

[6705-01-P]

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 618, 620

RIN: 3052-AC03

Organization; General Provisions; Disclosure to Shareholders

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA or Agency) proposes to amend its regulations to provide procedures for requesting national charters. The proposed rule would also require each association with a national charter to extend sound and constructive credit to eligible and creditworthy customers in its Local Service Area (LSA). In addition, the FCA proposes to establish controls through new business planning requirements for an association with a national charter. These new requirements will help strengthen the safety and soundness of the Farm Credit System (System or FCS). These requirements will also help ensure that the FCS continues to meet its public policy mission to provide adequate, dependable, and competitive credit and related services to agriculture and rural America.

DATES: Please send your comments to us on or before [insert 30 days from date of publication in the Federal Register].

ADDRESSES: You may submit comments via electronic mail to "reg-comm@fca.gov" or through the Pending Regulations section of our Web site at "www.fca.gov." You may also mail

or deliver written comments to Thomas McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 or send them by facsimile transmission to (703) 734-5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Objectives

Our objectives are to:

- Establish procedures for a direct lender association to request a national charter;
- Establish that each association with a national charter must provide dependable, sound, adequate, competitive, and constructive credit and related services to all eligible and creditworthy customers within its Local Service Area on a priority basis while being responsive to other areas in the nationally chartered territory;

- Establish controls through new business planning requirements for a direct lender association with a national charter;
- Maintain safety and soundness and improve risk management in the FCS; and
- Strengthen the ability of the FCS to achieve its public policy mission to serve agriculture and rural America.

We welcome your comments on how we should modify this proposed rule, or whether we should consider a wholly different approach that would better enable the System to remain responsive to the credit needs of agriculture in a changing market.

II. Authority to Issue National Charters

The Farm Credit Act of 1971, as amended (Act), gives the FCA broad authority to issue and amend the charters of System associations, including specifying the territories in which associations may carry on their operations. Section 5.17(a)(2)(A) of the Act authorizes the FCA, "[w]here necessary or appropriate to carry out the policy and objectives of this Act, [to] issue and approve amendments to Federal charters of institutions of the System"

Sections 2.0(b)(8), 2.10(c), and 7.8(b) of the Act specifically give the FCA the power to provide for the territory in which a direct lender association may carry on its operations, either in the terms of the association's charter or by regulation. These provisions also give FCA

the power to approve amendments to the charters of associations. Finally, section 5.17(a)(5) of the Act authorizes the FCA to "[g]rant approvals provided for under this Act either on a case-by-case basis or through regulations that confer approval on actions of Farm Credit System institutions." These statutory provisions authorize the FCA to issue and amend charters, including charters to operate nationwide, to direct lender associations without notice and comment rulemaking.

On May 3, 2000, the FCA issued guidance to System direct lender associations about how they could apply for a national charter. Because there was significant public interest in national charters, we published our guidance in the Federal Register on July 20, 2000 and invited comment. See 65 FR 45066, July 20, 2000. We received over 1000 responses to the Federal Register notice. Many commenters believe the law requires the FCA to pursue a notice and comment rulemaking for national charters. Hence, we are proposing this rule, which codifies requirements for any direct lender association requesting a national charter. Notwithstanding this proposal, we continue to believe that the FCA may issue or amend charters without conducting a rulemaking, and we specifically reserve the right to do so with other chartering actions.

III. Background

The FCA proposes to amend regulations in parts 611 and 618 to provide procedures for requesting a national charter.

Additionally, we propose to amend the disclosure requirements in part 620 to provide shareholders with information about lending activities if their associations have national charters. National charters, because they permit direct lender associations to diversify their loan portfolios geographically and by commodity, will significantly enhance safety and soundness opportunities for these associations. The proposed rule establishes new regulatory requirements that, when taken with other provisions of our existing regulations, will ensure an association with a national charter continues to operate in a safe and sound manner. In addition, these new requirements will strengthen the commitment of each direct lender association with a national charter to serve all eligible and creditworthy customers in its local area.

IV. A National Charter Defined

Proposed § 611.1126(a)(2) defines a national charter as a charter that authorizes a direct lender association to exercise all powers conferred on it under the Act and FCA regulations throughout the United States and the Commonwealth of Puerto Rico or within any lesser territory the FCA specifies in accordance with section 5.17(a) of the Act.

As discussed above, the FCA has the authority under sections 2.0(b)(8), 2.10(c), 7.8(b), and several provisions of 5.17(a) to issue and amend charters for System institutions. These provisions give us broad discretion to

issue national charters to direct lender associations that include most of the United States and Puerto Rico. Section 5.17(a)(2)(B), (a)(2)(C), (a)(13), and (a)(14) of the Act requires various consents before the FCA may include certain territories in an association's national charter.

Specifically, the following associations and their supervisory banks must consent before these associations' territories can be included in the national charter of any other association:

- Ag New Mexico, Farm Credit Services, PCA;
- Federal Land Bank Association of North Alabama, FLCA;
- Federal Land Bank Association of North Mississippi, FLCA;
- Federal Land Bank Association of South Alabama, FLCA;
- Federal Land Bank Association of South Mississippi, FLCA;
- First South Agricultural Credit Association¹;
- Louisiana Federal Land Bank Association, FLCA²;
- Production Credit Association of New Mexico; and
- Production Credit Association of Southern New Mexico.

Under the Act, these associations' shareholders must consent before the territories of these associations can be included in the charters of other FCS associations. Additionally, the association's affiliated bank, and for the three New Mexico production credit associations, their

¹ Protected territory of First South Agricultural Credit Association is located in the States of Alabama, Louisiana, and Mississippi.

² Except in the parishes of Bienville, Bossier, Caddo, Caliborne, Desoto, Jackson, Lincoln, Red River, Union and Webster Parishes, and that part of Ouachita Parish west of the Ouachita River in the State of Louisiana.

boards of directors, must consent to these charter changes. An association's national charter issued by the FCA will specify its exact territory. Separately, we have proposed rules that would provide specific direction on voting procedures by these institutions. See 65 FR 26776, May 9, 2000 and 65 FR 58486, September 29, 2000.

V. Eligibility to Request a National Charter

Proposed § 611.1126(b) provides that an existing direct lender association (as defined in §§ 619.9135 and 620.1, i.e., Federal land credit association, production credit association, or agricultural credit association) or an applicant for a new direct lender association charter may request a national charter.

The proposed rule states that any direct lender association that is under a cease and desist order that has become final, as defined by section 5.25 of the Act, is ineligible for a national charter. The FCA is authorized under part C of title V to issue cease and desist orders against any System institution that operates in an unsafe or unsound manner or violates a statute or regulation.

VI. Local Service Areas

Section 1.1 of the Act states that the Farm Credit System is "designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses" The FCA believes

the System should be responsive to all types of agricultural producers and other eligible borrowers who have a basis for credit and related services.

Each direct lender association that receives a national charter must remain responsive to the needs of eligible FCS customers. Accordingly, proposed § 611.1126(a)(3) and (e) establishes a Local Service Area for each direct lender association that receives a national charter. The LSA of an existing direct lender association will be its chartered territory immediately before it receives a national charter. The FCA will designate the LSA of any newly chartered association.

The Local Service Area establishes where each association with a national charter must offer credit and related services. The FCA believes the LSA requirement will ensure that the System carries out its public policy mission of extending credit and related services to farmers, ranchers, and other eligible customers in every part of the United States as described in section 1.1 of the Act. Therefore, each association with a national charter must provide dependable, sound, adequate, competitive, and constructive credit and related services to all eligible and creditworthy customers within its LSA on a priority basis, consistent with safe and sound lending practices. Furthermore, each association must be responsive to the needs of customers in other areas of its nationally chartered territory.

Existing regulations require that all System lenders extend credit and related services in a safe and sound manner. Accordingly, every association with a national charter must maintain sufficient capacity and expertise to provide credit and related services within its LSA before it can serve other areas in its national charter.

In section 4.19 of the Act, Congress intended that the System would make special efforts to serve young, beginning, and small farmers. We anticipate that each association will make specific efforts to reach out to serve those farmers in its Local Service Area. In conjunction with business planning for an association's national charter, we encourage System institutions to review FCA Policy Statement 75, dated December 10, 1998, when they plan, develop, and implement program revisions for young, beginning, and small farmers.

VII. Procedures for Requesting a National Charter Amendment

Proposed § 611.1126(c) establishes the procedures that an association requesting a national charter must follow. Under § 611.1126(c)(1), a national charter applicant must submit the following information to the FCA:

- A statement of the provision(s) of the charter that the association proposes to amend and the proposed amendment(s);
- A statement of the reasons for the proposed amendment(s), the impact of the amendment(s) on the association and its stockholders, and the requested effective date of the amendment(s);

- A certified copy of the resolution of the board of directors of the association approving the amendment(s);
- A business plan, revised to reflect the proposed national charter, that includes an LSA Plan addressing the matters set forth in § 618.8440, and has been adopted by the association's board of directors; and,
- Any other information or documents that the association wishes to submit in support of its application, or requested by the FCA.

Proposed § 611.1126(c)(2) requires any association that applies for a national charter to simultaneously send a copy of its application to its supervisory bank. The proposed rule also allows the supervisory bank to provide comments on a related association's national charter application to the FCA within a reasonable period of time. Under proposed § 611.1126(c)(3), the FCA will inform the association of the approval or disapproval of its national charter application.

Because § 611.1126(c) would establish specific procedures for requesting a national charter, we propose to make conforming changes to § 611.1121. We propose to amend that provision, which sets forth general procedures for requesting charter amendments, to exclude national charter applications from its scope.

VIII. Business Planning Requirements

Section 618.8440 continues to address business planning requirements for System institutions. The proposed

amendments to this regulation would add a provision that specifically requires any association with a national charter to develop and implement a Local Service Area Plan.

A. Current Business Planning Requirements

Each association that obtains a national charter must update its business plan to reflect changes in its operating environment. In addressing the requirements set forth in the proposed amendments to § 618.8440, each association should take into account the following considerations when it updates its business plan:

- Economic and market conditions facing the association;
- The effect that lending outside the association's LSA may have on meeting the association's objectives within its LSA;
- The effect programs that provide credit and related services to a broader customer base will have on the association's organizational efficiency, customer service, risk management, and operational capabilities;
- Specific operating objectives and strategies for any new credit or related services programs, including delivery and servicing mechanisms;
- The types and projected amounts of credit and related services that the association will offer and the geographic markets in which it will operate;

- The risk associated with providing credit and related services in new markets, including establishing risk-tolerance levels in relation to risk-bearing capacity and loan portfolio concentrations; and
- Policies, underwriting standards, and controls for the association's lending and related service activities in any new territory, so that such activities are conducted in a safe and sound manner.

Business planning is an integral component of any financial institution operating in a safe and sound manner. An association's board of directors is responsible for and in the best position to assess the association's strategic strengths and weaknesses and to set proper limits and internal controls on lending operations and related services. The FCA will exercise its examination and supervisory powers to evaluate whether each System association is operating in a safe and sound manner as it executes its plans to extend credit and offers related services in its national charter territory.

B. Safety and Soundness Requirements for National Charter Applicants

National charters, when planned and implemented properly, can improve safety and soundness by diversifying geographic and industry concentrations in the loan portfolios of FCS associations. Because they provide enforceable safety and soundness controls, proposed

§ 611.1126(c) and (d) and the proposed amendment to § 618.8440 provide additional safeguards to eliminate concerns that national charters expose System institutions to excessive risk.

Proposed § 611.1126(d) imposes rigorous safety and soundness criteria on each association that applies for and subsequently receives a national charter. Specifically, § 611.1126(d)(1) incorporates by reference existing regulations that address capital adequacy; loan underwriting requirements; loan servicing requirements; internal controls; and compliance with regulations governing consumer protection, equal credit opportunity, and fair lending practices. Further, § 611.1126(d)(4) requires any association that receives a national charter to continue to meet safety and soundness standards, both those included in § 611.1126(d)(1), and those listed in § 611.1126(d)(2) such as asset quality, management, and earnings performance. Once an association receives a national charter, the FCA reserves its right to restrict the association's operations if it fails to operate in a safe and sound manner. In addition to safety and soundness, § 611.1126(d)(3) requires each association that applies for and receives a national charter to demonstrate that it has implemented a program to serve young, beginning, and small farmers in its LSA.

C. Local Service Area Plan

The proposed rule establishes new business planning requirements for each association applying for a national

charter. Existing § 618.8440 requires each FCS institution to adopt an operational and strategic business plan on an annual basis that covers at least the succeeding 3 years. Proposed § 611.1126(c)(1)(iv) and the proposed amendment to § 618.8440 will require each direct lender association that applies for a national charter to develop an LSA Plan that addresses how it will continue to serve its local customers. Any association that receives a national charter must update its LSA Plan annually as part of its planning process and explain how it will continue to serve local areas by providing sound, adequate credit and related services to all eligible and creditworthy customers.

A direct lender association's LSA Plan must include its assessment of its LSA and its strategies to ensure adequate service in its LSA. At a minimum, each association's LSA Plan must:

- Describe all segments of its existing market (including both existing and potential customers);
- Evaluate how well it is currently serving each segment of its existing market (including both existing and potential customers);
- Assess underserved segments in its existing market;
- Assess its capacity to serve all segments of its existing markets (including both existing and potential customers) and any constraints on this capacity; and

- Describe the strategies it will pursue to ensure that it provides adequate service within its LSA.

The purpose of an LSA is to ensure each direct lender association does its part to help the FCS meet its public policy mission. This mission includes providing dependable, sound, adequate, competitive, and constructive credit and related services to all eligible farmers and ranchers, aquatic producers and harvesters, farm-related businesses, and rural homeowners.

D. Shareholder Reporting Requirements for Nationally Chartered Associations

The proposed rule establishes reporting requirements that provide association shareholders and the FCA with useful information about the lending and related services activities of any association that has a national charter. The proposed rule amends the shareholder disclosure regulation, § 620.5, to require any association with a national charter to disclose in its annual report information about the volume of loans, leases, and related services both inside and outside its LSA. Specifically, proposed § 620.5(a)(3) would require an association that has a national charter to disclose to its shareholders summary information on the percentage and total dollar amount of loans, leases, and related services extended both inside and outside the LSA. Additionally, the FCA, through its call reporting, may request more detailed information about

loans, leases, and related services that nationally chartered associations offer outside their LSAs.

IX. Effective Dates for National Charters

We expect that national charters approved by the FCA will have the same effective date for all System associations that apply by a specified target date. The effective date for national charters and the target date for submitting applications will be determined by the FCA once a final rule is adopted. Effective dates for national charters for subsequent applications will be based on the timing of the applications received. We welcome your comments on any unique business aspects that we should consider when we establish a uniform effective date for national charters.

X. Governance and Supervising Bank Relationship

National charters will not change FCA regulations on FCS corporate governance. A borrower who is an eligible farmer, rancher, aquatic producer or harvester is entitled to hold voting stock and to serve as a director in the System association from which he or she has a loan, regardless of geographic location. As required by section 4.15 of the Act, each association with a national charter must make efforts to ensure that borrowers from its chartered territory are adequately represented on its board of directors. Additionally, representation on an association's board should reflect the types of agriculture practiced by its borrowers. The proposed rule does not

change the affiliation between a nationally chartered association and its current funding and supervisory bank.

List of Subjects

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

12 CFR Part 618

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

12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 611, 618, and 620 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended to read as follows:

PART 611--ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 7.0-7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2279a-2279f-1, 2279aa-5(e)); secs. 411 and 412 of Pub. L. 100-233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100-399, 102 Stat. 989, 1003, and 1004.

2. Revise the heading of subpart G to read as follows:

Subpart G--Mergers, Consolidations, and other Chartering
Actions of Associations

3. Revise § 611.1120(b) to read as follows:

§ 611.1120 General authority.

* * * * *

(b) The Farm Credit Administration may make changes in the charter of an association as may be requested by that association and approved by the Farm Credit Administration pursuant to § 611.1121 or, in the case of national charters, § 611.1126 of this part.

* * * * *

4. Amend § 611.1121 by revising the introductory paragraph to read as follows:

§ 611.1121 Charter amendment procedures.

This section applies to any request by an association to amend its charter, except it does not apply to applications for national charters.

* * * * *

5. Add § 611.1126 to subpart G to read as follows:

§ 611.1126 National charters.

This section applies to any association that requests or receives a national charter.

(a) Definitions.

(1) You means a direct lender association as defined in §§ 619.9135 and 620.1 of this chapter.

(2) National charter. A charter that authorizes you to exercise all powers conferred on you under the Act and

regulations of the Farm Credit Administration throughout the United States and the Commonwealth of Puerto Rico or within such lesser territory as specified by the Farm Credit Administration in accordance with section 5.17(a) of the Act.

(3) Local Service Area (LSA).

(i) If you are an existing direct lender association, your LSA is your chartered territory immediately before you receive a national charter.

(ii) If you are a newly chartered direct lender association, your LSA is any territory the Farm Credit Administration designates as such.

(b) Eligibility to request a national charter.

(1) An existing direct lender association or an applicant for a new direct lender association charter may request a national charter.

(2) No direct lender association that is under a cease and desist order that has become final as defined by section 5.25 of the Act is eligible to request a national charter.

(c) Procedures for requesting an amendment to an existing charter that would result in a national charter.

(1) In requesting an amendment to an existing charter that would result in a national charter, you must submit an application to the Farm Credit Administration that contains the following information:

(i) A statement of the provision(s) of the charter that the association proposes to amend and the proposed amendment(s);

(ii) A statement of the reasons for the proposed amendment(s), the impact of the amendment(s) on the association and its stockholders, and the requested effective date of the amendment(s);

(iii) A certified copy of the resolution of the board of directors of the association approving the amendment(s);

(iv) A business plan, revised to reflect your proposed national charter, that includes an LSA Plan addressing the matters set forth in § 618.8440 of this chapter and has been adopted by your board of directors; and

(v) Any additional information or documents that you wish to submit in support of your application or that the Farm Credit Administration requests.

(2) You must simultaneously send a copy of your national charter application to your supervisory bank. The supervisory bank may provide comments on your national charter application to the Farm Credit Administration within a reasonable period of time.

(3) The Farm Credit Administration will notify you of its approval or disapproval of the amendment request.

(d) Criteria for issuing national charters.

(1) You may apply for a national charter if you are in compliance with:

(i) Capital adequacy requirements in subpart H of part 615 of this chapter;

(ii) Loan underwriting requirements in subpart D of part 614 of this chapter;

(iii) Loan servicing requirements in subpart N of part 614 of this chapter;

(iv) Internal control requirements in subpart J of part 618 of this chapter;

(v) All applicable laws and regulations pertaining to nondiscrimination in lending requirements in part 626 of this chapter, and other Federal statutes and regulations governing consumer protection, equal credit opportunity, and fair lending practices.

(2) The Farm Credit Administration will grant national charters only to direct lender associations that it determines are operating safely and soundly in accordance with capital, assets, management, earnings, liquidity, interest rate sensitivity, and other safety and soundness standards.

(3) If you apply for a national charter, you must demonstrate to the Farm Credit Administration that you have implemented a program that serves young, beginning, and small farmers in your local service area, and that you have complied with § 614.4165 of this chapter and other Agency guidance.

(4) After you receive a national charter, you must continue to comply with all the requirements in paragraphs (d)(1), (d)(2) and (d)(3) of this section.

(e) LSA requirement. If you receive a national charter, you will have an LSA. Once you receive your national charter, you must extend credit and offer related services to all eligible and creditworthy customers in your LSA, consistent with safe and sound lending practices.

PART 618—GENERAL PROVISIONS

6. 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 J—Internal Controls

7. Revise § 618.8440 to read as follows:

§ 618.8440 Planning.

(a) No later than 30 days after the commencement of each calendar year, the board of directors of each Farm Credit System institution must adopt an operational and strategic business plan for at least the succeeding 3 years.

(b) The business plan must include, at a minimum, the following:

(1) A mission statement;

(2) A review of the internal and external factors that are likely to affect the institution during the planning period;

(3) Quantifiable goals and objectives;

(4) Pro forma financial statements for each year of the plan;

(5) A detailed operating budget for the first year of the plan; and

(6) The capital adequacy plan adopted pursuant to §§ 615.5200(b), 615.5330(c), and 615.5335(b) of this chapter.

(c)(1) The business plan for each Farm Credit System association that has received a national charter, as defined in § 611.1126 of this chapter, must include a Local Service Area (LSA) Plan.

(2) An LSA Plan is a plan that addresses how the Farm Credit System association will serve its LSA under § 611.1126(d) of this chapter. At a minimum, an LSA Plan must:

(i) Describe all segments of the existing market of the Farm Credit System association (including both existing and potential customers);

(ii) Evaluate how well the Farm Credit System association is currently serving each segment of its existing market (including both existing and potential customers);

(iii) Assess underserved segments in the Farm Credit System association's existing market;

(iv) Assess the Farm Credit System association's capacity to serve all segments of its existing markets (including both existing and potential customers) and any constraints on this capacity; and

(v) Describe the strategies the Farm Credit System association will pursue to ensure that it provides full service within its LSA.

PART 620—DISCLOSURE TO SHAREHOLDERS

8. 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

9. Amend § 620.5(a)(3) as follows:

a. Remove the ";" at the end of the third sentence and add a "."; and

b. Add two new sentences to the end of this paragraph to read as follows:

§ 620.5 Contents of the annual report to shareholders.

* * * * *

(a) Description of business. * * *

(3) * * * For any association that has a national charter, it must identify the percentage and the total dollar amount of loans, leases, and related services that it extends to eligible customers. An association with a national charter must separately report the total loans,

leases, and related services that it makes both inside and outside its local service area;

* * * * *

Dated: _____

Kelly Mikel Williams,
Secretary,
Farm Credit Administration Board.