October 18, 2022

Autumn R. Agans

*Deputy Director, Office of Regulatory Policy*

Farm Credit Administration

1501 Farm Credit Drive

McLean, VA 22102-5090

Re: Response to Notice of Intent & Request for Comment – *Statement on Regulatory Burden*, Farm Credit Administration, Agency; 12 CFR Chapter VI RIN 3052–AD55; 87Federal Register 43227-43228

Dear Ms. Agans:

AgGeorgia Farm Credit (AgGeorgia) appreciates the opportunity to comment on the Farm Credit Administration’s (“FCA”) Statement on Regulatory Burden that was published in the *Federal Register* on July 20, 2022 (87 FR 43227).

AgGeorgia welcomes FCA’s continued review of regulations governing the System to identify and modify or eliminate, consistent with law and safety and soundness, regulations that are unnecessary, unduly burdensome, costly, or otherwise not based on law. In order to better analyze and access the complexities of the current regulatory environment and prepare a comment letter, AgGeorgia employees were in regular communication with the FCS Regulatory Burden Workgroup. The comments included in this letter reflect one of the most comprehensive reviews of FCA’s current regulatory environment that has occurred in recent years. In addition to identifying current regulations that were deemed unnecessary, duplicative, and/or ineffective, the Workgroup went a step further and proposed various solutions or approaches, if and when possible, unless elimination of the regulatory practice was deemed the only possible solution. The System’s feedback has been assembled and produced in both narrative summary and table formats, as set forth on the enclosure to this letter, in an effort to better present the comments received and communicated by the System and in an effort to facilitate FCA’s consideration of, and response to, each such comment.

AgGeorgia has previously provided comments on some of the regulatory burdens being faced or which we are otherwise experiencing, including comments on matters that are made subject of the Unified Agenda or rulemakings that became effective after January 1, 2022. Any comments previously provided are not included in this letter but bear keeping in mind in light of the burdens and costs that have been imposed, are being imposed, or that are threatened to be imposed on AgGeorgia by such efforts in addition to the burdens identified in this letter; such changes highlight some of the context in which AgGeorgia finds itself in terms of operational changes (*e.g.*, policy changes, procedural changes, system, software, vendor, agent, training, and other operational changes).

AgGeorgia agrees with the majority of the opinions expressed in the Farm Credit Council’s response to FCA’s request for comment, specifically that an MRA should only be issued for a violation of the Act or FCA regulations promulgated under the Act and should not be issued for perceived violations of examination guidance alone. AgGeorgia believes that FCA is without authority to enforce guidance or best practices (even if the intent behind the best practice is good); a regulator can only enforce compliance with relevant statutes and the regulations promulgated thereunder (*e.g.*, for AgGeorgia, the Act and FCA regulations promulgated thereunder), after notice and an opportunity to comment have been afforded and all conditions precedent have been satisfied. A regulator can issue recommendations or comments based on published guidance or best practices, but such cannot serve as the basis for an MRA. Examining System institutions, and issuing MRAs based on published guidance alone, exceeds the scope of a regulator’s authority and results in a subjective examination, giving rise to inconsistent System results, lack of preparedness, unnecessary cost, impairment of relationships between regulator and System institutions, unreliable outcomes, and unenforceable results.

AgGeorgia appreciates the need for safety and soundness in the System and acknowledges the importance of the regulator’s role in helping to maintain safety and soundness. However, the scope of enforcement must necessarily be limited to the Act and FCA regulations promulgated thereunder, and distinctions should be made, during and as a result of examinations, between MRAs and recommendations, *e.g.* AgGeorgia should also be able to more readily identify the guidance applicable to (and enforceable against) it by being able to look to one of three sources for compliance: (i) the Act; (ii) FCA regulation; and (iii) examination manual that reflects a culmination of all FCA-published guidance currently in effect and applicable to the System (*e.g.*, a summary of, with cites to, all IMs, BLs, and policies), without exceeding the scope of the Act and FCA regulation; such examination manual guidance should also cite to the Act and FCA regulation so that AgGeorgia can better ascertain and confirm compliance and participate in communications with FCA regarding same.

**Conclusion**

We appreciate the opportunity to comment on the agency’s Statement of Regulatory Burden and to present AgGeorgia’s concerns to FCA for its consideration. We urge the agency to move forward with its consideration of the burdens identified and the recommendations being made in this comment as soon as the agency has completed its review and afford the relief requested by FCS institutions. We trust that our comments will assist FCA in such efforts.

If you have any questions, then please do not hesitate to contact me.

Sincerely,



Enclosure

|  | **Source**  | **Regulation** | **Regulation Description** | **Burden(s)** | **Comment(s)** |
| --- | --- | --- | --- | --- | --- |
| 1 | 12 CFR Part 611 | 12 CFR 611.1155 | Approval of Equity Investments in UBEs  | The detailed requirements of the information that must be provided to FCA for its approval before a UBE can be created is administratively burdensome, time consuming, and thus expensive to System institutions. The process for creating and seeking approval for UBEs to protect System institutions in their administration of acquired assets is administratively burdensome can and should be simplified.  | The regulation should provide for the requirements for the appropriate use of UBEs but should not impose notification and approval requirements prior to use. Compliance with this regulation can be determined during the examination process.  |
| 2 | 12 CFR Part 611 | 12 CFR 611.326 | Floor Nominations for Open Farm Credit Bank and Association Director Positions | The requirement that associations must permit voting stockholders to make floor nominations for director positions circumvents the nominating committee’s process and creates inefficiencies in the development of the association’s election materials. The same requirement is not imposed on banks. Banks are only required to allow floor nominations if they are permitted by a bank’s election policies and procedures.  | The floor nomination process should be optional or discretionary for associations in the same manner as it is for banks. The recommendation is to allow associations to decide whether to allow for stockholder floor nominations. This would be governed by election policies and procedures in the same as is permitted currently for banks. |
| 3 | 12 CFR Part 613 | 12 CFR 613.3300(c)(2) | Participations and Other Interests in Loans to Similar Entities | The regulation is more restrictive than required by the Farm Credit Act. Based on the language of the statute, it appears as if Congress intended the 50% test to be satisfied only at the time the System institution first enters the transaction, whereas the regulation requires an “at any time” requirement. For example, the regulation provides, in relevant part: “Percentage held in the principal amount of the loan. The participation interest in the same loan held by one or more Farm Credit bank(s) or association(s) shall not, **at any time**, equal or exceed 50 percent of the principal amount of the loan.”12 CFR § 613.3300(c)(2)(emphasis added). *Compare, e.g.,* 12 USC § 2122, §3.1(11)(B)(i)(I)(bb); 12 USC § 2206a, § 4.18A(b)(2) (the Act uses the words “would” and “will” when applied to the similar entity requirements; “would” and “will” imply a prospective pro-forma test at the time the System institution enters the transaction, not an ongoing compliance obligation).   | The regulation should be revised to remove the “at all times” requirement, thus eliminating the burden on System institutions of having to monitor the buying/selling activities of commercial lenders and other System institutions following loan closing. Each System institution would only be responsible for determining whether the 50% test was met at the time the loans were closed, which appears to be the intent of Congress as stated in the Act. |
| 4 | 12 CFR Part 615 | 12 CFR 615.5140 | Eligible Investments | System institutions (bank and associations) have a restricted list of investments that can be purchased. The regulation also limits the investments of associations to no more than 10% of loans, which is unnecessarily restrictive. Association investment options currently are limited to guaranteed portions of SBA loan pools and USDA single loan transactions. Because these investments are guaranteed, there should be less scrutiny (or fewer limitations) imposed on those investments. However, System institution investment portfolios are reviewed every six or so months and System institutions are constantly required to tweak investment policies and procedures, with little to no beneficial impact. The regulatory restrictions imposed limit opportunities for balance sheet diversification and liquidity needs. | Banks were once the direct lender, with associations being the service providers; the relationships, roles, and sophistication levels of associations have changed since then. Associations are also more complex, larger, and have a greater need to better manage their own safety and soundness, with reduced reliance on banks. Associations have gained expertise to manage investments in a safe and sound manner that supports the ability to expand their investments, diversify their earnings, and allow for more stabilization of their balance sheets to better support the cooperative model; there is no reason to differentiate between associations and banks with regard to eligible investments as there once was, and System institution guidance and regulations require the monitoring of, and reporting on, such investments, and such investments are audited and subject to examination. With these and other controls and reviews, eligible investment limitations should no longer be applied to associations in a way that is dissimilar to those of banks. The eligible list of investments that can be purchased by associations, therefore, should be broadened to match those that can be purchased by banks.  |
| 5 | 12 CFR Part 615 | 12 CFR 615.5206 | Permanent Capital Ratio Computation | FCA call report requirements should be evaluated for consistency with other financial institution regulators (*e.g.*, OCC, FRB). Any additional reporting requirements need to be evaluated to determine the necessity of the information or perform a cost benefit analysis. For example, FCA should modify its regulatory capital ratio calculations to be consistent with other financial institution regulators. The current calculations requiring a 3-month average daily balance (“ADB”), in addition to calculating it based on ending balance, is overly burdensome, and the 3-month ADB actually materially misrepresents an entity’s capital ratios during quarter-end reporting. The requirement to calculate quarterly averages (*e.g*., 3-month ADBs) results in challenges to the System. For example, the requirement often results in the need for ad-hoc calculations and modifications to loan accounting/reporting systems as this is often times not a standard offering from providers who are primarily focused on commercial banking needs. Today, the System has to determine 3-month ADB balances on all individual loans, off-balance sheet commitments, letters of credit, derivatives, investments, and the like. Common accounting and loan accounting systems are not traditionally configured to track 3-month ADBs, which require additional costs to modify standard accounting and loan accounting software. Industry standard software generally only calculates YTD information. Further, FCA’s requirements for ADBs significantly exceed other financial institution regulators leading to unnecessary costs to develop and maintain software to track these non-standard requirements. Finally, the requirements for quarterly averages in the required bank disclosures is inconsistent with the Basel III framework and creates a significant amount of additional work to calculate and report capital disclosures that are not consistent with the rest of the financial industry.  | Call report instructions should remove the requirement to calculate capital ratios with a quarterly (*e.g.*, 3-month ADB) average balance and, instead, should be modified to require loans to be reported on an amortized cost basis, consistent with other financial institution regulators, which would be consistent with Basel III framework.  Using ending balance (one point in time) figures to calculate would capital ratios including risk-weighted assets would reduce differences between commercial banks and System institutions.  Additionally, such an approach would result in a more accurate representation of a System institution’s available capital.  Utilizing an ADB, by comparison, may misrepresent a System institution’s true position at a specific date.  For example, an institution may get “credit” for having capital within the last 3 months in an average balance but such credit is not available at the time of reporting.   |
| 6 | 12 CFR Part 615 | 12 CFR 615.5250 | Disclosure of Requirements for Sales of Borrower Stock  | This regulation requires that System institutions provide a prospective borrower with the annual report, the most recent quarterly report, if filed more recently than the annual report, the capitalization bylaws, and a written description of the terms and conditions under which the equity is issued. Providing such information in paper or hard copy format does not guarantee receipt, imposes costs and administrative burdens on System institutions, does not comport with preferred methods of delivery for most customers, and is inconsistent with delivery methods of other financial institutions that are similarly situated; other financial institutions may mail this information to the prospective borrower a week or two after closing, *e.g.* | System institutions should be able to offer customers the option of viewing the required information on their website, if and as applicable, or to receive copies of such reports and information through electronic means as opposed to paper alone. The customer may acknowledge such option(s) and/or make its election in writing at or prior to closing, and such acknowledgment and/or election can be maintained in the file. This is consistent with industry standard practices and with other federal laws and guidance. |
| 7 | 12 CFR Part 620 | 12 CFR 620.2 | Preparing and Filing Reports | System institutions must operate efficiently and in the best interest of the cooperative. Many, if not most, businesses operate, and engage in, electronic commerce, with less reliance on paper due to preference, cost, and delays associated with mail. Point-of-sale and other personal property loans close quickly, and the lenders under point-of-sale programs may not be known or confirmed until shortly before closing. Dealers under a point-of-sale program may not be able to identify, download, and provide copies of the correct quarterly reports for the lender assigned to the loan, and the administrator/lender needs to be sure that the correct quarterly report is provided. The cost of providing quarterly reports, coupled with the possibility that reports and other information may not be received and reviewed prior to closing, further warrant consideration of electronic access to, or delivery of, quarterly reports, with the opportunity to request paper copies, if and as desired. | In order to better guarantee a review and receipt of the correct quarterly report and other possible information at or prior to closing, it would seem to be equally, if not more, effective and prudent to provide the borrower with electronic and/or website access to review and retrieve the report(s) and information at or prior to closing and to acknowledge receipt and review of such report through such means, with an opportunity to be provided with a paper copy upon request. For portfolio loans, website access coupled with an acknowledgment would provide real-time access of the quarterly report, and an acknowledgment could be provided to confirm same. Providing access to such report at or prior to closing also would permit a more real-time review of the quarterly report and would allow the lender to better confirm same with the borrower. |
| 8 | 12 CFR Part 620 | 12 CFR 620.4 | Preparing and Providing the Annual Report | This regulation requires that System institutions provide, within 90 calendar days of the end of its fiscal year, an annual report substantively identical to the copy of the report sent to FCA under subparagraph (a)(1) of this regulation*.* The regulator requires System institutions to mail a hard copy of the annual report to its shareholders. However, mailing a hard copy is a financial and administrative burden. Providing print communications to all shareholders provides a substantial logistical and financial burden on System institutions and is not in alignment with shareholders’ preferred method of communication, which is electronic in most circumstances. | System institutions should be permitted to post annual reports to the institution’s website in lieu of mailing same. Most borrowers have internet access through their businesses, homes, or other venues. Alternatively, annual reports can be provided electronically via email with hard copies available at all branch locations and customer events or upon request. Permitting electronic access or delivery of all stockholder notices with an “opt out” requirement, not an “opt in” requirement, would relieve significant administrative and cost burdens experienced by System institutions, while still allowing for delivery of information by paper means upon request, for those who prefer it. As a matter of course, System institutions provide these disclosures at or prior to closing and are also permitted to deliver such reports electronically to FCA. |
| 9 | 12 CFR Part 620 | 12 CFR 620.5 | Contents of the Annual Report to Shareholders | The requirement to include permanent capital ratio in the annual report is administratively burdensome and costly, is not relied upon by FCA or other key stakeholders, and does not provide valuable information on the System institution.  | The regulations should be modified to no longer require the inclusion of permanent capital ratio in the annual report.  |
| 10 | 12 CFR Part 620 | 12 CFR 620.6 | Disclosures in the Annual Report to Shareholders relating to Directors and Senior Officers | As identified in the 2017 FCC commentary, the requirements of 12 CFR 620.6, and in particular to the provisions relating to retirement account information policies, are not only unduly burdensome and costly, but also confusing if not misleading to stockholders.  | The regulation should be modified to no longer require the inclusion of retirement account information policies in the annual report.  |
| 11 | 12 CFR Part 620 | 12 CFR 620.20 | Preparing and Distributing the Information Statement | The regulation requires that System institutions post their AMIS on their website “[i]n addition to the mailed AMIS.” The requirement that electronic publication and notification is to be used as an additional, not alternative, method of communication is burdensome and expensive. Providing print communications to all stockholders provides a substantial logistical and financial burden on System institutions and often does not align with the communication method preferred by many stockholders, which is electronic. | System institutions should be able to offer customers the option of viewing the required information on their website, if and as applicable, or to receive copies of such reports and information through electronic means as opposed to paper alone. The customer may acknowledge such option(s) and/or make its election in writing at or prior to closing, and such acknowledgment and/or election can be maintained in the file. This is consistent with industry standard practices and with other federal laws and guidance. |
| 12 | 12 CFR Part 620 | 12 CFR 620.30 | Audit Committees | The regulation requires all external auditors to report directly to the Audit Committee.  The requirement of a secondary “independent” individual within the organization to interject themselves in between an external auditor and the Audit Committee undermines the nature and intent of FCA regulation and creates an undue financial burden on the System institution by adding additional staffing costs and time commitment.  The requirement by FCA for the creation of an Audit Coordinator role when a small System institution outsources all reviews and audits to an external third-party is a financial and managerial burden that detracts from the value provided to all stakeholders in that System institution.  Additionally, 12 CFR 619.9270(e) requires all external auditors to be independent of the System institution to be audited, making the Audit Coordinator Role a redundancy.  The need for additional staff to meet this requirement raises the “cost of doing business” especially for smaller System institutions, ultimately reducing the available earnings that could have been used to pay patronage or support YBS initiatives in the communities.  | FCA should consider implementing a risk-based methodology for compliance with their regulatory requirements. The Audit Coordinator/CAE requirement creates unnecessary costs at institutions with less than $1B in assets with limited benefits. In general, these System institutions already incur significant expense to outsource audit engagements to reputable third-party accounting firms. In addition, the Banks are already required to perform significant due diligence over the effectiveness of the System institution’s ICFR program, which minimizes the risk of a material misstatement of the financial statements. Lastly, FCA’s directive to assign an HR person, or other administrative assistant type role, with the responsibilities of “audit coordinating” provides zero benefit to the stakeholders of a System institution.  |
| 13 | 12 CFR Part 621 | 12 CFR 621.10 | Monitoring of Performance Categories and Other Property Owned  | Nonaccrual reporting requirements are significantly greater under FCA call reports than other regulators. The costs associated with tracking nonaccruals and modifying loan accounting systems to meet FCA requirements are overly burdensome. The nonaccrual reporting requirements can cost in excess of $1,000,000.00 in custom code and personnel costs to customize the core functionality of a premier loan accounting service provider’s software. This is the same software as others are using in the System, which means the cost to the System overall is considerable. Accrual loan roll forward (RC-K) is overly burdensome and inconsistent with prudential regulator reporting requirements.  | FCA should modify its nonaccrual reporting requirements to require loans to be reported on amortized cost basis only and to otherwise align with other financial industry regulators. |
| 14 | Annual Report | 2020 Annual Report of the Farm Credit Administration Regulator of the Farm Credit System | Regulatory Activity in 2020 | FCA Syndication and Assignment study has been going on since 2006 and was supposed to be a 3-year study. In 2020, *e.g.*, FCA indicated it was working with the Funding Corporation to reduce the reporting burden and improve data collection by leveraging the Loan Database. To date, that has not happened. We appreciate the regulatory flexibility provided by FCA’s Syndication and Assignment Study. However, the additional reporting requirements associated with the Study continue to be viewed as an unnecessary burden. In 2021, FCA indicated it was working with the Funding Corporation to reduce the reporting burden and improve data collection by leveraging the loan database.  | The requirement that data be provided at the association level be discontinued; instead, such data should be gathered at the loan database level, as contemplated. |
| 15 | BL | BL-073 | Criminal Referral Guidance | BL-073 “Criminal Referral Guidance” has increased the cost, complexity, and burden of filing criminal referrals under 12 CFR 612 subpart B. It requires System institutions to file a criminal referral if a borrower has misstated financial statements or converted collateral valued at more than $5,000.00 regardless of intent, which is required in order to support a known or suspected violation of criminal law. This requirement does not provide latitude for an analysis of intent or a factual determination as to whether this was an isolated incident or mistake. As a result, institutions are required to report more incidents that do not constitute known or suspected violations of criminal law, which may require unnecessary, misleading, or otherwise inaccurate reports, but may also require separation of employment or other relationships unnecessarily and which may not warrant the safe harbor protections afforded under law. Further, reporting incidents prophylactically and without satisfying all of the requirements of 12 CFR 612 subpart B is not legally required, may be impermissible, would increase the administrative and cost burdens on System institutions, would reduce the impact of any event that may actually warrant the attention of the authorities (*e.g.*, the FBI and U.S. Attorney’s Office), would waste the resources of governmental agencies who are charged with receiving and reviewing such reports, and may impair a System institution’s reputation and credibility with federal and local authorities. Further, while BL-073 does provide some clarity on 12 CFR 612.2301(a)(4) and the minimum amount to consider with regard to reportable activity that involves persons other than insiders who fall within 12 CFR 612.2301(a)(1) (*e.g.*, $5,000.00), BL-073 does not fully comport with (or track) the Farm Credit Act or FCA regulation. Other regulatory burdens are also caused by FCA’s requirement to use its portal to file criminal referrals. The portal is an awkward tool that requires multiple entries of the same information. The portal does not readily allow the editing of a completed draft within the portal and does not consistently (if ever) allow for the linking of a supplemental referral to an original or initial referral. Relatedly, a criminal referral cannot be subsequently amended after it has been submitted through the portal, which may necessitate the filing of a new referral through the portal in order to update or append any additional information. Such steps result in administrative costs and inefficient uses of System resources.  | BL-073 should be modified to the extent it: (i) does not fully track or comport with the Act or FCA regulation; or (ii) suggests or otherwise seems to require the filing of a criminal referral where the intent necessary to support a known or suspected violation of federal criminal statute is not supportable or otherwise has not been shown, including where the facts show that a misstated financial statement or collateral conversion was inadvertent and/or where the facts do not support a loss from any such activity (other than an activity that may involve 12 CFR 612.2301(a)(1)). Further, rather than requiring the use of its portal, FCA should permit criminal referrals to be made to a specific criminal referral email address at FCA.  |
| 16 | EM | EM-31.1 (09-24-21) | Board & Management Operations, Corporate Governance | All Model Risk Management (“MRM”) guidance is wholly-contained within the examination manual provided to regulatory examiners with no supporting references as to the source of the guidance (*e.g.*, regulation). Adhering to an agreed-upon standard with no regulatory backing is challenging and burdensome to staff who are charged with trying to determine what level of MRM is appropriate. Specifically, FCA receives authority through the Farm Credit Act, *e.g.*, and has authority to proceed under and with regard to the Act and its promulgating regulations. Changes to the regulations require a notice and comment period. Examination manuals provide guidance on the scope of the review (examination) to be performed by the regulator under its authority and allow for a more transparent examination, where the System institution (*e.g.*, banks and associations) and the examiner are both able to prepare for and participate in the examination based on their equal access to, and knowledge of, the Act and FCA regulations. The examination manual guidance on MRM was not borne out of the Act or any cited or referenced FCA regulation. The basis (and boundaries) of MRM, therefore, are unknown. While MRM may be a good idea in theory and may support safety and soundness, the parameters are difficult to ascertain, were not subject to a notice and comment period, and would (and do) not apply equally to all System institutions of various sizes, with different funding banks, and with varying support and service structures. Without a legal basis in the Act, and without a corresponding legal basis in FCA regulation, System institutions cannot know what level of compliance is required or expected and what level of compliance is legally required. And, critically, without a legal basis in the Act, and without a corresponding legal basis in FCA regulation, the regulator is without a legal basis to act or know where its boundaries lie. Accordingly, issuing Matters Requiring Attention (“MRAs”) in examinations in the same year, let alone the same quarter, is inherently unreasonable, unfair, and without legal support and is subject to examination that is subjective and malleable. MRAs may only be issued on violations or non-compliance with the Act and FCA regulation or non-compliance with enforcement orders or other enforceable conditions. MRAs may not be issued based on guidance published by the regulator, that is not required by the Act or FCA regulation, that has not been subjected to a notice and comment period, and that has not even been reviewed by the Board. The use of MRAs also sends the wrong message to boards of directors regarding management’s compliance when FCA’s expectations are raised with each subsequent examination and impose unnecessary administrative and other costs on System institutions for which relief is needed. The Federal Reserve System previously confirmed the scope of authority and the ability to issue in MRAs, and interagency guidance was issued with regard to same. *See,* *e.g.*, 12 CFR § 262, Appendix A; see also Fed. Register Vol. 86, No. 66 (Apr. 8, 2021); Interagency Statement Clarifying the Role of Supervisory Guidance (Sept. 11, 2018). Without a congressional or regulatory-root, regulation by examination will result, which such examination is impermissible, inherently unfair, and does not promote compliance; System institutions do not know when they have achieved compliance because there is no way to test it. The first opportunity to test the guidance would be during examination, which is improper and beyond the authority of the regulator.  | The regulator should: (i) recommend System institutions develop MRM guidance but should not require it let alone impose MRAs to System institutions unless the Act and FCA regulations require such guidance to be developed; and (ii) consider providing supplemental guidance for MRM to the extent MRM is a recommended practice for safety and soundness, *e.g.*; and work directly with System institutions to develop MRM programs appropriate for their institution rather than continuing to apply higher expectations for institutions through the use of MRAs in reports of examination.  |
| 17 | EM | EM-31.3 | Audit and Review Programs | The Audit and Review Programs section of the examination manual imposes cost and administrative burdens on System institutions associated with the creation of an Audit Coordinator position.  For example, the requirement to have an Audit Coordinator/CAE, *e.g.*, creates unnecessary costs at institutions with less than $1B in assets with limited benefits. In general, these System institutions already incur significant expense to outsource audit engagements to reputable third-party accounting firms. For a small association, this may not be a full-time position, and associations may be required to move such responsibilities to an employee who is already employed with other duties on a full-time basis. In addition, banks are already required to perform significant due diligence over the effectiveness of the System institution’s ICFR program, which minimizes the risk of a material misstatement of the financial statements. Further, FCA’s directive to assign an HR person, or other administrative assistant-type role with the responsibilities of “audit coordinating” provides zero benefit to the stakeholders of a System institution. System institutions also have been asked to expand the audit universe and audit risk assessment based on this same section of the examination manual. Smaller associations are being required to develop and maintain an audit plan with the sophistication of a much larger institution, when their existing plan may be sufficiently robust for their size. | The regulator should consider implementing a risk-based methodology for compliance with regulatory requirements. |
| 18 | EM | EM-31.7 | IT Service Provider  | System institutions who rely upon their funding banks to provide IT and other vendor-management services should not be held to the same level of due diligence, vendor management, and audit requirements as the funding banks or other System institutions who are in direct privity with the vendor or other third-party service provider. The cost of duplicating or otherwise attempting to recreate the due diligence performed by the funding bank is disproportionate to the risk associated with such relationships if the funding bank has satisfied all of the requirements and practices associated with the engagement or retention and many System institutions are not in a position to receive or otherwise require information from the vendor or third-party service provider in such circumstances. When the funding bank directly engages with vendors or other third-party service providers for the benefit of, and/or otherwise makes certain services available to, associations, such services are more appropriately characterized as a captive from the perspective of associations, and such associations are unable to complete or otherwise satisfy due diligence, vendor management, and/or audit requirements as they otherwise would. As long as funding banks have completed vendor management and due diligence requirements appropriate for the relationship at hand, associations should not have to duplicate or otherwise complete such requirements, as well.  | While each System institution is responsible for its own data security and integrity of its IT-related systems, there should be a much lower burden of audit and regulatory oversight within districts where the funding bank provides IT as a service to its System institutions (as compared to districts where System institutions have those services in-house or contract with a non-System third-party).  The burden of regulatory compliance and security should be evaluated at the bank level, and the burden of verification and compliance be held at the System institution level when System institutions are implementing all required best practices of the bank as a service provider.  |
| 19 | FS | Fact Sheet (09-09-21) | Fact Sheet on Amendments and Clarifications to the Tier 1/Tier 2 Regulatory Capital Framework | The requirements for quarterly averages in the required Bank disclosures is inconsistent with the Basel III framework and creates a significant amount of additional work to calculate and report capital disclosures that are not consistent with other financial industries.   | Call report instructions should remove the requirement to calculate capital ratios with a quarterly (*e.g.*, 3-month ADB) average balance and, instead, should be modified to require loans to be reported on an amortized cost basis, consistent with other financial institution regulators, which would be consistent with Basel III framework.  Using ending balance (one point in time) figures to calculate would capital ratios including risk-weighted assets would reduce differences between commercial banks and System institutions.  Additionally, such an approach would result in a more accurate representation of a System institution’s available capital.  Utilizing an ADB, by comparison, may misrepresent a System institution’s true position at a specific date.  For example, an institution may get “credit” for having capital within the last 3 months in an average balance but such credit is not available at the time of reporting.   |
| 20 | IM | IM (10-13-06) | Electronic Filing of Part 620 Regulatory Reports  | This informational memorandum (“IM”) requires each System institution to maintain a dated and signed hard copy of regulatory reports filed in compliance with 12 CFR 620. The IM exceeds the requirements of the Farm Credit Act and FCA regulation and imposes costs on System institutions beyond those imposed by law. No reasonable basis exists for maintaining paper copies of System institution records, and other applicable law (*e.g.*, federal rules of evidence) does not require same. | System institutions should be able to maintain documentation in electronic format, consistent with prudent document retention and data privacy practices. |
| 21 | IM | IM (03-14-11) | Accounting and Disclosure of Troubled Debt Restructures, as Required by GAAP | Generally Accepted Accounting Principles (“GAAP”) requirements have changed, resulting in the elimination of “Troubled Debt Restructurings” (“TDRs”). As a result, the maintenance of current requirements for TDRs is operationally burdensome and immaterial to the financial statements and credit quality of System institutions. Retaining the legacy reporting requirements for TDRs will require System institutions to maintain two operational and reporting processes for TDRs and modifications under the updated reporting requirements. The legacy process is highly manual and subjective, requiring extensive documentation. The revised GAAP allow for systematic solutions and automated processes for reporting in a more efficient manner. Further, many System institutions plan to repurpose existing fields in loan accounting systems and databases/data warehouses to achieve the new reporting requirements. If FCA retains the legacy reporting requirements for TDRs, then the repurposing of data fields will not be possible and it will, therefore, be more costly to implement an automated and well-controlled solution for modification disclosures under the required GAAP implementation deadline of Q1 2023. | References to TDRs and “Accruing TDRs” in FCA regulations should be eliminated in order to conform with GAAP. Specifically, and further, the regulator should limit the definition of high-risk loans to nonaccrual loans and eliminate the inclusion of accruing TDRs and accruing 90 days past due loans. All loans remaining in accruing status must be adequately secured and in the process of collection. Frequently, accruing 90 days past due loans are fully guaranteed, justifying the accrual status of the loan. Further, due to the low credit risk of accruing 90 days past due and the lack of a GAAP requirement to track TDRs, a majority of System institutions have determined traditional loans that will be individually analyzed under Current Expected Credit Loss (CECL) framework will be limited to nonaccrual loans. For at least these reasons, FCA should eliminate references to “accruing restructured” and “formally restructured” loans, as well as references to superseded GAAP, in all regulations, informational memoranda, bookletters, examination manuals, FAQ guidance, and other similar issuances. |
| 22 | IM | IM (06-01-16) | Revised Guidelines on Submission of Proposals to Merge or Consolidate Farm Credit System Banks and Merge or Consolidate Farm Credit System Associations | The practical merger process adopted by FCA is inconsistent with FCA regulations and guidance provided. For example, in practice, FCA’s review period of merger applications is far exceeding the regulatory 60-day period. FCA routinely asks for additional items for review that are neither listed in FCA regulations nor the corresponding informational memoranda. Increasingly, FCA is requiring entities to address issues unrelated to the safety and soundness of the proposed merged entity (*e.g.,* climate-related risk assessments) in their disclosure materials. Additionally, there appears to be very little practical consideration given to the specific circumstances of each merger when structuring the merger conditions. For example, often the conditions of merger are the same regardless of the size of the merging institutions, whether the particular merger being reviewed would have a material financial impact or any other factors related to the specific proposed merger. Finally, the costs associated with sending required disclosures and information in hard copy form by mail to stockholders, which often is hundreds of pages in length, contains reports and information that many stockholders have previously received, and which may be stale by the time disclosures are sent to shareholders, is excessive and the process is impractical. | The merger review process should be modified to create two separate merger tracks for: (i) non-like-kind mergers, which would be a more streamlined process intended to limit costs associated with the proposed merger and reduce the applicable conditions (*e.g*., no integrated audit requirement); and (ii) like-kind mergers. Additionally, System institutions should be able to offer to deliver disclosures and reports to stockholders electronically unless delivery in hard copy form is requested. |
| 23 | Memo | Memo to Chair, Board of Directors, Chief Executive Officer of Each Farm Credit System Institution (06-28-22) | Rescission, renewal, and review of System institution requests to utilize excess capacity | The guidance provided by FCA for allowance of System institutions to engage in activities that would otherwise be impermissible (*e.g*., working with brokers) is vague. The guidance is short on criteria for acceptable thresholds, such as levels of participation (percentages that go through broker channels). The administrative burden to go through the approval process for System institution or bank is not necessary and leaves too much room for uneven enforcement. FCA’s desire to ensure that excess capacity is being monitored and maintained in accordance with legal requirements is understandable, and establishing a reporting and/or reapplication process may be reasonable under the circumstances. However, the revocation of any authority on which a System institution relied or that it was afforded in connection with excess capacity was an unnecessary requirement. Neither the Farm Credit Act nor any related FCA regulation requires the prior approval of the regulator for System institutions in these circumstances. Accordingly, revocation of authority, permission, or reliance and the requirement that System institutions apply for authority is not borne in law and has not been subject to a notice and comment period. The regulator appears to have exceeded its authority in making this request, in issuing a revocation, and in imposing this requirement. | The regulator should withdraw or amend its prior guidance and conform to the legal authorities it has to act in this space. |
| 24 | UCR | Uniform Call Report Instructions for Preparing the Report of Financial Condition and Performance Required by the Farm Credit Administration | Call Report Instructions;RC-K, Accrual Loan Activity Reconcilement for Loans, Leases, Notes Receivable (excluding Intra-System Loan), and Sales Contracts | Neither the Farm Credit Act nor FCA regulations require loans and leases reported on Schedule RC, line item 6, to be reported on an amortized cost basis and fair value basis and for those values or amounts to agree. As of today, the call report utilizes recorded investment, which is consistent with the majority of the loan footnote in the shareholder’s report. With the implementation of CECL on January 1, 2023, disclosures in the shareholder’s report will be changed from recorded investment to amortized cost. Any modification to the definition of loan balance creates confusion and additional reporting costs to meet differing loan definitions with limited to zero benefit. *See, e.g.,* 12 CFR 615.5132; 12 CFR 615.5140. Further, the need for system configurations and customizations that differ from standard offerings as systems are designed to meet the needs of commercial banks who do not have this requirement.  | FCA should modify its call report instructions to require loans to be reported on amortized cost basis only or to be consistent with what is included in the shareholder’s report, among other things, to avoid having to report different amounts. The difference in reporting amortized cost, as opposed to recorded investment, is negligible in value. |
| 25 | UCR | Uniform Call Report Instructions for Preparing the Report of Financial Condition and Performance Required by the Farm Credit Administration | Call Report Instructions;RC-K, Accrual Loan Activity Reconcilement for Loans, Leases, Notes Receivable (excluding Intra-System Loan), and Sales Contracts | Accrual loan roll forward (RC-K) is overly burdensome and inconsistent with prudential regulator reporting requirements. Any modifications to the definition of loan balance creates confusion and additional reporting costs to meet differing loan definitions with limited to zero benefit. | FCA should modify its call report instructions to require loans to be reported on amortized cost basis only or to be consistent with what is included in the shareholder’s report, among other things, to avoid having to report different amounts. The difference in reporting amortized cost, as opposed to recorded investment, is negligible in value. |
|  | **Source**  | **Guidance**  | **Guidance Description** | **Burden(s)** | **Comment(s)** |
| 26 | Farm Credit Act, CFR, and FCA-Published Guidance | FCA-Published Guidance | Miscellaneous | FCA-published guidance is appreciated and can help provide context or examples with regard to the Act or FCA regulations. However, published guidance must relate to, and be limited by, the Act and FCA regulation and cannot serve as the basis for an MRA. *See, e.g.*, 12 CFR 262, Appendix A; *see also* Fed. Register Vol. 86, No. 66 (Apr. 8, 2021); Interagency Statement Clarifying the Role of Supervisory Guidance (Sept. 11, 2018). Responding to and addressing MRAs impose unnecessary, and not legally supportable, costs and burdens on System institutions contrary to the protections afforded by the Administrative Procedures Act and related authority and result in inconsistent and subjective results and threaten the trust and relationships between System institutions and the regulator and internal relationships and compliance. | The regulator should be sure to limit the issuance of MRAs to violations of the Farm Credit Act or FCA regulation or as otherwise expressly permitted by law. Other recommendations may be made by the regulator in the course of an examination but should not be made the basis of an MRA. |
| 27 | Farm Credit Act, CFR, and FCA-Published Guidance | FCA-Published Guidance | Miscellaneous | A primary goal to examinations is compliance with the Farm Credit Act and FCA regulations promulgated under the Act. System institutions can more readily achieve compliance if: (i) examinations were limited to, and based on, the Act and FCA regulations, as required; (ii) examination manual guidance was cumulative of the guidance published by FCA through the effective date of the manual; and (iii) System institutions could access prior examination manual guidance to prepared redline or comparison versions to identify any changes being made from year-to-year or, in the alternative, FCA summarized any changes made from year-to-year or issued its own redline or comparison version for others to review. Further, and perhaps more critically, since FCA-published guidance should relate to, and be based on, the Act and FCA regulation, and any guidance that helps promote compliance with those authorities, whether set forth in an informational memorandum, bookletter, or policy statement, should be **summarized and cited** in the examination manual, so System institutions can confirm the scope of guidance going into an examination rather than having to review information spanning years (if not decades) and having to guess which guidance was still deemed relevant and which guidance was no longer actively being considered.  | The regulator should enable System institutions to identify compliance requirements by looking to the Farm Credit Act, FCA regulations, and examination manual guidance that summarizes and cites to the Act and FCA regulations and does not exceed such scope. System institutions should not be forced to rifle through decades’ worth of publications, and/or review examination manual guidance that is not based on the Act or FCA regulation, to determine (guess) its current compliance requirements. Compliance should be transparent and measurable and not subjective and/or based on guidance that exceeds the Act and that has not otherwise satisfied the Administrative Procedures Act. Simply put, the examination manual should be a one-stop resource for System institutions. System institutions should be able to rely upon such guidance to know whether they are in compliance, which would help promote transparency and consistency in the examination process (on both sides), allow for better preparation and communication during the examination process, and reduce the likelihood of regulation by examination (and variances in interpretation). Examinations should not be a surprise environment. |
| 28 | Farm Credit Act, CFR, and FCA-Published Guidance | 12 CFR 262 and Published Guidance | 12 CFR 262, Appendix A; see also Fed. Register Vol. 86, No. 66 (Apr. 8, 2021); Interagency Statement Clarifying the Role of Supervisory Guidance (Sept. 11, 2018).  | MRAs should only be issued for violations of the Act or FCA regulation(s) promulgated under the Act and should not be issued for perceived violations of examination guidance alone. A regulator is without authority to enforce guidance or best practices (even if the intent behind the best practice is good); a regulator can only enforce the Act and the regulations promulgated thereunder, after notice and an opportunity to comment has been afforded and all conditions precedent have been satisfied. A regulator can issue recommendations or comments based on published guidance or best practices but such cannot serve as the basis for an MRA. Other regulators have addressed this issue and have confirmed the limits of MRAs to be issued for such reasons. *See, e.g.,* 12 CFR 262, Appendix A; *see also* Fed. Register Vol. 86, No. 66 (Apr. 8, 2021); Interagency Statement Clarifying the Role of Supervisory Guidance (Sept. 11, 2018). Examining System institutions, and issuing MRAs based on published guidance alone, exceeds the scope of a regulator’s authority and results in a subjective examination, giving rise to inconsistent System results, lack of preparedness, unnecessary cost, impairment of relationships between regulator and System institution, unreliable outcomes, and unenforceable results. For example, FCA issued guidance on Model Risk Management (“MRM”) without citing, sourcing, or referencing the Act or FCA regulation. Within months of issuing the guidance, System institutions were examined and MRAs were issued for not complying with such guidance, even though no cite or the Act or FCA regulation had been made. While MRM may be a good idea, without proper legal support, and without such guidance going through a proper, and legally required, notice and comment period, System institutions were not afforded an opportunity to comment on, prepare for, or respond to the guidance, and any changes required by MRM imposed costs and burdens that were not anticipated. Because of the immediacy of the guidance and lack of an opportunity to provide notice and comment, System institutions could not have anticipated the enforcement of the guidance (as it is not legally required) and could not have had appropriate time to review and consider such guidance even if they wanted to follow such guidance. Without proper vetting, System institutions do not know whether compliance is required or when they have satisfied the guidance – *i.e.*, when they have reached the bottom. The law affords protections to regulated institutions; such protections were not satisfied with regard to MRM and other guidance that has been issued, and under which System institutions have been examined, that are not required by the Act and FCA regulation (as regulations should be limited by, and based on, the Act). Thus, the regulator should not examine against, and/or issue MRAs under, such guidance and the regulator should not combine recommendations and MRAs and treat them alike; they are distinguishable and serve separate purposes. | The regulator should limit the issuance of MRAs to only matters for which it is legally permitted to make such issuances (e.g., violations of the Farm Credit Act, FCA regulation). Other matters may be subject to recommendations appropriately issued by the regulator but may not be made subject of an enforcement action. |
| 29 | PS | Policy Statement | Policy Statement, FCA-PS-59, Regulatory Philosophy, Eff. Date July 8, 2011 | FCA has issued a significant amount of guidance and proposed a number of proposed rules within a relatively compressed amount of time, which impose administrative and other costs on System institutions and threaten the ability to operate efficiently and in the best interest of the cooperative. Each time new guidance is issued and/or a new rule is implemented, System institutions must update, modify, or replace internal guidance and/or systems, in whole or in part, without experiencing a commensurate benefit or furtherance of safety and soundness. | The regulator should consider the administrative burden of issuing new guidance and/or new rules and engaging in related examination activity and the impact and timing of same on System institutions. The regulator previously issued a policy statement related to such measures, which should be considered and followed in: (i) eliminating and not imposing unnecessary regulations that impair the ability of System institutions to accomplish their mission; and (ii) not imposing regulations that are unduly burdensome, costly, or not based on the law. *See, e.g.,* Policy Statement, FCA-PS-59, Regulatory Philosophy, Eff. Date July 8, 2011; *see also* Farm Credit Act of 1971, as amended; 12 USC 2001, *et seq.* |