



6340 South Fiddlers Green Circle
Greenwood Village, CO 80111
800-542-8072
www.cobank.com

VIA E-Mail

August 16, 2017

Mr. Barry F. Mardock
Deputy Director, Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

RE: RIN 3052-AD24 Regulatory Burden

Dear Mr. Mardock:

CoBank, ACB (CoBank) appreciates the opportunity to respond to the Farm Credit Administration's (FCA) request for comment concerning Regulatory Burden that was published in the May 15, 2017 *Federal Register* (82 FR 22762).

CoBank welcomes the FCA's continued comprehensive review of regulations governing the Farm Credit System (FCS) to identify and eliminate, consistent with law and safety and soundness, all regulations that are unnecessary, unduly burdensome or costly, or not based on law. Please take into consideration CoBank's response to your specific request for comment on whether the FCA's regulations may duplicate other requirements, are ineffective, are not based on law or impose burdens that are greater than the benefits received.

CoBank solicited feedback internally and from our affiliated associations to gather information for this comment letter. The concerns of our affiliated associations have been addressed by the comments from The Farm Credit Council, which we support. To address issues of specific concern to CoBank, our comment letter is organized in two sections – the first section corresponds with the specific regulations of the FCA in numerical order, while the second section includes recommendations to eliminate reporting requirements that do not fall under a specific regulation.

FCA Regulations

[§ 609.935](#)

ELECTRONIC COMMERCE

Subpart C - Standards for Boards and Management
Business Planning

This FCA regulation relates to "E-commerce" and details requirements for FCS institutions that engage in electronic commerce activities. The regulation does not define what activities should be included as E-commerce and creates a separate requirement for planning documentation that is already effectively included within the regulatory requirements for business planning. Specifically, the regulations and related guidance are excessively broad and inconsistent with the application of Ecommerce requirements with respect to commercial banks and other financial institutions (OFI). The FCA regulations define "Electronic business (E-business) or

electronic commerce (E-commerce)” as “buying, selling, producing, or working in an electronic medium.” The phrase “working in an electronic medium” has been applied expansively to effectively cover any electronic activity of an FCS institution with respect to its employees, customers, vendors, and others. The result is a significant additional burden to maintain a plan that satisfies examiners but provides no benefit to FCS institutions. FCA should revise its E-commerce definition to be consistent with the definition used generally in the marketplace. The banking regulators use the following practical and logical definition: “A broad term encompassing the remote procurement and payment by businesses or consumers of goods and services through electronic systems such as the Internet.” We believe that FCA’s original rulemaking was meant to implement E-commerce requirements consistent with the banking regulators’ definition. The current application of the FCA regulatory definition is overly broad and results in an expansive application by examiners, application beyond what is required by E-commerce laws, and creates an unnecessary burden on FCS institutions.

CoBank recommends modifying the regulation to ensure E-commerce requirements apply specifically to activities involving the remote procurement and payment of goods and services between FCS institutions and its members and business partners and to eliminate the requirement for planning documentation.

§ 612.2300

STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

Subpart B - Referral of Known or Suspected Criminal Violations
Purpose and scope

FCA requires the submission of criminal referrals using the FCA Criminal Referral Form (CRF). This referral form is unique to FCA and not integrated with FinCEN’s Suspicious Activity Reporting (SAR) system that is used by law enforcement and Federal prosecutors to fight financial crimes. CoBank voluntarily complies with SAR filing requirements. As a result, FCA’s requirement to use an FCA CRF is burdensome and confusing to criminal enforcement authorities in those situations when CoBank files a SAR and is required by FCA to also file an FCA CRF. Importantly, the SAR form provides effectively and efficiently the same information contained in the FCA CRF for use by law enforcement. FCA should eliminate this burden and accept the SAR form instead of the FCA CRF in those instances where reporting is provided under FinCEN filing requirements. Currently, the burden on CoBank is in excess of 500 hours per year to essentially file both a SAR and FCA CRF.

CoBank recommends modifying § 612.2300(e) to accept the submission of the SAR form for the filing of criminal referrals in lieu of an FCA CRF in those instances when an institution is voluntarily complying with FinCEN SAR filing requirements and the institution has filed a SAR report on the particular criminal matter as required by §612.2301. In these instances, the SAR report should also be submitted to FCA.

§ 612.2301

STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

Subpart B - Referral of Known or Suspected Criminal Violations
Referrals

FCA requires the reporting of “Any known or suspected criminal activity involving a financial transaction in which the institution was used as a conduit for such criminal activity (such as money laundering/structuring schemes)” without any threshold or test for substance. To provide consistency in requirements applicable to commercial banks for the filing of SARs, the FCA should implement a \$5,000 threshold for filing an FCA CFR when the suspect is known and \$25,000 when the suspect is unknown.

CoBank recommends modifying § 612.2301(a)(4) to establish a threshold for reporting of known or suspected criminal violations where an FCS institution is the conduit for criminal activity.

§ 613.3100

ELIGIBILITY AND SCOPE OF FINANCING

Subpart B - Financing for Banks Operating Under Title III of the Farm Credit Act
Domestic lending

CoBank’s authorities to finance electric and telecommunication borrowers are derived from the Rural Utilities Service (RUS)’ authorities under the Rural Electrification Act, as amended (the “REA”). (See § 3.8(b)(1)(A) of the Farm Credit Act of 1971, as amended) The REA authorizes such loans for providers of utility services to rural areas. In the 2008 Farm Bill, Congress updated the definition of a rural area for electric and telecommunication loans in the REA, including a grandfather clause together with an increase in the population level of a rural area that corresponds to the greater than 20,000 level that is in §613.3100(a)(4) of the FCA regulations. (See 7 U.S.C. § 913(3)) In the 2008 Farm Bill, Congress also amended the REA to grant RUS a new authority to make renewable energy loans to provide service to both rural or non-rural areas. (See 7 U.S.C. § 940(g)) Prior to this enactment, RUS was restricted to financing electric utilities serving primarily rural areas only.

CoBank recommends that FCA make conforming changes to § 613.3100(c)(2) to reflect these recent changes to the REA since CoBank’s lending authorities for electric and telecommunication borrowers are derived from the REA. We are proposing the following language in red-line to accomplish the conforming changes to the REA:

(c) Electric and telecommunication utilities.

(2) Purposes for financing. A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible to borrow under paragraph (c)(1) of this section in order to provide (A) electric or telecommunication services in a rural area, and (B) electric generation from renewable energy sources for resale to rural or non-rural areas. For purposes of this subsection only, “rural area” and “renewable energy sources” shall have the meanings set forth in the Rural Electrification Act of 1936, as amended. A subsidiary that is eligible to borrow under paragraph (c)(1)(iii) of this section may also obtain financing from a bank for cooperatives or agricultural credit bank for energy-related or public utility-related purposes that cannot be financed by the lenders referred to in paragraph (c)(1)(ii), including, without limitation, financing to operate a licensed cable television utility.

We are not asking FCA to eliminate the “rural area” definition from the FCA regulations, however, since it should continue to apply to water loans under § 613.3100(d). We recommend that you move the definition of “rural area” from § 613.3100(a)(4) to § 613.3100(d), as follows:

(d) Water and waste disposal facilities.

(1) Eligibility. A cooperative or a public agency, quasi-public agency, body, or other public or private entity that, under the authority of state or local law, establishes and operates water and waste disposal facilities in a rural area, as that term is defined by paragraph **(d)** ~~(a)(4)~~ of this subsection **(d)**, is eligible to borrow from a bank for cooperatives or an agricultural credit bank.

(2) Purposes for financing. A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible under paragraph (d)(1) of this section solely for installing, maintaining, expanding, improving, or operating water and waste disposal facilities in rural areas. **For purposes of this subsection (d) only, “rural area” means all territory of a State that is not within the outer boundary of any city or town having a population of more than 20,000 inhabitants based on the latest decennial census of the United States.**

§ 614.4120, § 614.4130, and § 614.4595

LOAN POLICIES AND OPERATIONS

Subpart C – Bank/Association Lending Relationships

§ 614.4120 – Policies governing the extension of credit to direct lender associations and OFIs.

§ 614.4130 – Funding and discount relationships between Farm Credit Banks or agricultural credit banks and OFIs.

Subpart P – Farm Credit Bank and Agricultural Credit Bank Financing of Other Financial Institutions
§ 614.4595 – Public disclosure about OFIs

FCA regulations § 614.4120 and § 614.4130 prescribes that OFI lending relationships be governed by a general financing agreement (GFA) similar to those governing relationships with Agricultural Credit Associations (ACAs). This requirement forces the banks to attempt to apply a GFA structured for ACAs to OFIs. This can create a burden since the GFAs and provisions therein applicable to the ACA lending relationship are not inherently relevant to the OFI lending relationship. As a result, the prescriptive requirements of the regulation result in an unnecessary burden to OFI lending. The specific form, name, and provisions of the OFI lending agreement should not be the subject of the regulations. Additionally, § 614.4130 (b) requires delivery of all documents related to the GFA be provided within 10 days of execution to the FCA. This can create a burden if exhibits or ancillary documents take time to gather. Similarly, § 614.4595 requires the banks to receive written approval from the OFI before publicly disclosing its name, address, and internet address. It also requires a bank to adopt and maintain policies and procedures relating to OFI public disclosures. This requirement is unnecessary, excessively prescriptive, not required in law and burdens banks to maintain a policy that detracts from meaningful board oversight. Disclosure of name, address and internet address is not a regulatory matter and it is better left to the banks and OFIs to decide within the lending relationship.

CoBank recommends modification of § 614.4120 and 614.4130 to allow FCS banks and individual OFI customers to develop financing agreements, independent of the ACA financing structure, allowing them to have a GFA that meets the unique needs and varying organizational

structures of OFIs. Additionally, § 614.4130 (b) should be modified to allow for the delivery to the FCA of all documents related to the GFA within 30 days of execution. Finally, it is recommended that § 614.4595 be eliminated.

[§ 615.5140](#)

FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

Subpart E - Investment Management

Eligible investments

The approval process for public-private partnership investments, such as community health care facilities, would better serve rural America if it were streamlined. The current case-by-case approval process significantly hinders the development of critical projects in rural communities. §615.5140(e) states "...you may purchase and hold other investments that we approve. Your request for our approval must explain the risk characteristics of the investment and your purpose and objectives for making the investment."

CoBank recommends that FCA provide for shelf or programmatic approval of community facility bond investments or issue an Informational Memorandum that streamlines the approval process for investments in public-private partnerships that benefit rural communities and modification of the regulation to specifically allow the purchase of community facility bonds as mission-related investments.

[§ 618.8440](#)

GENERAL PROVISIONS

Subpart J - Internal Controls

Planning

This regulation details the annual planning requirement for Farm Credit entities. § 618.8440(b)(7) details a human capital plan requirement with specific requirements and § 618.8440(b)(8) effectively requires a marketing plan from CoBank and associations. Both requirements are excessively prescriptive and detailed resulting in creation of documents and discussion to satisfy regulatory requirements as applied by examiners without any corresponding benefit to the institutions or mission achievement. Specifically, the regulations required significant detail in both the human capital and marketing plans that goes beyond what is appropriate for inclusion, even at a summary level, in a business plan. The human capital plan requirements are too specific in requiring descriptions of the work force, and succession plans as well as actions and strategies for diversity and inclusion. Given the diversity and differences among FCS institutions, the requirements should be general in nature rather than specific. Similarly, the marketing plan is too specific in requiring a description of the territory and strategies to service all eligible customers. To reduce burden and requirements that are duplicative in nature, the FCA should generalize the human capital and marketing plan requirements. For instance, the requirements could be simplified to state that institutions must develop human capital and marketing plans they deem appropriate for their institutions and addresses talent needs, diversity issues, and marketplace service. This change would allow FCS institutions to innovate in meeting human capital and marketplace needs rather than developing documents simply to satisfy a regulatory requirement and examiners.

While CoBank will continue to develop a human capital plan and district marketing plan, as part of the management of its business, these requirements are overly prescriptive and limit innovation related to an entity developing a plan that meets its specific needs and goals. Consequently, CoBank recommends that these sections should be generalized in the regulations.

Other Reporting Requirements

Syndication and Participations Study Reporting Requirements

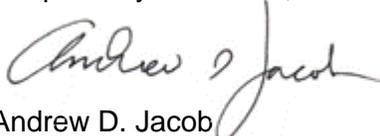
In 2006, the FCA Board approved a three-year Syndications and Participations Study “to help determine whether FCA should modify its approach to loan syndications and assignments to reflect significant changes in the markets, and to ensure that the Agency implements policies consistent with the System’s statutory requirement to provide credit to agriculture and rural America.” The reporting requirements for this study are burdensome and manually intensive, time consuming, and do not augment internal management’s tools. In 2013 Farm Credit East commented that the study had been in place for many years and recommended that it would be appropriate for FCA to revise the definition of participation therefore eliminating the burdensome nature of the study. At the time FCA responded that detailed reporting was necessary for thorough analysis of the issue and credibility of the study.

CoBank recommends FCA evaluate the data gathered over the past ten years for the syndication and participations study and determine the usefulness of gathering additional data in the future.

Conclusion

CoBank greatly appreciates the continuation of FCA’s comprehensive review of regulations governing the FCS. Thank you for the opportunity to provide comments on the issues important to CoBank and our affiliated associations. Please contact me with any questions or if more information is needed.

Respectfully submitted,



Andrew D. Jacob
Chief Regulatory, Legislative and Compliance Officer