9</sup> as well as with congressional intent to report on the System's service to each category of YBS farmers and ranchers. Finally, in the agency's Performance and Accountability Report for fiscal year 2002, the information on the System's YBS lending explicitly states that YBS categories are not mutually exclusive. Therefore, one cannot add across YBS categories to count total YBS lending.

As also explained in our response to the comments received on the ANPRM, in 1998, the agency made several changes to the way it collected YBS data from the System, including collecting YBS data based on the number of YBS loans rather than the number of YBS borrowers. The changes were consistent with the new YBS definitions the agency developed at that time and were made to capture more complete information on the System's extension of credit and services to YBS farmers and ranchers. In addition, we believe that the collection of loan numbers in combination with loan volume (that is, the average size of an institution's YBS loan) provides the public a base for a more useful comparison of the System's extension of credit to YBS borrowers. The agency continues to believe that the key issue in YBS data collection is consistent YBS reporting throughout the System. We believe that our current method of categorizing and counting the System's YBS loan numbers and loan volume provides the most accurate and

<sup>9</sup> The annual housing goals are established and supervised by the Department of Housing and Urban Development, Fannie Mae's and Freddie Mac's regulator.

complete picture of the System's YBS mission fulfillment.

Finally, other commenters suggested that FCA examiners verify the accuracy of the YBS data being reported by System institutions. We note that data verification, conducted on a sampling basis, is already a part of YBS examination procedures.

The remaining comments discussing the particulars of the proposed rule are addressed in the following section of this document.

## VI. FCA's Section-by-Section Response to Comments

### Section 614.4165(a)—Definitions

The proposed definition section clarified various terms used in section 4.19 of the Act. For instance, this section clarifies that, for purposes of this subpart, the term "credit" includes all loans and interests in participations made by System banks and direct lender associations operating under titles I or II of the Act. The term "services," as used in section 4.19(a) of the Act, includes all leases made under titles I or II authorities and all related services made by System banks and direct lender associations operating under titles I or II of the Act.

We received only one comment on this section, suggesting that we develop a meaningful definition of a small farm or ranch, one that is useful in today's market environment and based on input from all appropriate entities.

As mentioned in the preamble to our proposed rule, the agency's current definitions for "young," "beginning," and "small" farmers and ranchers are set forth in 1998 FCA guidance.<sup>10</sup> The guidance defines "small" as a farmer, rancher, or producer or harvester of aquatic products who normally generates less than \$250,000 in annual gross sales of agricultural or aquatic products. We discussed the extensive research the agency undertook in arriving at this definition of "small" farmer and rancher, which included evaluating terms used by the United States Department of Agriculture (USDA) and other regulatory agencies who collect data on "small" farmers and ranchers. Thus, we continue to believe the definition for "small" farmers and ranchers currently in use by the agency is appropriate. For the foregoing reasons, we adopt proposed § 614.4165(a) as final without change.

### Section 614.4165(b)—Farm Credit Bank Policies

This section implements certain provisions of section 4.19 of the Act, which require each:

1. Direct lender association to adopt a YBS program under the policies of its funding<sup>11</sup> Farm Credit bank board;
  2. Direct lender association to coordinate with other System institutions in its territory, and other governmental and private sources of credit in extending credit and services to YBS farmers and ranchers;
  3. Direct lender association to report annually on its YBS programs and performance results to its funding bank; and
  4. Farm Credit bank to report annually to the FCA summarizing the YBS program operations and achievements of its affiliated direct lender associations.
- Two commenters expressed concern that requiring banks to have written policies on their affiliated associations' YBS programs is contrary to FCA's recognition that direct lender associations have gained more autonomy from their funding banks since 1980, when section 4.19 was first added to the Act. Notwithstanding the fact that System banks have taken a diminished role in overseeing the operations of their affiliated direct lender associations, the requirements in this section track the requirements of section 4.19 of the Act, which we simply are not at liberty to disregard. Therefore, we adopt § 614.4165(b) as final without change.

### Section 614.4165(c)—Direct Lender Association YBS Programs

This section sets forth the minimum components that each direct lender association must include in its YBS program while at the same time allowing each association to design a YBS program unique to its territory. At a minimum, when developing a YBS program, each direct lender association must:

1. Develop a YBS program mission statement describing the YBS program objectives and specific means of achieving those objectives;
2. Develop annual quantitative targets for credit to YBS farmers and ranchers that are based on an understanding of reasonably reliable demographic data for the lending territory;
3. Develop annual qualitative goals that include efforts to offer services that

are responsive to the needs of YBS borrowers, take full advantage of opportunities for coordinating credit and services with other providers of credit, and implement effective outreach programs to attract YBS farmers and ranchers; and

4. Establish methods to ensure that it is conducting its YBS program in a safe and sound manner and within its risk-bearing capacity.

Several commenters commended § 614.4165(c) of the proposed rule because it allows System associations to take into consideration the demographics and economy of their territories along with their risk-bearing capacities when establishing their YBS programs. Two commenters supported the minimum YBS components required by the proposed rule. However, many commenters stated that in the Act Congress left the design of each association's YBS program up to their respective funding banks. These commenters stated that Congress recognized that local conditions warrant different approaches and deferred to the wisdom and local knowledge of the System bank boards to establish policies to guide these programs.

Since 1980, when section 4.19 was first included in the Act, the relationship between the funding banks and their affiliated associations has significantly changed, with the associations operating much more independently from their funding banks. Although the rule retains the statutory directive for associations to establish their YBS programs *under the policies* of their funding banks, in recognition of the autonomy with which associations now operate, we have kept the bank policies to a minimum, as discussed earlier. Moreover, we agree that Congress intended YBS programs to be developed by the System lenders who have the most knowledge of their territories. We have, therefore, developed this section to allow each direct lender association maximum flexibility in creating a YBS program that takes into consideration the economy and demographics of its territory, as well as its risk-bearing capacity. In so doing, the YBS rule is consistent with congressional intent to allow each association to design a YBS program that best fits the needs of its lending territory.

### Section 614.4165(c)(1)—Mission Statement

One commenter stated that it is inappropriate and potentially confusing for a regulation to require a mission statement that focuses only on YBS programs rather than on the System's

<sup>11</sup> Although section 4.19 of the Act refers to "district" and "supervising" Farm Credit banks, we use the term "funding" bank, which we believe more appropriately reflects the current relationship between a Farm Credit bank and its affiliated direct lender associations.

<sup>10</sup> See *supra* note 5.

mission to serve all of American agriculture.

We do not agree with the commenter's concern that a mission statement focusing strictly on an association's service to YBS farmers and ranchers is inappropriate or confusing. We believe the exercise of developing a mission statement will compel each direct lender association to focus on the objectives of its YBS program and the steps it must take to accomplish such objectives. Further, developing a mission statement to give direction to an association's YBS program does not in any way hinder an association's capacity and responsibility to serve all of American agriculture.

*Section 614.4165(c)(2)—Quantitative Targets*

Many commenters responded to this section of the proposed rule. One commenter suggested that this section be changed to permit System associations to consider their financial condition and risk-bearing capacity when establishing quantitative targets. In fact, § 614.4165(c)(4) requires each System association to have methods to ensure that it offers credit and related services to YBS borrowers in a safe and sound manner and within its risk-bearing capacity. Thus, quantitative targets and qualitative goals must be established with these safety and soundness factors in mind.

One commenter pointed out that the agency should understand the distinction between loan number goals and borrower number goals, as well as new-borrower goals versus new-loan goals. The agency is aware of the distinctions of establishing YBS quantitative targets by number of loans versus number of borrowers or by number of new loans versus new borrowers. However, we have left it to the decision of each direct lender association to determine how best to establish its quantitative YBS targets. This approach allows an association, for example, to establish a quantitative target based on increasing the number of new YBS borrowers if it determines that it wants to achieve a greater number of YBS borrowers versus YBS loans.

One commenter supported the requirement that an association establish quantitative targets that reasonably reflect the YBS demographics in its territory rather than basing such targets on nationwide data. However, many other commenters stated that no meaningful demographic data exists that is reflective of an association's territory and that using the data currently available will lead to distortion and faulty analysis of an

institution's YBS market penetration. Another commenter stated that requiring quantitative targets to reasonably relate to demographic data is unduly burdensome. Still, another commenter asked the agency to explain further what it means when it states that the quantitative targets must be based on "reasonably reliable" demographic data that "reasonably reflect" the YBS demographics in the lending territory. This commenter believes these terms are too vague.

A reliable measurement is necessary to ensure that the System is adequately fulfilling its YBS public purpose mission. We believe that demographic data is necessary for each direct lender association to adequately assess its YBS market characteristics, and we note that none of the commenters suggested a more viable alternative for assessment. Although we recognize that not all available demographic data may be an ideal representation of the YBS market in each association's territory, we still believe such data is useful and is a reasonable representation of the YBS market in a lending territory.

Further, we do not believe it is burdensome to require that quantitative targets be based on demographic data, as there is available and easily obtainable data from the *United States Department of Agriculture's National Agricultural Statistics Service Census of Agriculture* (USDA Census). We have attempted to make the reliance on demographic data less burdensome and costly by *not* requiring each direct lender association, or an independent source, to complete a demographic study. Instead, the rule allows for the use of the available demographic data as long as an association can explain any differences between its YBS quantitative targets and the data it is relying upon to establish such targets. Finally, we note that associations are free to obtain demographic data from other available sources besides the USDA Census, such as state and county demographic data or by any other appropriate means.

We do not believe the phrase "reasonably reliable" demographic data that "reasonably reflects" the YBS demographics in a lending territory is vague or lacking in sufficient specificity. The selection of these terms employs the "reasonable person" standard "that is, whether a reasonable person with knowledge of the relevant facts would question an association's reliance on the demographic data or the reasonableness of its quantitative targets in light of such data. This standard enables associations to draw on their sound business judgment and knowledge of their territory in establishing their

quantitative targets. Hence, even when the demographic data is not an ideal representation of an association's YBS market, the reasonable person standard allows associations to establish targets in variance of such data as long as they can justify the difference. Nevertheless, we have revised § 614.4165(c)(2) in the final rule to make it clear that each direct lender association's quantitative targets must be based on an understanding of how the data relates to the YBS market in the association's lending territory, not directly based on the demographic data. Since we believe "reasonably reliable demographic data" encompasses the meaning of the phrase in the proposed rule "that reasonably reflect the YBS demographics", the latter phrase has been removed.

One commenter suggested that the quantitative targets should reflect not only existing demographics, but also more far-reaching assessments of the needed changes in the distribution of farm assets to achieve a more balanced and diverse structure of agriculture and future borrower pools. The commenter suggested that this be accomplished by inserting at the end of the first sentence in § 614.4165(c)(2) the following: "and that progressively increase self-employment opportunities in agriculture within the lending territory."

The System's mission is to serve the credit and related services needs of all farmers and ranchers. Although the System is not directly responsible for increasing self-employment opportunities in agriculture, its mission certainly helps to accomplish this goal by making more agricultural credit available. Thus, we believe it is unnecessary to add the suggested language to this section.

A number of commenters were dissatisfied with the rule's approach permitting each direct lender association to establish their own quantitative targets rather than defining specific targets in the rule for the associations. The comments on this issue contained a number of suggestions, including that the agency: develop specific targets on the number of guaranteed loans made to beginning farmers and ranchers; look to the targets of other GSE regulators, such as those required for Freddie Mac and Fannie Mae, to help it set specific targets for the System associations; and impose penalties when an association fails to meet the specific targets.

The agency has strived throughout this rule to avoid dictating a uniform Systemwide approach to fulfilling its YBS mission. Establishing specific YBS quantitative targets for all System



associations would be inconsistent with our approach and impractical given the unique demographic and lending environments of each association's territory. The agency's examination and enforcement authorities will enable us to evaluate the reasonableness of each association's quantitative targets and to require adjustments to the targets where deemed necessary.

*Section 614.4165(c)(3)—Qualitative Goals*

One commenter expressed concern that § 614.4165(c)(3)(i), which requires YBS services to be offered in coordination with others, interferes with a direct lender association's ability to make its own choices on the types of related services it wishes to offer. This requirement, to *coordinate with others* when offering related services, is required by section 4.19(a) of the Act. Neither the Act nor this rule dictate what type of related services must be offered. However, the requirement to *coordinate with others* ensures that YBS borrowers, a group that can especially benefit from related services, will receive the help they need in their farming or ranching operations. By offering such services in coordination with others, associations may find the expertise and the cost-sharing benefits necessary to provide a full array of services.

One commenter suggested we add language to § 614.4165(c)(3)(i) and (ii) that specifically includes nongovernmental organizations when describing the offering of credit and services in coordination with others. We do not believe this language change is necessary because the rule, at § 614.4165(c)(3)(ii), requires that each direct lender association take full advantage of opportunities for coordinating credit and services offered by other Farm Credit System institutions, and other governmental and private sources of credit and services. Private sources of credit would include nongovernmental organizations, as the commenter suggested.

Another commenter believed that § 614.4165(c)(3)(iii), which requires direct lender associations to implement outreach programs, is inappropriate and usurps board authority and accountability. The commenter further stated that the rule should not prescribe how board and management assess customer needs and how they communicate with the customers through their marketing efforts. The requirement in the proposed rule to implement outreach programs is similar to current FCA policy on System YBS programs. The rule does not take any

responsibility out of the hands of an association's board to oversee its YBS outreach efforts nor does it tie management's hands in implementing outreach programs. The rule simply states that a minimum component of an association's YBS program must include outreach programs and suggests types of outreach activities that an association might consider. An association board and management are free to pursue appropriate outreach activities, including others than those suggested in the rule.

Finally, one commenter suggested that the final rule include goals for loan restructuring for YBS borrowers. Direct lender associations must provide borrower rights to all of their borrowers.<sup>12</sup> The decision to restructure a distressed loan is a fact-specific one that must be made on a case-by-case basis. Setting goals for restructuring YBS loans would be contrary to sound lending practices and could jeopardize the safe and sound operations of an association.

*Section 614.4165(c)(4)—Credit Enhancements and Risk-bearing Capacity*

One commenter suggested that the final rule include special credit treatment, special interest rates, and loan participation programs for YBS borrowers. Similar to all of the minimum components for a YBS program set forth in this rule, this section simply states that YBS loans must be offered in a safe and sound manner and within an association's risk-bearing capacity. This section of the rule then suggests types of credit enhancements that an association can use to manage risk while providing more opportunities to its YBS borrowers.

In all of the minimum components, our approach remains consistent. That is, each direct lender association has the flexibility to design a YBS program within the rule's minimum requirements. We believe it would be inconsistent with our role as a safety and soundness regulator to require specific types of credit enhancements. Therefore, although we agree with the commenter that special credit treatment, special interest rates, and loan participation programs are reasonable types of credit enhancements, it is up to each direct lender association to determine if sound business practices

and its risk-bearing capacity would permit it to offer such enhancements.

One commenter stated that this section's reference to risk-bearing capacity will be used by System associations as an excuse not to lend to YBS borrowers. System associations must always consider their risk-bearing capacity when extending credit and services. It is especially important to consider risk when extending credit to a potentially less financially stable group of borrowers, such as YBS borrowers. Nevertheless, associations are still expected to demonstrate that they are meeting the credit and services needs of the YBS community in their respective territories. The requirements for YBS programs set forth in this final rule should enhance System YBS programs and help ensure that the System successfully achieves its YBS mission in a safe and sound manner.

For all the foregoing reasons, we are adopting § 614.4165(c) as final with only two changes. As we explained above, we have revised § 614.4165(c)(2) in the final rule to make it clear that each direct lender association's quantitative targets must be based on an understanding of how the data relates to the YBS market in the association's lending territory, not directly based on the demographic data. Since we believe "reasonably reliable demographic data" encompasses the meaning of the phrase in the proposed rule "that reasonably reflect the YBS demographics", the latter phrase has been removed.

Further, as explained in the following section, in the final rule we are adding the following language to the end of § 614.4165(c)(3)(iii): "as well as an advisory committee comprised of "young," "beginning," and "small" farmers and ranchers to provide views on how the credit and services of the direct lender association could best serve the credit and services needs of YBS farmers and ranchers."

*Section 614.4165(d)—YBS Advisory Committee*

This section of the proposed rule explains that each direct lender association could, at its option, establish and maintain an advisory committee comprised of young, beginning, and small farmers and ranchers. We included this recommendation because we believe a YBS advisory committee could help each association determine the credit and services needs of YBS farmers and ranchers in its territory. Similarly, this committee could serve as the association's conduit to the YBS community and other agricultural interest groups and lending sources

<sup>12</sup> On February 10, 2004, the FCA board adopted a final rule that revised the borrower rights regulations at Part 614, subpart N and redesignated them to Part 617; see 69 FR 10901, March 9, 2004.



serving the needs of YBS farmers and ranchers.

One commenter supported the inclusion of this recommendation in the final rule and suggested we make the YBS advisory committee a requirement of each direct lender association's YBS program rather than an option. The commenter also suggested that the membership of the advisory committee be expanded to include university and nongovernmental organization representatives that work with YBS farmers and ranchers. Although we certainly encourage each direct lender association to establish an advisory committee as a way of reaching out to the YBS community in its territory, we recognize that it may not be feasible or cost-effective for every association to create and maintain such a committee. Further, given the unique demographics of each direct lender association's territory, we think it best to allow each association to determine the makeup of its advisory committee membership should it choose to create one. Therefore, we have not incorporated these suggestions into the final rule.

As we explained earlier, one commenter expressed concern that the use of suggestions and recommendations in the YBS rule left the System unclear as to what the rule actually requires. Because the formation of an advisory committee is a type of outreach activity, we have moved the suggestion of an advisory committee to § 614.4165(c)(3)(iii) of the final rule and deleted § 614.4165(d). We believe this change in the final rule will make it clearer that the formation of a YBS advisory committee is a suggested rather than required component of a YBS program.

#### *Section 614.4165(e)—Review and Approval of YBS Programs*

This section implements section 4.19(a) of the Act, which requires each direct lender association's YBS program to be subject to the "review and approval" of its funding bank. One commenter noted that there is no benefit to involving the funding banks in monitoring or approving the YBS programs of its affiliated direct lender associations. We note that the "review and approval" language is statutory and reflects congressional intent to involve the System banks, to some extent, in the YBS programs of their affiliated direct lender associations. The agency has no authority to simply disregard this congressional directive. Clearly, the System banks and associations have a common goal in ensuring that the special direction from Congress with regard to YBS farmers and ranchers is

accomplished. For instance, System banks may want to work with their affiliated associations in coordinating credit and service opportunities for the YBS community in its district. Thus, we see a benefit in keeping the funding banks aware of the YBS programs being conducted by their affiliated associations to further ensure the accomplishment of the System's YBS mission.

Contrary to the previous comment, another commenter commended FCA for correctly reflecting the evolved relationship between System banks and their affiliated direct lender associations by appropriately defining the bank's approval requirements of an association's YBS program. In narrowly interpreting the "review and approval" statutory language, the agency does indeed recognize the autonomy gained by direct lender associations since the addition of section 4.19 to the Act in 1980. For all the foregoing reasons, we redesignate this section as § 614.4165(d) and adopt it as final.

#### *Section 614.4165(f)—YBS Program and the Operational and Strategic Business Plan*

This section of the rule requires direct lender associations to include their YBS quantitative targets and qualitative goals in their operational and strategic business plans. One commenter supported this section while another commenter suggested that this section be deleted from the final rule. This latter commenter expressed concern that this section imposes additional administrative and reporting burdens on System institutions while providing no greater flexibility to serve YBS farmers and ranchers. We do not find the commenter's concerns convincing. This provision is intended to help associations define the steps by which they will accomplish their mission to serve YBS borrowers and build on their commitment to meeting their YBS targets and goals. We do not believe it is overly burdensome to include the YBS targets and goals, which associations must already develop, in their operational and strategic business plans. Moreover, most associations that have been adopting effective business plans under § 618.8440 of FCA regulations have already been including their YBS program projections in such plans. For all the foregoing reasons, we redesignate this section as § 614.4165(e) and adopt it as final.

#### *Section 614.4165(g)—YBS Program Internal Controls*

The rule requires that each direct lender association include, as part of its

YBS program, comprehensive and detailed internal controls. These internal controls include establishing clear lines of responsibility for YBS program implementation, YBS performance results, and YBS quarterly reporting. Regular and reliable reporting to the board of directors helps an association to assess the strengths and weaknesses of its YBS program. The quarterly reporting requirement in the final rule will provide the board of directors an opportunity to assess its association's YBS program and consider any necessary changes or adjustments to its program components. Oversight and control of an association's YBS program will help ensure that the program is managed effectively and will contribute to its overall success. We received no comments on this section. Therefore, we redesignate the section as § 614.4165(f) and adopt it as final.

#### *Section 620.5(n)—Contents of the Annual Report to Shareholders*

The rule requires each direct lender association to include in its annual report to shareholders a description of its YBS program, including a status report on each program component, as set forth in § 614.4165(c) of the proposed rule, as well as the definitions of "young," "beginning," and "small" farmers and ranchers. The rule also requires that the YBS discussion provide other information necessary for a comprehensive understanding of the direct lender association's YBS program and its results. In addition, the rule requires each Farm Credit bank to include in its annual report to shareholders a summary report of just the quantitative YBS data from its affiliated direct lender associations as described in FCA's instructions for the annual YBS year-end report. The rule also requires each Farm Credit bank's annual report to include the definitions of "young," "beginning," and "small" farmers and ranchers, as well as any other information that may be necessary for an ample understanding of the YBS mission results of the affiliated direct lender associations in its district.

Many commenters supported the requirement to include in the annual reports of each direct lender association and System bank a discussion of YBS program and performance results. A few commenters suggested that we require each direct lender association to report YBS program activity on an individual institution basis. Other commenters suggested that the annual reports be made available to the public, either on the banks and associations Web sites and/or on FCA's Web site. The rule already requires each direct lender

association to report on its YBS program activity in its annual report to shareholders and in the YBS year-end report to the FCA. We also note that many System institutions currently make their annual reports available to the public on their Web sites. The System's YBS year-end reports, listed by individual associations, are also available on the agency's Web site. However, the question of whether FCA should require annual reports to be posted on System institution Web sites is an issue for consideration beyond the scope of this rulemaking and one that will be considered if the agency should decide to revise its disclosure regulations at some future time. Finally, the public may request a copy of any System institution's annual report from either the individual institution or the FCA.

Several commenters opposed the requirement to include YBS information in System institutions' annual reports to shareholders, recommending that the annual report requirements be deleted altogether. These commenters advocated that the decision to include YBS information in an annual report should be left up to each institution's board of directors. The commenters also suggested that FCA runs the risk of reducing innovation in System YBS program development as direct lender associations focus more on meeting the agency's reporting requirements than on working with YBS customers. One commenter stated that the annual report should not become a replacement document for business plans, or measurements for examination purposes, but instead should remain a vehicle to report the operating results of the institution. The agency is not swayed by these comments to delete any of the proposed annual YBS reporting requirements.

Moreover, we continue to believe reporting to shareholders and the public on the YBS mission results will underscore the importance of the System's public purpose YBS mission and will result in greater transparency to the public on the System's accomplishment of this mission.

One commenter suggested the agency require direct lender associations to include in their annual reports a description of special credit treatments, special interest rates, and loan participation programs available to YBS borrowers. This commenter believes the proposed rule did not go far enough in encouraging the use of such credit enhancements.

The rule requires each direct lender association to include in its annual report a description of its YBS program,

including a status report on each program component set forth in § 614.4165(c). Establishing qualitative goals is a required component of an association's YBS program, which includes credit enhancement programs. Thus, we believe the rule already requires associations to describe its credit enhancement program goals in its annual report.

One commenter indicated that it was unclear in the rule whether associations will be required to include in their annual reports their YBS performance with regards to related services offered to their YBS borrowers. The rule clearly requires associations to report on their related services offered under their YBS programs. Specifically, § 620.5(n)(2) of the rule requires a status report on each program component as set forth in § 614.4165(c). The offering of related services is a program component under § 614.4165(c)(3)(i) of the rule. Thus, associations must include in their annual reports to shareholders a status report of their efforts to offer related services under their YBS programs.

In contrast to the previous comments, which address the reporting and disclosure of YBS information by System institutions, the following comments address FCA's role in reporting and disclosing YBS data. Several commenters stated that if the proposed rule is made final without major revisions to its public disclosure requirements, FCA will have failed as a Federal regulator by abrogating its mission to protect the public's right to know about how the System is fulfilling its YBS mission. The commenters believe the FCA should compile the YBS information itself and release it to the public. The FCA disagrees with the commenters' statement.

Under section 4.19(b) of the Act, it is the System associations who must report on their YBS activities to the banks and, in turn, the banks must submit an annual report to FCA summarizing the YBS operations and achievements of their affiliated associations. It is clearly the responsibility of the System institutions rather than the FCA to report on their YBS operations and achievements. However, in addition to System YBS year-end reports, the agency also includes a summary of the System's YBS results in our annual performance report (these reports are available on FCA's Web site). Finally, as noted earlier, the agency is taking steps to disclose future System institutions' YBS compliance ratings to the public. The agency believes these various YBS reports are more than sufficient to give the public an ample understanding of

each direct lender association's YBS program and related performance results as well as the System's overall YBS performance and achievements.

Finally, several commenters stated that FCA should disclose consolidated YBS data for each district rather than require System banks to do so in their annual reports to shareholders. The commenters assert that there is no basis in the Act for such a reporting requirement and that requiring the banks to include in their annual reports to shareholders YBS information gathered from their affiliated associations imposes an unnecessary burden in light of the fact that the associations are the shareholders of their respective funding banks.

The FCA disagrees that there is no basis in the Act for this requirement. As previously noted, section 4.19(b) of the Act requires System banks to provide FCA with a report summarizing the YBS operations and achievements of its affiliated direct lender associations. Further, sections 5.17(8) and 5.19(b)(1) of the Act give the agency broad authority to establish reporting requirements for System institutions so that all parties interested in the operations of the System, including shareholders, investors, Congress, and the public at large, can assess the System's performance and mission fulfillment as a GSE. Further, although the banks acquire their YBS information from their affiliated associations, it is still helpful for the associations to view, at a glance, how the district as a whole is performing its YBS mission. Thus, we believe the inclusion of this YBS data in the annual reports of the banks would be helpful to the associations. Moreover, we do not believe the consolidated YBS reporting requirements are burdensome for the banks. The rule requires the System banks to include in their annual reports to shareholders a summary report of just the YBS quantitative data from their affiliated direct lender associations. This quantitative data must already be submitted to the agency in each bank's annual YBS year-end report. Thus, it is not significantly more burdensome for the banks to include this same data in their annual reports to shareholders. Finally, the agency believes it is first and foremost the responsibility of each System institution, rather than the FCA, to report information regarding its YBS program results.

For all the foregoing reasons, we adopt proposed § 620.5(n) as final without change.

*Section 630.20(p)—Contents of the Annual Report to Investors*

The rule requires the funding banks to include a report on consolidated YBS lending data of their affiliated associations in their Systemwide annual report to investors and to include the definitions of “young,” “beginning,” and “small” farmers and ranchers. Additionally, the rule requires that the report include any other information that may be necessary for ample understanding of the System’s YBS mission results.

Several commenters raised concerns about the System banks not having enough time to collect and analyze the YBS data for inclusion in the report to investors. (This same concern was raised with respect to including YBS data in the System banks’ and associations’ annual reports to shareholders.) These commenters raised this concern because of anticipated new and shorter timeframes for publishing such reports in order to be more responsive to the marketplace. The agency believes the impact of adding the YBS data to the report to investors will be insignificant compared to all the other data the banks must include in this report.

For all the foregoing reasons, we adopt proposed § 630.20(p) as final without change.

## VII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with their affiliated associations and service corporations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, 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.

### 12 CFR Part 630

Accounting, Agriculture, Banks, banking, Organization and functions

(Government agencies), Reporting and recordkeeping requirements, Rural areas.

■ For the reasons stated in the preamble, parts 614, 620, and 630, chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

## PART 614—LOAN POLICIES AND OPERATIONS

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

**Authority:** 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; 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, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 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, 2199, 2201, 2202, 2202a, 2202c, 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); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

## Subpart D—General Loan Policies for Banks and Associations

■ 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 and ranchers and producers or harvesters of aquatic products under title I or II of the Act; and

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

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

(b) *Farm Credit bank policies.* Each Farm Credit Bank and Agricultural Credit Bank must adopt written policies that direct:

(1) The board of each affiliated direct lender association to establish a program to provide sound and constructive credit and services to young, beginning, and small farmers and ranchers and producers or

harvesters of aquatic products (YBS farmers and ranchers or YBS). The terms “bona fide farmer or rancher,” and “producer or harvester of aquatic products” are defined in § 613.3000 of this chapter;

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

(3) Each affiliated direct lender association to provide, annually, a complete and accurate YBS farmers and ranchers operations and achievements report to its funding bank; and

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

(c) *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. Such a program must include the following minimum components:

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

(2) Annual quantitative targets for credit to YBS farmers and ranchers that are based on an understanding of reasonably reliable demographic data for the lending territory. Such targets may include:

(i) Loan volume and loan number goals for “young,” “beginning,” and “small” farmers and ranchers in the territory;

(ii) Percentage goals representative of the demographics for “young,” “beginning,” and “small” farmers and ranchers in the territory;

(iii) Percentage goals for loans made to new borrowers qualifying as “young,” “beginning,” and “small” farmers and ranchers in the territory; or

(iv) Goals for capital committed to loans made to “young,” “beginning,” and “small” farmers and ranchers in the territory.

(3) Annual qualitative YBS goals that must include efforts to:

(i) Offer related services either directly or in coordination with others that are responsive to the needs of the “young,” “beginning,” and “small” farmers and ranchers in the territory;

(ii) Take full advantage of opportunities for coordinating credit and services offered with other System institutions in the territory and other governmental and private sources of credit who offer credit and services to

those who qualify as “young,” “beginning,” and “small” farmers and ranchers; and

(iii) Implement effective outreach programs to attract YBS farmers and ranchers, which may include the use of advertising campaigns and educational credit and services programs beneficial to “young,” “beginning,” and “small” farmers and ranchers in the territory, as well as an advisory committee comprised of “young,” “beginning,” and “small” farmers and ranchers to provide views on how the credit and services of the direct lender association could best serve the credit and services needs of YBS farmers and ranchers.

(4) Methods to ensure that credit and services offered to YBS farmers and ranchers are provided in a safe and sound manner and within a direct lender association’s risk-bearing capacity. Such methods could include customized loan underwriting standards, loan guarantee programs, fee waiver programs, or other credit enhancement programs.

(d) *Review and approval of YBS programs.* The YBS program of each direct lender association is subject to the review and approval of its funding bank. However, the funding bank’s review and approval is limited to a determination that the YBS program contains all required components as set forth in paragraph (c) of this section. Any conclusion by the bank that a YBS program is incomplete must be communicated to the direct lender association in writing.

(e) *YBS program and the operational and strategic business plan.* Targets and goals outlined in paragraphs (c)(2) and (c)(3) 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).

(f) *YBS program internal controls.* Each direct lender association must have internal controls that establish clear lines of responsibility for YBS program implementation, YBS performance results, and YBS quarterly reporting to the association’s board of directors.

## PART 620—DISCLOSURE TO SHAREHOLDERS

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

**Authority:** Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

## Subpart B—Annual Report to Shareholders

■ 4. Amend § 620.5 by adding a new paragraph (n) to read as follows:

### § 620.5 Contents of the annual report to shareholders.

\* \* \* \* \*

(n) *Credit and services to young, beginning, and small farmers and ranchers and producers or harvesters of aquatic products.*

(1) Each direct lender association must describe the YBS demographics in its territory and the source of the demographic data. If there are differences in the methods by which the demographic and YBS data are presented, these differences must be described.

(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(c) 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.

(3) Each Farm Credit bank must include a summary report of the quantitative YBS data from its affiliated direct lender associations as described in FCA’s instructions for the annual YBS yearend report. The report must include the definitions of “young,” “beginning,” and “small” farmers and ranchers. A narrative report may be necessary for an ample understanding of the YBS mission results.

## PART 630—DISCLOSURE TO INVESTORS IN SYSTEMWIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

■ 5. The authority citation for part 630 continues to read as follows:

**Authority:** Secs. 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2252, 2254).

## Subpart B—Annual Report to Investors

■ 6. Amend § 630.20 by adding a new paragraph (p) to read as follows:

### § 630.20 Contents of the annual report to investors.

\* \* \* \* \*

(p) *Credit and services to young, beginning, and small farmers and ranchers and producers or harvesters of aquatic products.* The Farm Credit banks must include a report on consolidated YBS lending data of their

affiliated associations. The report must include the definitions of “young,” “beginning,” and “small” farmers and ranchers. A narrative report may be necessary for an ample understanding of the YBS mission results.

Dated: March 23, 2004.

**Jeanette C. Brinkley,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 04–6967 Filed 3–29–04; 8:45 am]

BILLING CODE 6705–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2002–NM–300–AD; Amendment 39–13542; AD 2004–06–16]

RIN 2120–AA64

### Airworthiness Directives; Dornier Model 328–100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires repetitive inspections of certain support arms of the ground spoiler assemblies for cracking, and replacement of any ground spoiler assembly having cracking with a new ground spoiler assembly. This amendment would also require certain inspections for discrepancies of the ground spoiler assemblies and the flap of each wing; and corrective actions if necessary. This action is necessary to prevent failure of the support arms due to cracking, which could result in loss of function and/or separation of the affected ground spoiler assemblies from the airplane, and consequent reduced controllability of the airplane during landing or rejected take-off operations. This action is intended to address the identified unsafe condition.

**DATES:** Effective May 4, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 4, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW.,