

Module: Compliance

Section: Borrower Rights - Access To Information

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Authority and Purpose

FCA Regulations 12 CFR Part 618, Subpart G, prohibit a director or employee of a Farm Credit System (System) institution from disclosing information not ordinarily contained in published reports or press releases regarding the institution or its borrowers or members, except as necessary in performing official duties, or as authorized in this section of the regulations.

Applicability and Exemptions

This subpart of the regulations contains provisions relating to stockholders' and borrowers' rights to: (1) list of borrowers and stockholders; (2) copies of certain loan documents; and (3) copies of the institution's articles of incorporation, charter, and bylaws.

Stockholders' Right to List of Stockholders, § 618.8310(b)

Stockholders of all System lending institutions may request a list of stockholders for purposes as defined in the regulation. The institution is required to provide the information within 7 days of the receipt of the written request.

Stockholders may, as an alternative to receiving a list of stockholders, request the institution to mail or otherwise furnish to each stockholder a communication for a permissible purpose (i.e., matters relating to the effectiveness of management, the use of corporate assets, and the performance of directors and officers) on behalf of the requesting stockholder, providing the requesting stockholder defrays the reasonable costs of the communication.

Disclosure of Loan Documents, § 618.8325(b)

Qualified lenders are required to provide a copy of all loan documents to the borrower or the borrower's legal representative at the execution of the loan.

Subsequently, upon written request of a borrower or a borrower's legal representative, the lender must provide, free of charge and as soon as practicable, a copy of any loan documents signed by the borrower, a copy of other documents delivered by the borrower to the lender, and a copy of each appraisal of the borrower's assets made or used by the lender. The lender, however, may withhold any information about an appraisal that would disclose confidential information of a third party that would identify the third party or his/her property.

Access to Corporate Documents, § 618.8325(c)

System institutions are required to have available in their offices for inspection copies of the institution's articles of incorporation or charter and bylaws. Also, copies of these documents must be furnished to any owner of stock or participation certificates upon request.

Examination Objectives

Determine whether adequate policies, procedures, and internal controls have been established to provide reasonable assurance of compliance with the regulatory requirements relating to stockholders' and borrowers' access to information.

Obtain corrective action when violations are identified or when deficiencies are noted.

Examination Procedures

The following procedures are provided to facilitate an evaluation of stockholders' and borrowers' rights to access information. Consistent with risk-based examination principles, examiners should add, delete, or modify procedures as needed based on the particular circumstances of the institution.

1. Coordinate compliance examination activities with other members of the examination team and the examiner-in-charge (EIC). Emphasis should be on identifying violations of law and regulation in other areas (e.g., eligibility, scope of financing, lending limits, etc.); integrating those findings with the examination of consumer protection, borrower rights, and financial reporting; and concluding on management's compliance with laws and regulations.
2. Review and evaluate the adequacy of policies, procedures, and internal controls that are in place to ensure compliance with the requirements of FCA Regulations 12 CFR §§ 618.8310 and 618.8325.
3. Determine through discussion with management and appropriate personnel and a review of pertinent files that the following regulatory requirements were met:
 - a. Requests from stockholders for lists of stockholders are fulfilled;
 - b. Borrowers are provided copies of all loan documents when loans are executed;
 - c. Requests from borrowers or borrowers' legal representatives for copies of signed loan documents and appraisals are fulfilled;
 - d. Articles of incorporation or charter and bylaws are available for inspection in the institution's offices; and
 - e. Requests from any owner of stock or participation certificates for copies of the institution's articles of incorporation or charter and bylaws for inspection are fulfilled.
4. Review the controls used by the institution to ensure compliance with access to information regulations.
5. Complete workpaper FCA 6060, if necessary, in conjunction with the evaluation of compliance with the requirements of this regulation.
6. Utilize discussions with institution managers as needed to gather information and discuss procedures and practices followed by institution personnel to ensure compliance with laws and regulations.
7. Conclude whether the institution is adequately complying with FCA Regulations 12 CFR §§ 618.8310 and 618.8325. If not, ascertain whether the conclusion of noncompliance is supported by adequate documentation of the specific noncompliance.
8. Consider the possibility of issuing a borrower rights directive or imposing civil money penalties if significant, repeated, and uncorrected violations are surfaced.
9. Discuss tentative conclusions and examination findings with the examiner(s) responsible for evaluating management.
10. Discuss items of concern, scope of work performed, and conclusions with the EIC and with the appropriate institution manager. Obtain a response regarding the cause(s) of deficiencies or weaknesses and anticipated corrective actions.

11. Organize and compile, if necessary, violations of law and regulation into an appendix for the Report of Examination.
12. Prepare a leadsheet or other summary document to provide workpaper support for the work performed and the conclusions reached.