
THE FARM CREDIT COUNCIL

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August 15, 2008

Mr. Gary Van Meter
Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

Dear Mr. Van Meter:

I noted with considerable interest the letter submitted by the American Bankers Association (ABA) on August 6 commenting on the proposed Rural Community Investment regulation. Because their letter contains considerable misleading, inaccurate and unhelpful information, the record would benefit from some additional perspective on their commentary. We are not aware that the ABA has ever provided a favorable comment on a proposed FCA regulation and certainly their approach to this one is no different. While they are certainly entitled to their opinion, it is unfortunate that they continually choose to abuse the comment process by submitting altogether inaccurate drivel focused on denying farmers and rural America the access to assistance through the Farm Credit System that Congress intended.

The ABA's basic premise is that the proposed regulation is an "unprecedented attempt to fundamentally transform the mission of the Farm Credit System." This statement underscores both ABA's failure to understand the Agency's regulatory proposal as well as their continued efforts to mislead the public regarding the mission of the Farm Credit System.

The Farm Credit's mission is established by the Farm Credit Act. The purposes section as well as the policy and objectives section of the Act provides the context and guidance for what that mission should be. To quote directly from what Congress wrote regarding why they adopted the Farm Credit Act, it states "to provide for **an adequate and flexible flow of money into rural areas**, and to modernize and consolidate existing farm credit law **to meet current and future rural credit needs...**" (emphasis added). The clear intent here is a mission for the System of being a customer-owned, cooperative partner for rural America not limited to agriculture. It is a System operating under a statute imbued with the flexibility to ensure that Farm Credit can continue to adapt to meet that mission in ways that were not even contemplated in 1971. Congress was visionary in their approach to crafting the Farm Credit Act in this area. They recognized that the Act needed to be a flexible instrument so as to not only permit the System to serve the credit needs that existed contemporaneously but also to meet future rural credit needs as well.

Congress entrusted to FCA the responsibility and authority to interpret through its regulations how the needs of agriculture and rural America could be met as those needs change over time. Where Congress decided that limitations to that flexibility needed to be in place, it made those



limitations explicit in the language of the Act. Where it intended flexibility, that flexibility was left in the clear language of the Act, and FCA was given the clear ability to establish regulations that ensure the System is able to achieve its mission.

It is important to note as well that Congress has spoken to a broader role for the System when it comes to supporting the farmer and rancher stockholders that own most System institutions. Sec. 1.1 (a) of the Act states in part, “that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers...” In establishing the direct lending authorities of the System, Congress clearly set out to address this broader mission by permitting the System to directly support the broader rural community. That is why the System has the authority to address housing needs through home mortgage lending, to support vital infrastructure, such as water, waste water treatment, electric, telephone and other communications utilities as well as to support service businesses that farmers rely on including accounting, tax and record keeping, as well as things such as veterinary services for their livestock.

As recently as this year’s Farm Bill, Congress addressed the broader rural development role of the System by making clear their desire that the System should have greater flexibility to support rural entrepreneurs. In 2002 Congress ensured that there were no legal impediments to the System establishing state-chartered entities that would run rural venture capital funds under the Rural Business Investment Company program. Congress again addressed this in 2008 in the current Farm Bill by providing greater flexibility to those RBICs even when they have substantial System ownership.

Since Congress clearly has confirmed its intent that the System be directly involved in rural venture capital activity and directly spoken to the System serving a broad role in supporting rural communities, a claim that this proposal as written is an attempt to “fundamentally transform” the System’s mission is fantastic fantasy.

Of course the ABA conveniently ignores the limitations that the Agency has built into the proposal that will ensure System investment in rural community bonds will be restricted to a small level of activity as compared to the System’s direct lending in support of agriculture and rural America.

ABA claims that the rule would “thrust the FCS into a role that it is unprepared to carry out – that of a traditional commercial lender.” There is a supreme irony in this statement in light of the hundreds of billions of dollars that commercial banks have now lost in their lending activities backed by real estate. According to the website Inside A-R-M (www.insidearm.com) “Banks have already turned in a half a trillion dollars of mortgage losses, with one analyst saying the total could eventually rise to \$2 trillion.” It would appear that rather than pointing fingers elsewhere as to who is prepared to act in a prudent manner, ABA should take the time to put on a seminar or two for their own members.

ABA claims that the Agency relies on the preamble of the Act for the statutory authority supporting the Rural Community Investment program. The Agency clearly establishes the specific statutory basis for the proposed rule in the preamble pointing to the specific statutory

provisions authorizing System institutions to make investments as permitted by FCA regulations. ABA suggests that the Act limits these investments to only being used “for the purpose of managing institution capital.” The statutory provisions authorizing investments by System institutions contain no such language. ABA claims repeatedly that FCA is prohibited from exercising the clear interpretive authority Congress grants the agency when it comes to the investment authority of System institutions because Congress supposedly has continuously rejected expansions in the System’s direct lending authority over several decades. Perhaps ABA has convinced itself that it has always succeeded in preventing any changes to the System’s lending authority but that thinking is delusional on their part. Congress in fact has changed the System’s direct lending authority on multiple occasions since 1971 despite banker opposition, and as was described earlier, as recently as the most current Farm Bill Congress reaffirmed that the System is to have a role in supporting non-agricultural rural entrepreneurs.

Irrespective of what Congress has done regarding the System’s lending authority, Congress has never acted in any way to question the Agency’s actions or to limit its interpretive authority as to the System’s investment authority. As the Agency highlights in the preamble to the regulation, for the last 37 years the Agency has from time to time used the flexibility built into the investment authority of the Act to permit System institutions to invest in many different types of instruments that support the System’s mission to enhance the flow of funds to rural areas. Despite many opportunities for Congress to clarify that this was never their intent (and for the ABA to challenge the legality of these previous actions) we are unaware that any such clarification (or challenge) has ever been proposed.

ABA makes the statement that, “the record also provides plain evidence that any time Congress expands FCS authority it has done so by legislative statute.” What a stupid statement!! Congress has no other way to expand System authority but to do so by legislative statute. What Congress did do in the case of the investment authority, however, was to build into the statute the ability of the System to undertake investment programs “as may be authorized under regulations issued by the Farm Credit Administration.” The plain language of the Act demonstrates that Congress gave to the Agency the ability to establish and guide System investment programs. Congress imposed no limits on those programs nor did they impose limits or provide guidance regarding FCA writing regulations as they did in other parts of the Act (for instance see Section 4.29 relating to FCA regulations guiding Lines of Insurance). The point is, when Congress chooses to limit the Agency’s interpretive authority, they speak to that very clearly in the Act. ABA missed the boat on this completely.

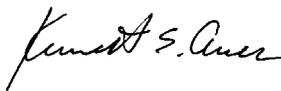
ABA undertakes a pained discussion intending to demonstrate that the activity proposed by the regulation is financing and not investing. Here again ABA plays fast and loose with the truth. They state that “the purpose of the proposed rule is to “...finance essential community facilities...finance basic infrastructure ...[and] directly finance economic development”.” Their selective quotes from the preamble of the proposed regulation ignores crucial language which makes clear that the purpose of the rule is to permit the System to invest in bonds and other financial instruments that support essential community facilities and other purposes. The Agency first permitted the System to invest in municipal bonds over thirty years ago, bonds that provided financing for local municipal activities. This demonstrates again that what is being proposed hardly seems to be very new interpretive ground for the Agency.

ABA struggles to argue that the Agency’s proposed definition of the term “rural area” is not consistent with one narrow aspect of the Farm Credit Act. While they are correct in that Congress has chosen to define “rural” as it relates to certain specific lending activities of the System, Congress’ failure to do so elsewhere in the Act evidences their delegation of interpretation to FCA. It is notable that where Congress has spoken regarding the System’s investment in Rural Business Investment Companies, they chose to use a broad definition consistent with what the Agency has proposed. The regulations implementing that program define rural in the following way, “*Rural Area* means an area that is located outside a standard metropolitan statistical area, or within a community that has a population of 50,000 or less inhabitants.” There is nothing in the Act that restricts the geographic area in which the System can conduct its agricultural lending activities. The vast land mass of the United States remains rural in character and deserves to have access to the same essential community facilities that suburban and urban areas enjoy. Contrary to what ABA implies, we recognize that the proposal does not qualify any individual American “for Farm Credit assistance.” The proposal addresses investments in bonds and other financial instruments.

Finally, ABA suggests that the proposed rule “threatens the safety and soundness of the Farm Credit System.” ABA hardly has standing to comment regarding safety and soundness let alone to raise these disingenuous concerns. We believe that FCA has carefully considered the safety and soundness issues related to this proposal and have adequately addressed them. Further, ABA demonstrates their fundamental lack of understanding of the Farm Credit System by ignoring the fact that the fiduciary safety and soundness responsibility for the institutions of the System is squarely in the hands of the boards of directors of System institutions and their management teams. The Agency has appropriately required that boards adopt specific policies to implement investment programs that are consistent with the financial strength and expertise of individual institutions. Not all boards of directors and management teams will decide to make the types of investments contemplated in the regulation, and that is how it should be since they are in the best position to evaluate the capacity of their institution to do so. Again we find it ironic that ABA should imply that their membership is better equipped to evaluate these types of risks given the clear evidence of the challenges the industry has had in evaluating the risks associated with simple home mortgages.

We appreciate having the opportunity to submit this comment and hope that it proves helpful to you as you review the ABA comment letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth E. Auer". The signature is written in a cursive, flowing style.

Kenneth E. Auer
President and CEO