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December 4, 2024

Autumn R. Agans
Deputy Director, Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

Re: Response to Advance Notice of Proposed Rulemaking – *Loans to Similar Entities*,
Farm Credit Administration, Agency; 12 CFR Part 613; RIN 3052-AD58; 89 FR 72759
(Sep. 6, 2024)

Dear Ms. Agans:

CoBank, ACB (“CoBank”) appreciates the opportunity to comment on the Farm Credit Administration’s (the “FCA”) Advance Notice of Proposed Rulemaking (the “ANPRM”) that was published in the Federal Register on September 6, 2024, relating to similar entity lending activity. *See* 89 FR 72759.

CoBank participated with a multi-disciplinary Farm Credit System (“System”) workgroup of experts (“Workgroup”) assembled by the Farm Credit Council (“FCC”) to analyze and comment on FCA’s inquiries in the ANPRM based on, among other things, the Farm Credit Act of 1971, as amended (the “Act”), existing FCA regulations, published guidance, and experiences with, and knowledge of, similar entity lending practices, Congressional intent, and safety and soundness considerations.

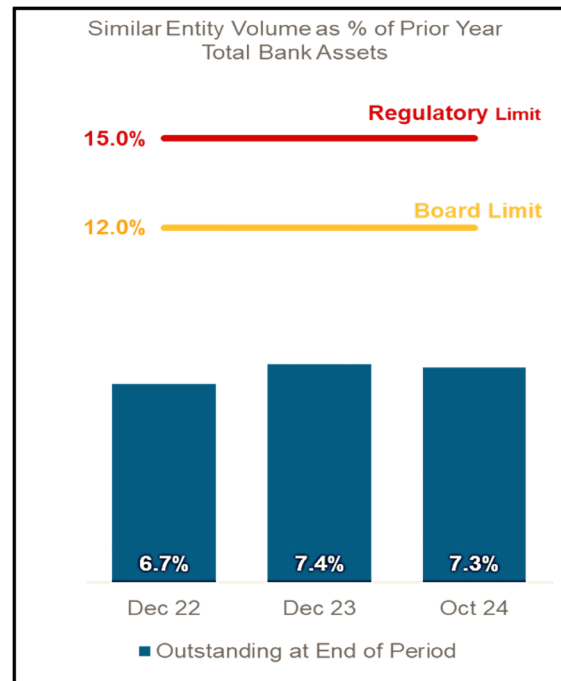
This letter is to provide CoBank’s full support and endorsement of the FCC’s comment letter and, accordingly, will not reiterate all the responses provided by the Workgroup. CoBank would like to join the FCC in urging the FCA not to limit the opportunities for System entities to leverage their similar entity authorities as clearly and unambiguously outlined by Congress in the Act. The similar entity participation authorities are critical for risk management, earnings contributions and related patronage distributions, and contribute to CoBank serving its mission. Accordingly, the regulations should not be revised to address arbitrary perceptions of reputational risk associated with these lending activities.

The FCC’s letter fully addresses the potential adverse implications of regulatory restrictions and provides responses to the FCA inquiries, including responses in the following areas:

- **The Statutory and Legislative History fully supports CoBank’s interpretation and implementation of the similar entity authorities granted in the 1992 and 1994 Acts.** Congress clearly and unambiguously granted similar entity authorities to CoBank and the System, respectively, to enhance financial safety and soundness by reducing risk concentration and to facilitate relationships and cooperation among System lenders and non-System lenders. Any arbitrary regulatory revisions to limit similar entity participations would be imprudent and negatively impact CoBank’s eligible customer-owners and the bank’s participation in lending markets with non-System lenders. As explained by the FCA, the expanded definition of “participation” as enacted by Congress¹ was specifically intended to supersede the narrower definition that FCA had imposed by regulation.

“The proposed definition is more expansive than the current regulatory definition of ‘participation in that it permits risk-sharing on a basis other than pro-rata. In addition, it appears to expand the ‘similar entity’ participation authority to include participations in technical and financial assistance. ... the expanded definition of ‘participation’ also allows institutions to decrease credit risk by purchasing senior interests in loans and by purchasing interests in loan syndications, which better protect the institution from the insolvency of the lender. Here too, concentration risk may be decreased because greater flexibility as to the types of agreements may result in fuller and more effective use of participations to achieve diversification.”²

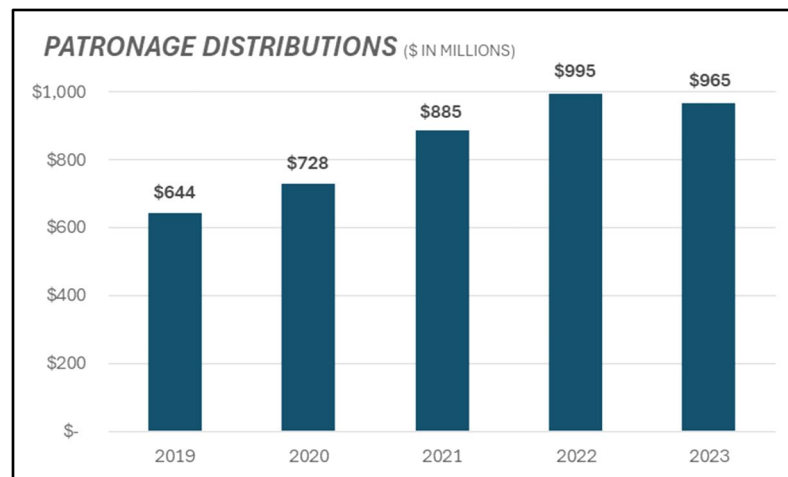
Further, the existing statutory and regulatory restrictions already contain adequate conservative exposure limitations and requirements that properly constrain the System’s use of similar entity authorities to ensure they are used as Congress intended. As shown in the adjacent chart, CoBank’s outstanding volume of similar entity participations is well within established board policy and regulatory portfolio limits. Importantly, Congress created a simple limit based on total assets at the institution level to provide the ability for individual institutions to manage and diversify their various risks.



¹ The Farm Credit System Agricultural Export and Risk Management Act, section 2, codified as section 3.1(11)(B)(iii) of the Farm Credit Act of 1971 (12 U.S.C. 2122(11)(B)(iii)).

² See Letter dated August 17, 1994, to Hon. E. “Kika” de la Garza from Dorothy L. Nichols, Farm Credit Administration (the “Nichols Letter”), 140 Cong. Rec. H. 10325 (Sep. 29, 1994).

- **Similar Entity participations are central to CoBank’s mission to serve agriculture and rural America.** Agricultural markets and rural infrastructure needs are dynamically evolving, and the System’s similar entity authorities, as clearly and unambiguously outlined in the Act, provide CoBank with the necessary flexibility to partner with non-System entities to better support the agricultural value chain necessary to deliver agricultural commodities and food products from producer to consumer and provide vital infrastructure services to rural communities. Further, with marketplace-recognized expertise in agriculture and infrastructure lending, CoBank and System institutions seek out, and are sought out by, non-System lenders to partner on capital investments in agriculture and rural America. These investments would likely not occur without these important participation authorities.
- **Similar entity participations support CoBank's financial strength to meet its mission through good times and bad.** For more than three decades, CoBank has consistently and responsibly used similar entity participations to support the bank’s mission by diversifying our loan portfolios geographically and across industries. Similar entity participations enhance earnings to support patronage payments to eligible customer-owners, which significantly contributes to the financial well-being of farmers, ranchers, and rural communities. As shown in the following chart, over the past five years, CoBank has distributed over \$4 billion in patronage:



In 2023 alone, CoBank distributed \$965 million in patronage as follows:

- CoBank-affiliated associations received \$348 million and non-affiliated associations received \$20 million in patronage, which directly supported patronage/returns to their farmer/rancher borrower/owners. An additional \$161 million was paid on loan participations to eligible System borrowers purchased from System associations/banks.
- Electric generation and distribution cooperatives and eligible water/waste disposal borrowers received \$130 million in patronage, which directly supported patronage/returns to their constituents in rural communities.

- Agricultural cooperatives and rural communications borrowers received \$306 million in patronage, which directly supported patronage/returns to their members/owners.
- **The FCA should not conflate compliance with statutory or regulatory requirements with reputation risk management.** Reputation risk is an important risk factor for CoBank and the System, but it is not necessary to mitigate reputation risk by arbitrarily limiting the statutory and regulatory authorities provided by Congress to address important agriculture, rural, and System needs. CoBank has established robust processes to identify and manage reputation risk associated with the bank's lending activities, with specific and intentional emphasis on similar entity participation activities.
- **CoBank's ability to serve the evolving corporate structures of agricultural and infrastructure borrowers would be further complicated by strict regulatory requirements.** Both directly eligible and similar entity borrowers use a multitude of structures to manage risks, taxes and opportunities in the rapidly changing global marketplace. This necessitates lenders to be nimble and flexible to address their needs. A restrictive regulatory structure would hamper our ability to serve these borrowers' needs. Further, the policies, procedures, and internal controls already in place have allowed us to serve agriculture and rural America's needs.
- **CoBank believes that the bank's ability to make loans to the same borrower or to related borrowers under multiple financing pathways is consistent with the Act, legislative history, and that doing so advances the bank's mission.** Legislative history does not squarely discuss to what extent a single borrower that engages in more than one type of authorized activity may qualify under different pathways. Since it is these various, often unrelated, authorized activities that determine eligibility, an entity may be directly eligible for a particular authorized activity but require financing for other functionally similar activities that are not available on a directly eligible basis. There is no reason or prohibition in the Act to prevent such an entity from obtaining all of the financing that may be available to it under the various provisions of the Act. To read the Act as prohibiting a company from qualifying as a similar entity because it is eligible for a loan under another section of the Act would improperly limit the System financing available to that company and would, in fact, unfairly penalize such a company by limiting its potential System financing.

In summary, with respect to similar entity authorities, Congress has clearly and unambiguously stated that the authorities were intended to be broad and serve as a risk diversification tool designed to ensure that American agriculture has the credit availability and rural infrastructure necessary to continue to be the leader in the global agricultural economy. Accordingly, we ask the FCA to avoid regulatory changes that would restrict similar entity lending beyond the flexible provisions provided in the Act. Rather, we would encourage the FCA to apply the similar entity authorities in a broad and flexible manner

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while reducing regulatory and guidance burdens so that System institutions may continue to prudently utilize this authority to diversify their risk positions. Such diversification is critical to serving the mission in good economic times and bad. We trust that the FCC Workgroup's comments, as well as those outlined above, will assist FCA in such efforts in understanding the purpose and history of the System's similar entity authorities and the adverse consequences of FCA implementing any unnecessary limitations on this important diversification tool provided by Congress. We believe that continuing to work collaboratively with FCA in more informal ways would allow us to resolve any concerns.

Sincerely,

A handwritten signature in cursive script that reads "Tom Halverson". The signature is written in black ink on a light-colored background.

Thomas E. Halverson
President and Chief Executive Officer