



INDEPENDENT COMMUNITY
BANKERS of AMERICA®

Derek B. Williams, *Chairman*
Lucas White, *Chairman-Elect*
Jack E. Hopkins, *Vice Chairman*
Sarah Getzlaff, *Treasurer*
James H. Sills, III, *Secretary*
Brad M. Bolton, *Immediate Past Chairman*
Rebeca Romero Rainey, *President and CEO*

August 29, 2023

The Honorable Debbie Stabenow
Chair
Senate Agriculture Committee

The Honorable John Boozman
Ranking Member
Senate Agriculture Committee

The Honorable Glenn “GT” Thompson
Chair
House Agriculture Committee

The Honorable David Scott
Ranking Member
House Agriculture Committee

Re: 2023 Farm Bill Agricultural Credit Title & FCS Expansion

Dear Chairs Stabenow and Thompson and Ranking Members Boozman and Scott:

I am writing on behalf of the Independent Community Bankers of America (ICBA) and the nearly 50,000 community bank locations we represent, to reiterate our ongoing concerns as you finalize the 2023 farm bill language and aim for a markup and passage this fall.

ICBA has worked with other rural lending associations to produce a joint document advising ways to improve access to credit for farmers and ranchers via changes to USDA farm loan programs.¹ However, our serious concerns with the Farm Credit System’s (FCS) push for adoption of several **non-farm** lending proposals may lead to our opposition to these proposals unless substantive changes are made.

Essential Community Facilities. While USDA’s essential community facilities (ECFs) authorities are limited to non-profits, an earlier version of FCS’s proposal would have allowed FCS to finance for-profit ECFs (potentially grocery stores, restaurants, gas stations, etc.). The proposal should specifically prohibit FCS loans to primarily commercial or for-profit businesses to ensure consistency with current USDA authorities and prevent crowding out private sector tax-paying community banks. The Farm Credit Administration (FCA) claims to distinguish between loans and “investments” when they approve ECF investments on a fast-tracked, case-by-case basis and considers the purposes of the investments to facilitate a mission focus, raising questions as to the need for this proposal.

¹ Joint lender document: “FSA Program Changes Needed to Support Beginning Farmers and Improve FSA Farm Loan Programs” / [Lender Programs to Support Beginning Farmers and Improve USDA Farm Loan Programs](#)

The Nation’s Voice for Community Banks.®

WASHINGTON, DC
1615 L Street NW
Suite 900
Washington, DC 20036

SAUK CENTRE, MN
518 Lincoln Road
P.O. Box 267
Sauk Centre, MN 56378

866-843-4222
www.icba.org

The proposal as drafted does not “codify FCS’s ability to work with community banks” as FCS has stated. The proposal language does not even mention loan participations with **local** lenders. It only includes an **option** to join forces with one non-FCS lender, which could be a **large domestic or foreign lenders or USDA**, entirely excluding community banks. Further, the proposal’s allowance to finance ECFs up to **15 percent** of an associations **total assets** could result in FCS entities having **more loans in ECFs than in agriculture**, contrary to their public mission, and doesn’t count participations in the limit.

RBICs. The FCS proposes to revise Rural Business Investment Corporations (RBICs) to allow FCS to finance 75 percent (currently 50 percent) of the RBIC without being limited to FCS eligible purposes. FCS also seeks hundreds of millions of dollars in debentures (grants) for nonfarm businesses. We are concerned FCS could form many new RBICs for non-farm financing unless debt financing is prohibited.

Financing Businesses Nominally Serving Aquaculture. FCS seeks to also finance businesses which provide services to aquaculture producers and harvesters. The proposal is broader than past proposals rejected by Congress that proposed allowing FCS to finance small businesses primarily engaged in serving aquaculture. FCS could finance any business providing only minimal services, such as an aquaculture producer’s occasional purchases of a few cleaning supplies at a local hardware store or a large retailer. This allows abuse similar to FCS’s exploitations of ‘similar entities’ authorities where they’ve financed some of America’s largest corporations.

Sec. 1071. FCS seeks to evade or significantly minimize compliance with section 1071 small business data collection requirements. All ag and rural America lenders should have equal compliance options as those available to the FCS for sec. 1071 if FCS is exempted, either entirely or via a ‘sampling’ procedure. Congress could adopt H.J. Res 85 (formerly H.J. Res 66) or exempt farm and rural loans.

The Department of the Treasury has previously stated, “They (FCS) are not just another competitor, they are a lender to which the government has given significant competitive advantages.”² The attachment provides further details, and we look forward to working with you to address our concerns.

Sincerely,

/s/

Rebeca Romero Rainey
President & CEO

Attachment

² Treasury Assistant Secretary Gregory A. Baer, House Committee on Banking and Financial Institutions, October 3, 2000

ICBA Concerns with Farm Credit System Expansion Proposals

Essential Community Facilities. FCS seeks to amend the Consolidated Farm and Rural Development Act (Con Act) to finance “essential community facilities” (ECFs). USDA provides loan guarantees for ECFs for lenders to finance “a public improvement, operated on a **non-profit basis.**” FCS’s proposed language does not specifically prohibit the financing of for-profit entities which a previous version of the language authorized. Unless prohibited, FCS could try to finance for-profit entities under this authority. These for-profit entities could conceivably include grocery stores, gas stations and various small businesses financed by community banks.

There is no proven need for FCS, a government sponsored enterprise (GSE), with immense tax and funding advantages, to jump into this broad array of financing and crowd out private sector, tax-paying community banks. There is no test to determine whether FCS financing is needed.

FCS lenders can currently make “investments” as approved by their regulator on a case-by-case basis. However, these “investments” are not intended to be general financing arrangements for all types of business loans. Since FCS lenders can make FCA approved investments, there is no need for this legislation. FCS claims the FCA approval process is “too cumbersome” making it hard to form partnerships. However, Compeer Financial stated in a May 4, 2023, Senate Ag Committee hearing that they have financed over 50 senior care facilities and hospitals since 2018. This is hardly a cumbersome process.

In addition, the FCA has stated the agency has a “fast-track” approval process enabling case-by-case approvals can be done expeditiously. At an August 2017 FCA board meeting, then Chairman and CEO Dallas Tonsager stated, “*I hope system institutions will continue to use the fast-track approval process the agency has established to build partnerships.*” These statements undermine the FCS’s rationale for their ECF proposal.

If FCS were to engage in non-farm loans to for-profit ECFs, it could “open the floodgates” for FCS to go **all-out on financing non-farm businesses.** FCA has stated the investment authority granted to the FCS was intended to be focused, noting “size, nature, and method of rural community-based investing requires **appropriate and meaningful investment criteria.**”¹

FCA stated, “Conditions of approval enforce the **implied statutory distinction between loans and investments by excluding any transaction more similar to a commercial loan** than to a traditional investment transaction and specifically **prohibiting FCS from directly making or purchasing loans** (emphasis added).”² The distinction (investments vs loans) indicate the new authorities are not authorities already in place but in a different form.

¹ Mission-Related Investments Update, August 12, 2010, Farm Credit Administration, page 7

² Ibid, page 7

The case-by-case approval process allows the regulator some oversight to enforce a mission mandate.

15 Percent Threshold is Significant Expansion and Could Move FCS Away from Serving Agriculture. The ECF proposal includes a **15 percent** “limitation” on the amount of an association’s ECF financing based on each institution’s **total assets**. This is a significant expansion over what is currently allowed for investments approved by the FCA on a case-by-case basis (i.e., **10 percent** of total **outstanding loans**). **FCA previously rejected FCS requests** to raise the percent and establish the percent based on total assets instead of outstanding loans.

FCA explained: “FCA has consistently held the principal statutory mission of the System is lending to agricultural and aquatic producers, and their cooperatives. A portfolio limit tied to loans ensures agricultural credits remain the primary assets of all System banks and associations. **A portfolio limit based on either “earnings” or “total assets” could permit associations to hold a greater amount of assets that are unrelated to agriculture** (emphasis added).”³

FCA’s objective was to ensure that each association “never exceeds the 10-percent portfolio limit.” This was to ensure FCS associations did not become grossly unbalanced with a much greater amount of “investments” for non-farm purposes than their agricultural loans. FCA stated, “the primary purpose of the portfolio limit is to ensure that System associations adhere to **their statutory mission as a GSE to finance agriculture.**”⁴ FCA noted “**the 10-percent limit on investments ensures that loans to agricultural producers and other eligible borrowers constitute most of an association’s assets** (emphasis added).”⁵

Further, the 15 percent of assets test doesn’t even count loans made with a non-FCS lender against this limit, further highlighting the potential for FCS associations to have fewer agricultural loans than ECF loans. The proposed 15 percent asset limit is not an effective restriction.

Participations with Non-FCS Lenders. FCS claims the ECF legislation will “codify our ability to work with local banks.” The actual proposal does not even require FCS to participate in the ECF loans with non-FCS lenders. IF the FCS lender offers a participation to **one non-FCS lender**, there is **no requirement** for an offer to a **local lender** located in the community. The offer to participate could be to **a large domestic or foreign bank or the USDA**.

FCS’s terms to finance ECFs will be lower than the private sector due to their nearly nonexistent federal tax obligations. Their “offer” to one non-FCS lender at a rate acceptable to the borrower is **unworkable** since the non-FCS lender will typically not be able to match the FCS’s tax exempt

³ *Federal Register* / Vol. 83, No. 113 / Tuesday, June 12, 2018, pg 27494 <https://www.govinfo.gov/content/pkg/FR-2018-06-12/pdf/2018-12366.pdf>

⁴ Ibid, pg 27495

⁵ Ibid, pg 27495

⁶ Testimony, Compeer Financial, U.S. Senate Subcommittee on Commodities, Risk Management, and Trade, May 4, 2023, page 8



interest rate unless the loan terms presented to the potential customer are required to reflect the tax obligation of the non-FCS lender.

To accomplish this local lenders, with a physical presence in the community, could be given the same tax rate as the FCS lender or by requiring the financial offer to the customer to be a blended rate of the combined FCS lender and local lender's financing.

Rural Business Investment Corporations (RBICs). During the 2018 Farm Bill debate, FCS lenders pushed to raise the amount of financing provided to a RBIC from 25 percent to 50 percent without being limited to investing in only agriculture-related industries. FCS claimed raising the limit to 50 percent would “build more flexibility into the funds for investing in all sectors and **fulfilling the Farm Credit System's desire** to deploy more money to support rural America's businesses.” Now the FCS desires to move this cap once again, this time to 75 percent and provide grants (debentures) to businesses.

RBICs were intended to provide equity and venture capital investments to assist small businesses but were not intended to provide debt financing (loans) since non-farm businesses are efficiently financed by the private sector. FCS also proposes RBICs be appropriated hundreds of millions of dollars for debentures (grants) to businesses. The combination of GSE equity infusions with grant money and debt financing could transform RBICs into privileged quasi-governmental corporations competing with community banks for business loans. Congress should ensure RBICs cannot provide debt financing in combination with other government benefits and GSE equity and venture capital infusions.

Non-farm Businesses Serving Aquaculture. FCS also proposes to finance businesses furnishing services directly related to the operating needs of producers or harvesters of aquatic products. Previous versions of this FCS proposal, rejected by Congress, limited such financing to “small entities that are **primarily** engaged in providing” services to producers or harvesters of aquatic products. This proposal is much broader than what was proposed by the FCS in past years since the entities financed would not be small or primarily engaged in aquaculture.

The non-farm businesses financed would only need to provide a tiny amount of services to the aquaculture industry to become eligible. FCS, for example, could finance a hardware store or a large retailer if an aquaculture harvester makes an occasional purchase of cleaning supplies or any miscellaneous item. There are no constraints to the open-ended nature of which businesses could be financed or their degree of involvement in the aquaculture industry. Existing loans could be taken away from community banks by FCS engaging in predatory pricing.

Proposals Need Meaningful Constraints. If the FCS's proposals (ECFs; businesses serving aquaculture; RBICs etc.) do not have practical constraints, the FCS will abuse whichever loophole(s) they can in order to pursue non-farm financing far beyond congressional intent.



For example, the FCS used its ‘similar entities’ authority to finance Verizon, a Fortune 500 company ranking as the fifteenth largest corporation in America. Congress expected FCS to use the similar entities authority to finance companies that acted like locally owned farmer cooperatives. GSEs are intended to fill single niche credit gaps (e.g., agriculture, housing, etc.) and are not created to be general purpose lenders to the largest corporations in America.

Evasion of Sec. 1071 Small Business Data Collection. The FCS also seeks to evade the burdensome compliance regime of the Dodd Frank Act’s section 1071 regulation (Small Business Data Collection Rule), recently adopted by the CFPB. FCS efforts have ranged from complete exemption to suggesting a sampling of borrowers’ data submitted to their regulator. But these efforts are geared only toward exempting the FCS or requiring compliance in name only, which would be an unequal and unfair burden for all other lenders who would need to fully comply with section 1071. ICBA has expressed concerns with section 1071’s requirements but we believe all lenders should be treated equally, for example by adopting H. J. Res 85 (formerly H.J. Res 66), or congress can allow lenders to choose to exempt agricultural and rural loans.

Conclusion. The FCS proposals lack needed clarity and constraints. These proposals go far beyond their stated intent and if adopted as drafted could act as magnets for abuse, as has been the case with the ‘similar entities’ authority. These proposals have not been sufficiently vetted.

FCS’s proposals go far beyond the purpose for which the FCS was created as a single purpose lender with GSE tax and funding advantages. These proposals do not remove the FCS’s tax advantages for non-business financing, which allows them to undercut the private sector. As the Department of the Treasury previously stated, “They (FCS) are not just another competitor, they are a lender to which the government has given significant competitive advantages.”⁷

As the Treasury also previously stated, “GSEs are an exception to our general approach of avoiding differential treatment among financial institutions. The potential benefits that GSEs bring to a particular market must be balanced, therefore, against potential risks to the financial system and potential effects on market competition.”⁸

While we are quite willing to work with Congress on ways to ensure access to credit in rural markets, simply allowing the FCS to indiscriminately muscle out community banks from local credit markets with relatively loosely defined new lending powers is contrary to the mission of the FCS as a GSE established to serve agriculture.

ICBA also believes reforms are needed to ensure the FCS’s focus remains on agricultural lending and doesn’t shift into non-farm business lending. For example, we do not believe the FCS was created to compete with community banks for deposits (i.e., cash management accounts). We look forward to presenting ideas on refocusing the FCS in the near future.

⁷ Treasury Assistant Sec. Gregory A. Baer, House Committee on Banking and Financial Institutions, Oct. 3, 2000.

⁸ Ibid

Given the FCS's incessant thirst for **non-farm** lending powers, we believe the following modifications to their proposals are necessary.

Modifications for Essential Community Facilities (ECFs):

- Prohibit loans to for-profit businesses.
- Require the FCS lender offer a participation in the financing to one non-FCS **local** lender, with a **physical presence** in the community, where the project is located.
- Require the financial offering to the potential customer to be a blended rate of the combined FCS rate and the local lender's rate.
- Change the 15 percent of total assets limit to **10 percent of outstanding ag loans** and count participation with non-FCS lenders against the limit to ensure ag lending remains the majority of each association's portfolio.
- Ensure the annual report lists each financial institution participating in each ECF project.

Modifications for Lending to Businesses Serving Aquaculture:

- Limit proposal to small businesses **primarily** engaged in providing services to aquaculture producers or harvesters.
- Prohibit use of this authority to refinance existing loans held by community banks or for new loans in areas where community banks already serve the aquaculture industry.
- Require annual reporting information be included in the ECF report to include which companies are being financed by the FCS under this authority.

Modifications for Rural Business Investment Corporations (RBICs):

- Prohibit RBICs from offering loans or debt financing.
- Require any business receiving a RBIC investment when the RBIC has more than 50 percent investment from FCS lenders to be ineligible from also receiving a debenture.
- Prohibit RBICs from converting existing loans of community banks into RBIC investments.
- Require reporting on which businesses receive RBIC investments and which RBIC provided each investment.

Modifications to Sec. 1071 Small Business Data Collection:

- Ensure agricultural and rural America lenders are treated in the same manner as FCS lenders.

To discuss the contents of this attachment please contact Mark Scanlan at mark.scanlan@icba.org or Scott Marks at scott.marks@icba.org