

**FARM CREDIT ADMINISTRATION****12 CFR Parts 612, 614 and 618**

RIN 3052-AB85

**Standards of Conduct; Loan Policies and Operations; General Provisions; Regulatory Burden****AGENCY:** Farm Credit Administration (FCA).**ACTION:** Direct final rule with opportunity to comment.

**SUMMARY:** This direct final rule reduces regulatory burden on the Farm Credit System (FCS or System) by repealing or amending 16 regulations. These revisions provide System banks and associations with greater flexibility concerning loan sales, agricultural secondary market activities, loans to insiders, letters of credit, information programs, travel expenses, and disclosing borrower information during litigation.

**DATES:** Unless we receive significant adverse comment by September 8, 1999, these regulations 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 notice of the effective date in the **Federal Register**. If we receive significant adverse comment on an amendment, paragraph, or section of this rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw that amendment, paragraph, or section and adopt as final those provisions of the rule that are not the subject of a significant adverse comment. In such a case, we would then tell you how we expect to continue with further rulemaking on the provisions that were the subject of significant adverse comment.

**ADDRESSES:** You may send comments by electronic mail to "[reg-comm@fca.gov](mailto:reg-comm@fca.gov)" or through the Pending Regulations section of our website at "[www.fca.gov](http://www.fca.gov)." You may also mail or deliver written comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 or fax them to (703) 734-5784. You may review copies of all communications that we receive in the Office of Policy and Analysis, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

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or

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**SUPPLEMENTARY INFORMATION:****I. Background**

On August 18, 1998, we published a notice in the **Federal Register** that invited you to identify existing regulations and policies that impose unnecessary burdens on the FCS. See 63 FR 44176 (Aug. 18, 1998).<sup>1</sup> We specifically asked you to focus on those regulations and policies that are ineffective, duplicate other governmental requirements, or impose burdens that are greater than the benefits received. We took this action in our continuing effort to improve the regulatory environment so the System can better serve farmers and ranchers.

We received 30 responses. Of this total, 20 comment letters came from Farm Credit associations. Six Farm Credit banks sent us seven comment letters. The Farm Credit Council (FCC) commented on behalf of its membership. We also received responses from the Federal Farm Credit Banks Funding Corporation and the Federal Agricultural Mortgage Corporation (Farmer Mac).

In this first phase of our effort to reduce regulatory burden on the FCS, we are repealing or revising 16 regulations. These regulations govern:

- Loan sales by agricultural credit banks (ACBs);
- Subordinated participation interests in Farmer Mac loan pools;
- Loans to institution-affiliated parties;
- Letters of credit that finance international trade;
- Informational programs at FCS institutions;
- Purchases and sales of personal property;
- Travel and subsistence expenses for directors, officers, and employees; and
- Disclosure of confidential information in litigation.

We plan to respond to your other concerns in future phases of this project, and currently, we are analyzing all the issues that you raised.

<sup>1</sup> On November 18, 1998, we extended the comment period to January 19, 1999. See 63 FR 64013 (Nov. 18, 1998).

**II. Analysis of Changes and Comments by Section****A. Sale of Interests in Loans by ACBs**

We are correcting § 614.4010(f)(1) so it accurately reflects the statutory authority of ACBs to sell interests in loans. The amended regulations confirm that ACBs may sell interests in the type of long-term real estate mortgages that they can make under section 1.7(a) of the Farm Credit Act of 1971, as amended (Act), to:

- System banks and associations that have authority to purchase such interests;
- Non-System lenders; and
- Certified agricultural mortgage marketing facilities for Farmer Mac.

We emphasize that revised § 614.4010(f)(1) also permits ACBs to sell interests in long-term mortgages that they purchase from other System lenders. Section 3.1(13)(B) of the Act and amended § 614.4010(f)(1) allow ACBs to sell interests in cooperative, rural utility, and international loans only to other Farm Credit banks and associations that have authority to purchase such loan interests.

**B. Subordinated Participation Interests in Farmer Mac Pools**

We are repealing five separate regulatory provisions (§§ 614.4000(e)(4), 614.4010(f)(4), 614.4030(c)(4), 614.4040(c)(4), and 614.4050(d)(4)) that authorize Farm Credit banks and associations to purchase subordinated participation interests in pools of loans that are sold into the Farmer Mac secondary market. The existing regulations carry out provisions of title VIII of the Act that Congress repealed in 1996.<sup>2</sup> Prior to 1996, title VIII of the Act required Farm Credit banks and associations to pledge cash reserves or hold subordinated participation interests in loans that they pooled and securitized for Farmer Mac. As amended, title VIII of the Act now permits, but no longer requires, Farm Credit banks and associations to retain subordinated participation interests in Farmer Mac pools. With the removal of these regulations, we will continue to review policy as well as safety and soundness issues related to subordinated participation interests in Farmer Mac loan pools.

**C. Loan Approvals**

We received 11 comments about §§ 614.4460 and 614.4470, which govern loans to insiders. Although the Agricultural Credit Technical

<sup>2</sup> Farm Credit System Reform Act of 1996; Pub. L. No. 104-105, 110 Stat. 162 (Feb. 10, 1996).

Corrections Act of 1988<sup>3</sup> abolished the district boards, § 614.4460 refers to the defunct boards. Under this regulation, district boards were required to approve loans that System banks make to:

- Their directors and employees; and
- FCA Board members and staff.

Currently, § 614.4470 requires Farm Credit banks to approve loans that their affiliated associations make to:

- The association's own directors and employees;
- Directors and employees of a jointly managed association; or
- Bank employees.

System banks and associations asked us to update § 614.4460 and repeal the bank approval requirement in § 614.4470. These commenters believe that our regulations should only apply to large insider loans.

We respond by replacing §§ 614.4460 and 614.4470 with a single regulation. Final § 614.4460 requires your board to approve all loans to:

- Certain FCA and Farm Credit System Insurance Corporation (FCSIC) employees who are permitted to borrow from your institution under our Supplemental Standards of Ethical Conduct regulations at 5 CFR parts 4101 and 4001, respectively;<sup>4</sup>

- Your directors and employees;
- The directors and employees of another System bank or association that is under a joint management agreement with your institution;

- The directors and employees of your association's funding bank; and
- A cooperative or other legal entity if any of its directors, partners, or employees are also members of your board of directors.

Your board must also approve loans to other borrowers if any of these parties has a substantial beneficial interest in the proceeds or collateral of the loan.

When you extend credit to insiders you must comply with the Standards of Conduct regulations in part 612, the Disclosure regulations in part 621, and your board's policies. We also require your institution to document all material facts about your credit relationships with any of these parties and make it available, on request, to the FCA's Office of Examination and to the appropriate officials of your funding bank.

The final regulation repeals the requirement that bank boards approve loans that their affiliated associations make to insiders. Our new approach retains adequate controls on loans that Farm Credit banks and associations make to their directors and employees. Currently, the boards of Farm Credit banks approve loans to insiders. Under the new regulation, boards of associations are similarly responsible for approving loans to their insiders.

The commenters suggested that our regulation should require System boards to approve only insider loans that are above a minimum amount established by the institution's policy. We did not adopt this approach because board approval of all insider loans provides the most independent and objective approval process for such loans at each bank or association. Board approval also avoids the appearance of misconduct and impropriety. Board approval of even small insider loans is appropriate and reassures customers, shareholders, and investors that the System boards exercise diligence and independent judgment when they carry out their duties and obligations. Another regulation, § 612.2140(a), requires directors of Farm Credit banks and associations to recuse themselves from board deliberations on their own loans.

We are repealing § 614.4450 on our own initiative. This regulation originally carried out provisions of the Act that authorized the FCA to supervise and approve the lending activities of all System banks and associations.<sup>5</sup> After the Farm Credit Act of 1985<sup>6</sup> repealed this authority and converted the FCA into an arms-length regulator, we amended § 614.4450 to state that "authority for loan approval is vested in the Farm Credit banks and associations." This rule is no longer needed because it neither implements the Act nor promotes the System's safety and soundness.

#### D. Letters of Credit

Existing § 614.4720 allows banks for cooperatives (BCs) and ACBs to issue and confirm letters of credit that finance international trade in agricultural commodities and farm supplies. The final provision of this regulation, § 614.4720(g), requires BCs and ACBs to charge fees for issuing letters of credit. We repeal it because we believe that this should be a business decision of BCs and ACBs. We retain all other provisions of this regulation because we believe they continue to promote safe

and sound international banking practices at BCs and ACBs.

#### E. Conducting Information Programs

The FCC, one association, and two Farm Credit Banks asked us to repeal § 618.8210, which requires FCS institutions to maintain programs that inform farmers and other members of the public about FCS organization, functions, and services. The commenters believe that our regulations should not tell System institutions to conduct informational programs. Instead, they suggested that each System bank or association address this issue in its operational program. We agree that business goals provide an effective incentive for System banks and associations to market their services to potential customers. We repeal § 618.8210 because it is no longer needed.

#### F. Purchases and Sales of Personal Property

The FCC, two System banks, and an association want us to repeal § 618.8250. The commenters remarked that operational programs of System lenders, not FCA regulations, should govern the purchases and sales of personal property.

We respond by adjusting the regulatory requirements that apply to the purchases and sales of personal property by your banks and associations. One provision of § 618.8250 is obsolete because it contains a reference to the defunct district boards. Moreover, we agree that your policies and operational programs, rather than FCA regulations, should cover all purchases and most sales of personal property by your bank or association. However, we believe that our Standards of Conduct regulations in part 612 should continue to govern the sale of personal property to your directors, officers, or other employees. Our regulatory requirements in part 612 help your institution avoid allegations of favoritism or fraud when you sell personal property to insiders. We rewrote the final sentence of § 618.8250 in plain language and transferred it to § 612.2165(b)(7) in the Standards of Conduct section of the regulations. This provision requires your institution to sell surplus personal property above a stated value to your employees through open competitive bidding.

#### G. Travel, Subsistence, and Other Related Expenses

Four commenters suggested that we repeal § 618.8270. This regulation requires the boards of FCS banks and associations to develop written policies,

<sup>3</sup> Pub. L. 100-399, 102 Stat. 1003 (Aug. 17, 1988).

<sup>4</sup> The new regulation explicitly refers to the Supplemental Standards of Ethical Conduct regulations that the FCA and FCSIC Boards enacted in 1995. See 60 FR 30781 (June 12, 1995). Those regulations specifically prohibit most FCA and FCSIC employees from borrowing from System institutions. For example, FCA and FCSIC Board members, examiners, procurement personnel, and all employees over a certain civil service grade level cannot legally borrow from Farm Credit banks and associations.

<sup>5</sup> See 38 FR 27837 (Oct. 9, 1973).

<sup>6</sup> Pub. L. No. 99-205, 99 Stat. 1678 (Dec. 23, 1985).

keep records, and audit the travel, subsistence, and other related expenses of their directors, officers, and employees. The commenters assert that this regulation imposes unnecessary burdens on FCS institutions. They point out that System banks and associations already address this issue in their operational plans.

We have decided to repeal § 618.8270 because other regulations already cover the travel and subsistence expenses of directors, officers, and employees of your institutions. For example, § 618.8430 requires your bank or association to establish effective internal controls over their operations. Additionally, § 611.400 implements section 4.21 of the Act, which governs compensation for the FCS bank directors. Our examiners will continue to review the travel, subsistence, and related expenses of System bank directors in the normal examination process.

#### *H. Production of Documents and Testimony*

One Farm Credit bank asked us to amend § 618.8320(b)(7), and two Farm Credit banks and two associations wanted us to repeal § 618.8330. These regulations govern the disclosure of documents and testimony in litigation. Some commenters objected to the cost of hiring an attorney to contest orders to produce documents or testimony. All commenters believe that our regulations should not limit their options on how best to respond to court orders.

We continue to believe that regulations governing the production of confidential information during litigation are necessary. However, we revised our regulations to better balance your borrowers' rights to confidentiality with your need for greater flexibility in disclosing information during litigation. We combined both provisions into a single regulation, § 618.8330, and rewrote it in plain language.

Final § 618.8330(a) allows your bank or association to disclose confidential information about a borrower (or a successor in interest) if your institution is in litigation with that borrower or his or her successor. Without this provision, your institution would have no authority to produce confidential information about a borrower who is in litigation with you.

Final § 618.8330(b) allows your bank or association to disclose confidential information under the lawful order of a court if the Government or your institution is not a party to the litigation. As a result, you do not automatically have to contest every order to produce documents or

testimony. You may release confidential borrower information as defined by § 618.8320(a) only if a judge issues the order. We believe that this requirement is important because the judge is impartial and can fairly decide whether the litigant needs the confidential information in your possession.

### **III. Direct Final Rule**

We are revising or repealing these regulations by a direct final rulemaking. The Administrative Procedure Act, 5 U.S.C. 551–59, *et seq.* (APA), supports direct final rulemaking, which is a streamlined technique for Federal agencies to enact noncontroversial regulations more quickly, without the usual notice and comment period. This process enables us to reduce the time and resources we need to develop, review, clear, and publish a final rule while still affording the public an opportunity to comment on or object to the rule.

In a direct final rulemaking, we notify you the rule will become final on a specified future date unless we receive significant adverse comment during the comment period. If we receive significant adverse comment on an amendment, paragraph, or section of this rule, and that provision may be addressed from the remainder of the rule, we will withdraw that amendment, paragraph, or section and adopt as final those provisions of the rule that are not the subject of a significant adverse comment. In such a case, we would then tell you how we expect to continue with further rulemaking on the provisions that were the subject of significant adverse comment.

A significant adverse comment is one where a commenter explains why the rule would be inappropriate (including challenges to its underlying premise or approach), ineffective, or unacceptable without a change. In general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from the agency in a notice-and-comment rulemaking.

Direct final rulemaking is justified under section 553(b)(B) of the APA. Section 553(b)(B) is the APA's "good cause" exemption that allows an agency to omit notice and comment on a rule when it finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." In direct final rulemaking, the agency finds the rule is straightforward and noncontroversial to make normal notice and comment unnecessary under the APA. However, rather than eliminating public comment altogether, which is permissible under section 553(b)(B), the agency gives the public an

opportunity to rebut the agency's conclusion that public input on the rule is unnecessary.

We believe that a direct final rulemaking is the proper method for repealing or revising these regulations that place unnecessary regulatory burden on FCS institutions. For these reasons, we do not anticipate significant adverse comment on this rule. If we receive no significant adverse comment, we will publish our regular notice of the effective date of the rule following the required Congressional waiting period under section 5.17(c)(1) of the Act.

### **List of Subjects**

#### *12 CFR Part 612*

Agriculture, Banks, banking, Conflict of interests, Rural areas.

#### *12 CFR Part 614*

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

#### *12 CFR Part 618*

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, the Farm Credit Administration amends parts 612, 614, and 618 of chapter VI, title 12 of the Code of Federal Regulations as follows:

### **PART 612—STANDARDS OF CONDUCT**

1. The authority citation for part 612 continues to read as follows:

**Authority:** Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

2. Amend § 612.2165 by adding the following sentence to the end of paragraph (b)(7):

#### **§ 612.2165 Policies and procedures.**

\* \* \* \* \*

(b) \* \* \*

(7) \* \* \* Farm Credit institutions must use open competitive bidding whenever they sell surplus property above a stated value (as established by the board) to their employees.

\* \* \* \* \*

### **PART 614—LOAN POLICIES AND OPERATIONS**

3. 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 A—Lending Authorities

#### § 614.4000 [Amended]

4. Remove § 614.4000(e)(4).  
5. Amend § 614.4010 by removing paragraph (f)(4) and revising paragraph (f)(1) to read as follows:

#### § 614.4010 Agricultural credit banks.

\* \* \* \* \*

(f) \* \* \*

(1) Subject to subpart H of this part, agricultural credit banks may sell interests in real estate mortgage loans identified in paragraph (a) of this section to Farm Credit System institutions authorized to purchase such interests, other lenders, and certified agricultural mortgage marketing facilities for the Federal Agricultural Mortgage Corporation. Agricultural credit banks may also sell interests in the types of loans listed in paragraph (d) of this section to other Farm Credit System institutions that are authorized to purchase such interests.

\* \* \* \* \*

#### § 614.4030 [Amended]

6. Remove § 614.4030(c)(4).

#### § 614.4040 [Amended]

7. Remove § 614.4040(c)(4).

#### § 614.4050 [Amended]

8. Remove § 614.4050(d)(4).  
9. Revise subpart M to read as follows:

### Subpart M—Loan Approval Requirements

#### § 614.4460 Approval of loans to affiliated parties.

(a) With approval of your board, your bank or association may lend to the following parties in accordance with part 612 of this chapter and the policies of your board of directors:

(1) Farm Credit Administration employees permitted to borrow from your institution under 5 CFR 4101.104;

(2) Farm Credit System Insurance Corporation employees permitted to borrow from your institution under 5 CFR 4001.104;

(3) Your directors and employees;

(4) The directors or employees of another bank or association under a

joint management agreement with your institution;

(5) The directors or employees of your funding bank if you are an association;

(6) A cooperative or other legal entity if any of its directors, partners, or employees are also members of your board of directors; and

(7) Other borrowers if any of the parties identified in this section are:

(i) Recipients of the loan proceeds;  
(ii) Stockholders or other equity owners of the borrower and they have a significant interest in the loan funds or collateral; or

(iii) Endorsers, guarantors or comakers on the credit.

(b) Your bank or association must document all material facts about the credit relationship with any of these parties and make the documentation available, on request, to our Office of Examination and to the funding bank.

### Subpart Q—Banks for Cooperatives and Agricultural Credit Banks Financing International Trade

#### § 614.4720 [Amended]

10. Remove § 614.4720(g).

### PART 618—GENERAL PROVISIONS

11. The authority citation for part 618 continues to read as follows:

**Authority:** Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, 2252).

### Subpart F—Miscellaneous Provisions

#### §§ 618.8210–618.8270 [Removed and Reserved]

12. Remove and reserve subpart F, consisting of §§ 618.8210 through 618.8270.

### Subpart G—Releasing Information

#### § 618.8320 [Amended]

13. Amend § 618.8320 as follows:

a. Remove paragraph (b)(7); and  
b. Redesignate paragraphs (b)(8), (b)(9) and (b)(10) as paragraphs (b)(7), (b)(8), and (b)(9).

14. Revise § 618.8330 to read as follows:

#### § 618.8330 Production of documents and testimony during litigation.

(a) If your bank or association is a party to litigation with a borrower or a successor in interest, you or your directors, officers, or employees may disclose confidential information about that borrower or the successor in interest during the litigation.

(b) If the Government or your bank or association is not a party to litigation,

you or your directors, officers, or employees may produce confidential documents or testimony only if a court of competent jurisdiction issues a lawful order signed by a judge.

Dated: August 2, 1999.

**Vivian L. Portis,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 99–20323 Filed 8–6–99; 8:45 am]

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### FARM CREDIT ADMINISTRATION

#### 12 CFR Parts 614, 616, 618 and 621

RIN 3052–AB63

#### Loan Policies and Operations; Leasing; General Provisions; Accounting and Reporting Requirements; Effective Date

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA) published a final rule under parts 614, 616, 618 and 621 on June 28, 1999 (64 FR 34514). This final rule clarifies existing regulations and provides Farm Credit System institutions with more regulatory guidance about leasing activities. The rule reflects comments received from two public comment periods. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is August 6, 1999.

**EFFECTIVE DATE:** The regulation amending 12 CFR parts 614, 616, 618 and 621 published on June 28, 1999 (64 FR 34514) is effective August 6, 1999.

#### FOR FURTHER INFORMATION CONTACT:

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(12 U.S.C. 2252(a)(9) and (10))

Dated: August 3, 1999.

**Vivian L. Portis,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 99–20427 Filed 8–6–99; 8:45 am]

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