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FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052-AC62

Loan Policies and Operations; Loan Purchases from FDIC

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration is proposing to amend its rules on loan policies and operations. The amended rule would permit Farm Credit System (System) institutions with direct lending authority to purchase from the Federal Deposit Insurance Corporation (FDIC) loans to farmers, ranchers, producers or harvesters of aquatic products and cooperatives that meet eligibility and scope of financing requirements. This action would allow the System to provide liquidity and a stable source of funding and credit for borrowers in rural areas affected by the failure of their lending institution.

DATES: You may send comments on or before July 19, 2010.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. FCA requests that comments to the proposed amendment include the reference RIN 3052-AC62. You may submit comments by any of the following methods:

- E-mail: Send us an e-mail at reg-comm@fca.gov.
- FCA Web site: <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or from our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public

Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted but, for technical reasons, we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

Agriculture and rural sectors in the United States are adversely affected by bank failures and depressed local economies. Many commercial banks are active in agricultural and cooperative lending and, when they fail, farmers and ranchers and cooperatives can be left seeking new lenders to meet their ongoing credit needs. The Federal Deposit Insurance Corporation, Farm Credit System institutions, and others have asked whether System institutions, directly or in partnership with other market participants, could provide a source of credit and liquidity to borrowers whose operations are financed with agricultural or cooperative loans affected by commercial bank failures.¹

When a bank fails and the FDIC is appointed receiver, the FDIC may sell the whole bank or its pieces (loans, deposits, or other assets).² When the FDIC sells bank assets it may sell agricultural or cooperative loans individually or in pools at auction. The System, as a Government-sponsored enterprise for agricultural lending, should have a role in providing credit to farmers and ranchers and cooperatives and liquidity to these rural areas by bidding on agricultural or cooperative loans, consistent with the safe and sound operation of System business.

FCA regulations currently provide that a System institution may not purchase an interest in a loan from a non-System institution except for the purpose of pooling and securitizing loans to sell to the Federal Agricultural Mortgage Corporation unless the interest is a participation interest.³ As a result, the System is not able to buy loans from the FDIC. However, the Farm Credit Act of 1971, as amended (Act), does not prohibit System institutions from purchasing loans from the FDIC.⁴ The FCA believes that allowing System institutions to purchase loans from the FDIC when a commercial bank lender carrying a portfolio of eligible agricultural or cooperative loans is closed and placed in receivership would further the public policy of the Act.

The proposed rule would create a regulatory framework for authorizing System institutions to purchase agricultural or cooperative loans of failed commercial banks from the FDIC. The System institution would be required to use due diligence to the extent allowed by the FDIC auction process to determine whether the loans purchased meet the eligibility and scope of financing requirements of the Act and FCA regulations.⁵ All failed bank borrowers with agricultural loans purchased by a System institution would be entitled to certain "borrower rights."⁶ Failed bank borrowers with agricultural or cooperative

loans also would be offered membership status through a stock membership program developed by the System institution that meets the requirements of the System institution's bylaws and the Act.⁷ Non-eligible loans and eligible loans to failed bank borrowers who chose not to become members would be divested. However, if distressed, those loans that were purchased by System institutions with titles I and II direct lending authority would be subject to borrower rights and would be restructured or foreclosed, whichever is least costly, as soon as financially feasible.

Analysis of the Proposed Rule

We propose to amend § 614.4325(b) to allow System institutions to purchase loans from the FDIC acting as receiver or in any other capacity under its statutory authority. The authority to purchase would be limited to loans that, with reasonable due diligence allowed through the FDIC auction process, the System institution determines meet eligibility and scope of financing requirements under titles I, II and III of the Act. After purchase, the System institution would be required to complete a more thorough due diligence to ensure that all of the loans meet eligibility and scope of financing requirements. System institutions would be urged to maintain prudent credit underwriting standards in purchasing loans from the FDIC. Funding bank approval would be required for acquisitions of loans from the FDIC exceeding 10 percent of the purchasing Farm Credit association's capital.

System institutions are particularly positioned to assist distressed borrowers through the borrower rights requirements of the Act. The proposed rule would provide that the borrower rights provisions of part 617 of the FCA regulations, except those with respect to effective interest rate disclosure, would apply to the failed bank borrowers to the same extent as they would have if the System institution had made the loan directly to the failed bank borrower. As such, the System institution would be able to restructure loans to some of the failed bank borrowers and these restructures would allow some of the borrowers to remain in production agriculture. Once purchased, the System institution would use all the rights contained in part 617 to work with the failed bank borrowers with agricultural loans to restructure the loan when it is the least cost alternative. These rights would include actions on applications, distressed loan restructuring, and rights of first refusal.⁸ System institutions would not be expected to retroactively provide differential and effective interest rate disclosures associated with new loans; however, if a new System loan was made to a failed bank borrower, then those provisions, and all of part 617, would apply to that loan.

In addition to borrower rights, the rule would provide that the System institution give the failed bank borrowers whose loans meet eligibility and scope of financing requirements an opportunity to acquire stock of the institution under a program to be developed by each System institution, consistent with the System institution's bylaws and the requirements of the Act. A System institution would be required to divest the loan as soon as reasonably feasible if the failed bank borrower could not or would not participate in the membership program (non-participating failed bank borrower). If that loan was distressed, the non-participating failed bank borrower would be given all the borrower rights set forth in part 617, subparts A and D through G, during the divestiture period. The non-participating failed bank borrower would not be entitled to patronage, voting, or other shareholder rights under the FCA regulations or institution bylaws.

Because of the nature of the loan pools, it may be impossible to purchase a pool with loans solely within the purchasing institution's territory. Therefore, the proposed rule would allow any System institution to purchase loans from the FDIC regardless of whether the borrower's agricultural operation is located wholly or partially in the institution's chartered territory. However, we would expect System institutions to focus on serving farmers and ranchers' operations within their chartered territories, and an institution should carefully analyze whether it has the ability to adequately service a particular purchased

loan to a borrower whose operations are located outside its chartered territory. If it does not have that ability, then the institution should consider partnering with the System institution located in the lending territory where the headquarters for the failed bank borrower is located. If it does have the ability to adequately service a loan or pool of loans outside of its chartered territory, a System institution would be permitted to purchase that loan or pool of loans provided notice is given to the System institution(s) chartered to serve the territory where the headquarters of the failed bank borrower is located. We propose to amend § 614.4070 by adding a new paragraph (d) that exempts territorial concurrence for loans or pools of loans purchased from the FDIC, if notice is provided to the System institution in whose chartered territory the headquarters of the failed bank borrower is located. Requiring territorial concurrence compliance on each purchase would impede a System institution's ability to bid on a pool of agricultural loans. However, this territorial concurrence exemption does not apply to any additional loans that may be made to the borrower.

Request for Comments on Proposed Rule

We invite comments on the proposed rule and will take all comments into consideration before issuing the final amendment to the FCA regulations on loan policies and operations.

Regulatory Flexibility Act

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

¹System institutions are federally chartered, cooperatively owned corporations authorized under titles I, II, and III of the Farm Credit Act of 1971, as amended (Act), to make long-term mortgage and short- and intermediate-term production loans to farmers, ranchers and agricultural producers, and, in the case of banks for cooperatives, to eligible cooperative associations. *See* 12 U.S.C. 2001 *et seq.*

²While a System institution could not qualify as a franchise purchaser, it could possibly pair with a non-System lender where that lender could buy the deposits and other loans leaving the System institution to buy the agricultural loans.

³12 CFR 614.4325(b).

⁴The Act is silent as to specific authority of a System institution to buy loans from an entity such as the FDIC; however, section 1.5(5) of the Act gives Farm Credit Banks the authority to acquire, hold, dispose and otherwise exercise all the usual incidents of ownership of real and personal property necessary or convenient to its business (*see* section 2.2(5) and 2.12(5) for parallel authority with respect to Farm Credit associations); and section 1.5(15) of the Act gives Farm Credit Banks authority to buy and sell obligations of, or insured by the United States or any agency thereof (*see* section 2.2(11) and 2.12 (17) for parallel authority with respect to Farm Credit associations). For parallel authorities with respect to banks for cooperatives, *see* section 3.1(5) and (13)(A) of the Act.

⁵Part 613, subpart A sets forth the eligibility requirements for financing bona fide farmers, ranchers and

aquatic producers or harvesters under titles I and II. Part 613, subpart B sets forth eligibility requirements for cooperative financing under title III.

⁶This rule would require borrower rights to borrowers of loans purchased from the FDIC by System institutions with direct lending authority under titles I and II of the Act. Borrower rights would not be required to be given to borrowers of loans purchased from the FDIC by a bank for cooperatives. This is because section 4.14A(a)(6) of the Act excepts banks for cooperatives from borrower rights requirements.

⁷Section 4.3A(c)(1)(E) of the Act requires that as a condition of borrowing from or through the institution, any borrower who is entitled to hold voting stock or participation certificates shall, at the time a loan is made, acquire voting stock or participation certificates in an amount not less than \$1,000 or 2 percent of the amount of the loan, whichever is less. Section 4.3A(c)(1)(D) of the Act provides that the bylaws of each bank and association shall provide for the issuance of voting stock which may only be held by borrowers who are farmers, ranchers or producers or harvesters of aquatic products, and eligible cooperative associations.

⁸12 CFR part 617, subparts A and D through G. These "borrower rights" would not apply to loans to cooperatives. See footnote 6.

List of Subjects in 12 CFR Part 614

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

Accordingly, for the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations, is proposed to be 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, 4.13B, 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, 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 B--Chartered Territories

2. Amend § 614.4070 by adding a new paragraph (d) to read as follows:

§ 614.4070 Loans and chartered territory--Farm Credit Banks, agricultural credit banks, Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.

* * * * *

(d) A bank or association chartered under title I or II of the Act may finance eligible borrower operations conducted wholly or partially outside its chartered territory through the purchase of loans from the Federal Deposit Insurance Corporation in compliance with § 614.4325(b)(3), provided:

(1) Notice is given to the Farm Credit System institution(s) chartered to serve the territory where the headquarters of borrower's operation being financed is located; and

(2) After loan purchase, additional financing of eligible borrower operations complies with paragraphs (a), (b), and (c) of this section.

Subpart H--Loan Purchases and Sales

3. Amend § 614.4325 by revising paragraph (b) to read as follows:

§ 614.4325 Purchase and sale of interests in loans.

* * * * *

(b) *Authority to purchase and sell interests in loans.* Loans and interests in loans may only be sold in accordance with each institution's lending authorities, as set forth in subpart A of this part. No Farm Credit System institution may purchase any interest in a loan from an institution that is not a Farm Credit System institution, except:

(1) For the purpose of pooling and securitizing such loans under title VIII of the Act;

(2) Purchases of a participation interest that qualifies under the institution's lending authority, as

set forth in subpart A of this part and meets the requirements of § 614.4330 of this subpart;

(3) Loans purchased from the Federal Deposit Insurance Corporation, provided that the Farm Credit System institution with direct lending authority under titles I, II, or III of the Act:

(i) Conducts reasonable due diligence prior to purchase, and conducts thorough review after purchase, to determine that the loan, or pool of loans, qualifies under the institution's lending authority as set forth in subpart A of this part, and meets scope of financing and eligibility requirements in subpart A or subpart B of part 613;

(ii) Obtains funding bank approval, if a Farm Credit System association, for loans or pools of loans purchased exceeding 10 percent of total capital;

(iii) Establishes a program whereby each eligible borrower of the loan purchased is offered an opportunity to acquire the institution's required minimum amount of voting stock;

(iv) Determines whether each loan purchased, except for loans purchased that could be financed only by a bank for cooperatives under title III of the Act, is a distressed loan as defined in § 617.7000, and provides the borrower of the purchased loan the rights afforded in § 617.7000, subparts A, and D through G if the loan is distressed regardless of whether the loan is to an eligible or ineligible borrower; and

(v) Divests itself of ineligible loans purchased that are not distressed loans as defined in § 617.7000 and purchased loans of borrowers who elect not to acquire stock under the program offered in paragraph (b)(3)(iii) of this section in the same manner it would divest, under its current business practices, a loan in its loan portfolio determined to be ineligible.

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Dated: May 12, 2010

Roland E. Smith,
Secretary,
Farm Credit Administration Board.