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| **Title:** | **FINAL RULE--Borrower Rights--12 CFR Parts 614, 615, and 618** |
| **Date of Issuance:** | **10/28/1986** |
| **Agency:** | **FCA** |
| **Federal Register Cite:**  | **51 FR 39486** |

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 615, and 618

Borrower Rights

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration Board (Board) adopts final regulations governing the lending operations of Farm Credit System (System) institutions. The regulations relate to the disclosure of interest rates and related information; practices related to applications for extensions of credit; forbearance policies; notices of equity retirement; access to stockholder lists; and the disclosure of loan documents. On May 8, 1986 ([51 FR 17035](file://fcahome/DavWWWRoot/readingrm/fedreg/Federal%20Register%20Documents/51%20FR%2017035.docx)), the Farm Credit Administration (FCA) published for comment proposed regulations implementing recently enacted provisions of the Farm Credit Amendments Act of 1985 (Pub. L. 99-205) (1985 Amendments) relating to matters concerning stockholder/borrower rights; mergers, consolidations and territory transfers; and conservatorships and receiverships. Because of the number and complexity of the issues raised by the commentators, the Board determined that in order to properly respond to the comments, the regulations should be divided into two groups and considered separately. The regulations relating to mergers, consolidations, territorial transfers, conservatorships, and receiverships were adopted as final regulations by the Board at its September 3, 1986 meeting ([51 FR 32431](file://fcahome/DavWWWRoot/readingrm/fedreg/Federal%20Register%20Documents/51%20FR%2032431.docx)). The second group of regulations is contained in this publication and relates to the rights of borrowers and stockholders of System institutions.

**EFFECTIVE DATE:** The regulations shall become effective November 28, 1986.

**FOR FURTHER INFORMATION CONTACT:** Gary L. Norton, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020.

**TEXT:**

**SUPPLEMENTARY INFORMATION:** In accordance with § 5.17(b)(1) of the Farm Credit Act of 1971 (Act) the proposed regulations were provided to Congress for a period of 30 days prior to their publication in the **Federal Register**. Following publication in the **Federal Register**, the public was given a period of 30 days to comment on the regulations. Comments were received from System borrowers, System associations, a System bank, the Farm Credit Corporation of America (FCCA) on behalf of the 37 banks of the System, a Congressman, and other non-System groups and organizations.

In connection with the adoption of final regulations, the FCA Board determined that in light of the pending adjournment of Congress and the urgent need for these regulations to become effective, it was necessary to invoke the emergency provision contained in § 5.17(b)(2) of the Act. By invoking this exception, the effective date of these regulations will not be delayed until the expiration of the 30 days during which either or both Houses of Congress are in session. This decision was made in recognition of the provisions of the 1985 Amendments that directed the FCA to implement the statutory amendments as soon as possible and because of pending litigation between System institutions and their borrowers relating to matters that are the subject of these regulations. Accordingly, the final regulations will become effective upon expiration of 30 calendar days after the date of publication in the **Federal Register**.

While the regulations will be effective 30 days after publication, the Board has determined that the public will have an additional 30 days to comment on the following aspects of the final regulations which involve considerable controversy or which were substantially changed from the regulations as proposed:

(1) Section 614.4366 -- The requirement that each borrower be provided with a disclosure of the borrower's effective interest rate.

(2) Sections 614.4440-614.4444 -- The requirement that banks for cooperatives comply with provisions of these sections.

(3) Sections 614.4440-614.4444 and 614.4513 -- The right of persons who seek forbearance and submit an application for the renewal, extension, deferral, etc., of the terms of an existing loan to seek review by the Credit Review Committee of a denial of such application.

(4) Sections 614.4440-614.4444 and 614.4513 -- Whether, and under what circumstances, loans owned or participated in by the Capital Corporation should be subject to or excluded from the procedures provided in these regulations.

The Board carefully analyzed and considered each comment and responds to the comments on the basis of a thorough consideration of the merits of the positions expressed therein.

**Section-by-Section Analysis and Response to Comments**

**Subpart K -- Disclosure of Loan Information**

**General**

The regulations in this subpart require System institutions to: disclose the current and effective interest rates on loans; State whether the current interest rate is fixed or variable; describe the factors affecting a variable interest rate; and disclose changes in the current and effective interest rates during the life of the loan.

In a general comment, the FCCA stated that the regulations are at variance with the intent of Congress and the language of § 4.13 of the Act. The FCCA claims that the proposed interest rate disclosures could possibly mislead borrowers, cause litigation between institutions and their borrowers, and potentially involve the expenditure of millions of dollars of compliance costs.

The Board disagrees that the regulations are not consistent with § 4.13 of the Act and the intent of Congress. The legislative history to the 1985 Amendments is replete with references to Congress' concern with protecting and enhancing the rights of borrowers from System institutions. The regulations provide for meaningful and timely disclosure of interest rates and related information consistent with the legislative history and the language of § 4.13. (See discussion to §§ 614.4366 and 614.4367.) With respect to the FCCA's argument that the proposed effective interest rate disclosures may mislead a borrower and cause litigation, the FCCA's concern is unwarranted. The disclosure provided for by the regulations should not involve computations that are significantly different than those currently used by System institutions for evaluating their interest rates, capital requirements, and projected profits on loans. The Board understands that compliance with the regulations may involve an expenditure of additional funds by System institutions; however, these expenditures should be minimal, and primarily associated with the startup costs associated with the development of procedures and initial implementation. Moreover, these expenditures must be viewed as a statutory cost of doing business since the regulations merely implement the disclosure requirements mandated by the Congress.

**Section 614.4365 Applicability.** The regulation explains that this subpart applies only to System institution loans not subject to the Truth in Lending Act (TILA). A Georgia farmers' organization and a System association expressed the opinion that all agricultural loans should be subject to the TILA.

In response to these comments the Board notes that Congress has mandated that System loans which are not subject to the TILA shall be governed by the disclosure requirements contained in the Act and FCA regulations. Accordingly, Congress would have to amend the Act to accommodate the concerns expressed by these parties.

**Section 614.4366 Definitions.** This section contains definitions of various terms used in the subpart. Comments were received with respect to the definition of "effective interest rate," which means the current interest rate adjusted for the amount of equity a borrower is required to hold in an institution.

In a general comment, a Georgia farmers' organization applauded the disclosure of the effective interest rate, and stated that it will assist farmers by informing them of the true cost of interest. They suggested that the definition of effective interest rate should also include the cost of discount points.

The FCCA commented that the definition of "effective interest rate" will provide borrowers with information that is at best of limited value and at worst, clearly misleading. The FCCA claims that the disclosure may be misleading because borrowers may assume that the effective interest rate initially disclosed will apply for the duration of the loan. The FCCA stated that since multiple factors enter into the calculation of an effective interest rate, an accurate computation of such rate would require the development and application of complex formulas to each individual loan which, in turn, would necessitate the institution's making arbitrary assumptions concerning many of the factors. In its view, the proposed regulation is also deficient because the calculation does not appear to take into account the various stock retirement programs operated by each institution. The FCCA maintains that any attempt to take into account such differences would be very burdensome and costly and could require assumptions that may not be accurate with respect to the actual loan terms. The FCCA recommended an alternative approach to the calculation of an effective interest rate which is described in the discussion of § 614.4367.

The Board disagrees with the recommendation of the Georgia farmers' organization that the calculation of the effective interest rate should include the cost of discount points. Section 4.13 was specifically designed to ensure that the System institution disclose the impact of the stock purchase requirement on the effective rate of interest. This provision is designed for a limited purpose and was not intended to include all of the factors which can affect interest rates, many of which are specifically included in statutes such as the TILA. Furthermore, including discount points in the calculation would serve to magnify the difference between the effective and current interest rates and distort the true cost of purchasing stock. As a result, borrowers would be misled with respect to the cost of stock -- an outcome not intended by Congress or consistent with § 4.13.

The Board disagrees with the FCCA's belief that this regulation will be of limited value or clearly misleading. As discussed here, and below in response to the comments on § 614.4367, it must be emphasized that the regulation implements the express requirements of the Act. Section 4.13 directs the disclosure to each borrower of the effect of the purchase of stock on the effective rate of interest paid by the borrower. The proposed definition implements this provision by defining "effective interest rate" to mean the current interest rate taking into account the cost of purchasing any stock or participation certificates a borrower is required to hold in the institution in order to obtain the loan.

The Board does not agree that the regulation is deficient because it requires the institution to calculate the effective interest rate on the basis of a single point in time. Any interest rate disclosure must be calculated at a particular point in time. In that regard, there is no difference between disclosing the interest rate on a variable interest rate loan at a single point in time. The fact that a rate may change does not lessen the utility of the disclosure provided that the borrower is made aware that the rate is subject to change.

The FCCA's statement that the calculation of the effective interest rate does not include the type of stock retirement program the institution utilizes is incorrect. The definition requires that such calculation take into account the stock retirement program applicable to the loan at the time it is made and the cost of owning stock in an institution. The FCCA's observation that the effective interest rate may differ between two loans, one of which is subject to an automatic stock retirement program versus another operating with a nonautomatic stock retirement program, illustrates the need to explain to borrowers the exact type of program applicable to their loans at the time they are made. This is precisely the sort of information that § 4.13 contemplates providing borrowers. As provided for in the model disclosure form, borrowers will be advised that stock programs are subject to change. In addition, the institution will provide the borrower with an explanation of the assumptions used in calculating the effective interest rate.

The Board does not concur with the FCCA's concern that the application of complex formulas utilizing a number of factors, some of which may only be projected, would significantly impair the value and accuracy of the effective interest rate disclosure. As discussed in greater detail below in the responses to § 614.4367, it is not unusual for institutions to estimate various terms with respect to both internal and external projections for interest rates, cash flow, and expected profit. For example, in computing annual percentage rates for loans subject to the TILA, institutions often are required to estimate factors such as the term of the loan. As long as borrowers are informed that certain factors are estimates subject to change, the effective interest rate disclosure provides them with an effective means for evaluating the cost of holding stock in the institution. Neither the Act nor the regulation require that an institution be bound by estimates of factors which the institution is not in a position to control or predict with certainty. The regulation only requires that the effects be estimated and that borrowers be advised that the effective interest rate is subject to change based on changes in enumerated factors.

**Section 614.4367.** Required disclosures. Paragraph (a) requires each association to disclose to borrowers at or before the time of the execution of the loan, the interest rate on the loan, the effective interest rate with representative examples of the impact of the equity purchase requirement on the interest rate, and the identification of standard adjustment factors used to compute a change in a variable interest rate.

A Georgia farmers' organization supported the disclosure requirements, but added that borrowers should be provided with loan schedules and loan officers should be required to explain different loan terms and options. A group of attorneys general from a number of Midwestern States (attorneys general) and a group representing a number of interested parties from the State of Iowa (Iowa group) commented that the information disclosed under paragraph (a) should be provided to borrowers prior to execution of a loan. The Iowa group suggested providing this information at least 5 days before execution of the loan unless waived by the borrower. The attorneys general recommended providing the information at the time of the loan application and upon execution of the loan. The two commentators claim that providing this information at the time of execution of the loan would not give the borrower an adequate opportunity to review the information and seek or negotiate alternatives and, therefore, the disclosure is not "meaningful and timely" as required by the Act. The attorneys general also advocated disclosing the formula for computing the variable interest rate. In the alternative, they suggested that the regulation be amended to explain how the standard adjustment factors cause a change in the interest rate.

The FCCA objected to the requirement that institutions compute and disclose to borrowers the effective interest rate for each loan. In its opinion, the language of and the legislative history to § 4.13 of the Act indicate that Congress did not intend to require this type of disclosure. The FCCA argues that the proposed regulation effectively renders the "representative example" language in § 4.13 meaningless. Accordingly, the FCCA recommended that the regulation be amended to delete the requirement that borrowers be informed of their effective interest rate and substitute a requirement that borrowers be given an example that illustrates how the purchase of stock can affect the effective interest rate.

The FCCA also submitted several technical comments. The FCCA observed that the regulation does not specify to whom disclosure should be provided in the case of multiple borrowers on a single loan. It recommended the FCA adopt the approach contained in the TILA where disclosure to any one of the primary obligors on the loan is sufficient. The FCCA also sought a clarification of the applicability of the regulation to the Farm Credit System Capital Corporation (Capital Corporation) and the Farm Credit Corporation of Puerto Rico (FCCPR). In addition, the FCCA suggested that the term "loan agreement" be changed to "loan document" because System institutions utilize the term "loan agreement" to refer to a specific type of document not used in connection with every System loan.

The Board disagrees that the regulation should require disclosure of loan schedules and an explanation by loan officers of the different loan terms and options. This regulation implements a statutory provision requiring the disclosure of information that would not otherwise be present in the loan documents. The regulations cannot describe and mandate every aspect of communications between borrowers and System institutions. Clearly, there are many matters related to the negotiation of a loan and the execution of loan documents that are not the subject of the Act or FCA regulations. The issues raised by the Georgia commentators relating to loan options, payment schedules, and credit programs fall into that category. Borrowers should not execute documents unless they understand and agree to the terms of the documents and have exercised their business judgment to determine whether the financial package is appropriate for their purposes.

The Board disagrees with the suggestion that disclosures under this section be provided prior to the execution of the loan. The Board notes that the specific provisions of the loan often are not finalized until after an application has been processed and both parties agree to the terms of the loan. It is only at this later point in time, after the parties have agreed to the terms and conditions of the loan, that the institution is in a position to compute the disclosures required under these provisions. In this respect, the comments of the FCCA regarding the difficulties associated with computing these figures are relevant. While the disclosure can be made at the time of the loan closing, to require these computations before all the loan terms have been finalized would be unnecessarily burdensome to the institution and of limited value to borrowers.

The important principle contained in the Act and incorporated in these regulations is that borrowers be provided accurate and complete information before they become legally obligated on a loan contract. Any borrower who does not understand or agree to the terms of the contract should not execute the document. The attorneys general and Iowa group argue that without prior disclosure, borrowers do not have an adequate opportunity to evaluate the information and negotiate alternatives. As a matter of prudent business practice borrowers should have requested information relating to the interest rates charged by the institution prior to execution of the loan; for example, at the time of the loan application. The regulations cannot provide a comprehensive itemization of all contacts, discussions, and negotiations between lenders and borrowers.

The Board does not agree that institutions should be required to disclose the formula for computing changes in interest rates. Interest rates are established on the basis of the institution's cost of funds and its margin. The margin may be increased or decreased based on changes in operating expenses, loan loss requirements, casualty losses, and other factors. No formula can be devised that can illustrate when or by how much the margin must be adjusted to accommodate these factors. The position that § 4.13 does not require System institutions to disclose the actual effective interest rate on each borrower's loan is in error. Section 4.13 and the other "borrower rights" provisions in the 1985 Amendments are designed to ensure that borrowers from System institutions receive certain basic information relating to their dealings with System institutions. Section 4.13 requires the FCA to issue regulations pursuant to which System institutions will provide each borrower with meaningful and timely disclosure of the borrower's current rate of interest, adjustment factors relating to any loan which has a variable rate of interest, the effect of the institution's stock purchase requirement on the borrower's "effective" rate of interest, and any subsequent changes in the borrower's interest rate.

**Section 4.13(a)(3)** provides that the "effective" interest rate on each borrower's loan can be disclosed through a representative example. By permitting disclosure to be made through a representative example, Congress recognized that there are many variables that could change the "effective" rate of interest paid by a borrower during the life of a loan. Such factors include changes in the institution's stock purchase requirement, the institution's stock retirement policy, repayment schedules, and interest rates. Therefore, Congress only required that the initial disclosure should be based on an example which makes certain assumptions based on conditions existing at the time the loan is executed. FCA regulation § 614.4367 implementing § 4.13 of the Act takes the same approach. This section requires that at the time the borrower executes the loan contract, the institution shall have made an estimate of the borrower's effective interest rate based on certain assumptions relating to the above-enumerated factors. As set forth in the regulation and the materials in the appendix to 12 CFR 614.4367, the institution must also disclose that all of those factors are subject to change during the life of the loan and that the effective interest rate paid by the borrower may similarly be subject to change.

The FCCA suggested that borrowers should not be provided with the actual effective interest rates on their loans but with a hypothetical example which may bear no relationship to each borrower's actual loan. It asserts that the disclosure requirement contained in the regulation will not provide meaningful information since the factors relied on are subject to change over the life of the loan. The FCCA arguments are mutually inconsistent and ignore the statutory requirements. The type of hypothetical disclosure sought by the FCCA would be based on factors which may not exist in a given borrower's situation. This type of disclosure would provide information that could be misleading and would be significantly less meaningful than the disclosure required by the regulation.

The regulation implements the express statutory requirement that borrowers be given meaningful disclosure of the interest rates charged by the institution. The type of disclosure required by the regulation is similar, in its reliance on assumptions, to disclosures made under the TILA. Each TILA disclosure involving variable rate loans requires that certain assumptions be made regarding repayment of that loan. Making those disclosures necessitates that the institution make certain assumptions, including that the loan will be carried to its full term, that no prepayment will be made, and that the interest rate over the term of the loan will continue without change. While it is necessary to make those assumptions in order to compute the interest rate, the documents make clear that if any of those assumptions change during the life of the loan, the APR on the loan will also change. The same principle is applied with respect to loans governed by § 4.13 of the Act and 12 CFR 614.4367.

The Board has no evidence to support the FCCA's assertion that these disclosure requirements would impose unnecessary and burdensome expenses for the institutions. It is doubtful that these results will occur since each institution will know all of the basic assumptions regarding a loan at the time the loan contract is executed. The regulation does not require System institutions to project into the future all the conceivable adjustments that may occur to the interest rate. It does require that the institution provide disclosure based on factors existing at the time the loan is made and using certain assumptions regarding the repayment on the loan. It is not plausible that those assumptions would not already have been made by the institution since otherwise it would not be in a position to determine its profit on the loan or evaluate the borrower's capacity to repay the loan.

The Board adopts the comments regarding the appropriate disclosure for loans involving multiple borrowers. Accordingly, the final regulation is amended to provide that, in the case of a loan which involves more than one borrower, the disclosure shall be made to at least one party who is a primary obligor on the loan.

With respect to the FCCA's inquiry regarding the status of the Capital Corporation, no change to the regulation is necessary. As indicated in the supplementary information to the proposed regulations, this regulation applies to loans made by any System institution. The FCA has been advised that the Capital Corporation will utilize the same loan purchase and servicing practices implemented by the predecessor Capital Corporation. Under this procedure, the Capital Corporation purchases an amount of the loan that excludes the portion of the loan used to purchase stock or participation certificates. The association that originated the loan remains responsible for servicing the loan. Thus, the required disclosures will continue to be made by the associations. In the event the Capital Corporation's lending or servicing arrangements change, this regulation can be reviewed and amended as appropriate. For the same reasons, the regulation does not require an amendment to accommodate the operations of the FCCPR. The FCCPR is a wholly owned subsidiary of the Farm Credit Banks of Baltimore. It was established to take advantage of provisions in the Federal tax laws which allow certain tax savings to investors in bonds, the proceeds of which are used in Puerto Rico. These tax savings translate into a lower interest rate paid on the bonds and, as a result, a lower rate on borrower loans. The only function of the FCCPR is as a vehicle to obtain lower cost funding for the FLBA and PCA in Puerto Rico. The Puerto Rican PCA and FLBA continue to make and service loans and, therefore, are subject to the disclosure requirements of the regulation.

In response to the comment of the FCCA, the Board has amended paragraph (a) to substitute the term "loan document" for the term "loan agreement."

**Section 614.4367(b).** Paragraph (b) provides that within 90 days of the effective date of the regulation, each association shall provide each borrower with the information specified in paragraph (a) with respect to each loan outstanding. The disclosure of the actual effective interest rate on an outstanding loan shall be as of the date of the disclosure.

The FCCA commented that the 1985 Amendments do not require retroactive disclosure and that such disclosure is without precedent in any other statute requiring the disclosure of interest rates by lending institutions. In its opinion, the legislative history does not support such disclosure. The FCCA stated, without supporting documentation, that it will cost millions of dollars to comply with this provision. It suggested that the requirement be deleted or limited to situations such as where a borrower intends to refinance his obligation, in which case disclosure would be limited to those PCA borrowers with loans made within the prior 2 years. Additionally, the FCCA claimed that it would be operationally impossible to comply with the regulations in the 90-day period allowed. The FCCA also reiterated its comments to paragraph (a) and suggested that the effective interest rate disclosures under this paragraph should also be in the form of representative examples, which it believes would be at least as beneficial as the effective rate disclosures proposed by the FCA.

The FCCA's contention that the 1985 Amendments do not require the disclosure of the information required in paragraph (a) with respect to each loan outstanding is incorrect. There is no indication from the legislative history that Congress intended to restrict the application of § 4.13 to new borrowers only. Rather, Congress wrote §§ 4.13 and 4.14 in the present tense, indicating that it intended the borrowers' rights provisions to apply to current borrowers.

With respect to the claim that the System cannot comply with the requirement in the time allowed, the Board notes that the regulation was published in proposed form in the **Federal Register** on May 6, 1986. Compliance with this provision will not be required until 120 days after publication of the final regulations. The System will have received the regulation between 8 and 9 months before having to provide the required disclosures.

For the same reasons noted in the discussion to paragraph (a), the FCCA's comment that alternative disclosure be made in the form of representative examples is rejected.

**Section 614.4367(c).** Paragraph (c) provides that not later than 10 days prior to the effective date of a rate change on a variable rate loan, each association must disclose the new interest rate, the effective date of the change, and the factors taken into account in establishing the new rate.

The Iowa group and the attorneys general suggested that in order for the disclosure to be meaningful and timely, it should be provided 30 days before the change, which would enable a borrower to obtain substitute financing or take other appropriate action. The FCCA commented that the 10-day advance notice requirement should not apply to financing with a maturity of 1 year or less. It believes that borrowers with such short-term loans do not have any interest in or intention of refinancing their loans and, therefore, the 10-day requirement serves no purpose and is not meaningful.

The FCCA and the Iowa group stated that the advance notice requirement should only apply to a pending increase in interest rates.

Three System associations expressed concern over the cost of complying with the provision, and stated that it would reduce the flexibility of an association to respond to changes in interest rates. The commentators believe the cost of disclosure will outweigh the benefits to stockholders. A PCA commented that this disclosure can be done in a more cost-effective manner, but it did not offer any suggestions in this regard. Another System association recommended that the membership of an association should be able to vote on whether the association will provide the required disclosures and incur the expense necessary to provide such disclosures.

The FCCA requested that the FCA permit a 6-month phase-in of the 10-day notice requirement since it will require banks to significantly alter their operating procedures. In addition, the FCCA suggested that the term "standard factors" used in paragraph (c)(3) should be changed to "standard adjustment factors."

The Central Bank for Cooperatives (CBC) requested confirmation of its interpretation that paragraphs (a) through (d) of this section do not apply to the CBC or other banks. The CBC observed that it would not be able to comply with this paragraph because the interest rates it charges to international borrowers change on a daily basis.

The Board rejected the recommendation that the notice period should be increased from 10 to 30 days. In determining the appropriate notice period, the regulation must balance the cost to the associations and the benefits to borrowers. The Board believes that 10 days is an adequate time period for a borrower to evaluate the effect of the change in the interest rate on that person's operations and to take whatever action the borrower deems appropriate. If a borrower determines, as a result of a pending rate increase, that the loan should be refinanced by another lender, the refinancing can occur at any time before or after the new rate is effective with only a minimal negative impact on the borrower. A 30-day period would unreasonably restrict the flexibility of System associations to adjust their rates of interest to borrowers to reflect their cost of funds.

The Board does not accept the recommendation that the 10-day notice requirement should not apply to loans with a maturity of 1 year or less. Section 4.3 requires institutions to provide a meaningful and timely disclosure of any change in the interest rate applicable to a borrower's loan. The Act does not differentiate between short- and long-term loans and the Board is not aware of any reason why a borrower with a short-term loan would be less interested in knowing of interest rate changes than a borrower with a long-term loan.

The Board agrees with the suggestions that the advance notice requirement should only apply to increases and not decreases in interest rates. Accordingly, the final regulation provides that the notice of a decrease in a borrower's interest rate may be provided simultaneously with the effective date of a change in the rate.

With respect to the comments regarding the administrative and financial cost associated with compliance with the regulation, the regulation was carefully drafted to strike the appropriate balance between providing meaningful and timely notice of interest rates to borrowers while minimizing the burden on System institutions. The cost of complying with this procedure must be viewed as a statutorily mandated cost of doing business. To the extent the regulation imposes a delay in the implementation of an interest rate change, this delay need only occur once. Thereafter, the timing of each interest rate adjustment can be made to take into consideration the notice requirement. In addition, to the extent associations are concerned about their ability to coordinate the notice requirements with their end-of-the-month mailings, that matter can be addressed by district banks modifying their procedures to provide for quicker notification to associations of interest rate changes or by the associations delaying their end-of-the-month mailings.

The Board disagrees with the recommendation that the members of each association should be given an opportunity to vote on whether they wish to comply with this provision. This regulation implements a statutory requirement that must be complied with by each institution. Congress has determined that all borrowers are entitled to the protections afforded by this section. There is no statutory basis upon which a majority of borrowers can deny these rights to a minority.

The Board disagrees that there is a need for a 6-month phase-in of the 10-day notice requirement. While it was asserted that the regulation will require System institutions to significantly alter operating procedures, no evidence documenting the need for any additional time to comply with the notice requirement was offered. Moreover, the System was placed on notice of this provision on May 6, 1986, when the proposed regulation was published in the **Federal Register**. Since the regulation will not be effective until 30 days following publication of the regulation as final, the System will have had more than 6 months to plan for the implementation of this provision. This is more than adequate time for the System to develop operating procedures to implement this requirement.

The Board agrees to the proposal of the FCCA that the phrase "standard factors" used in paragraph (c)(3) should be changed to "standard adjustment factors."

In response to the question by the CBC relating to the application of paragraphs (a), (b), (c), and (d), the Board reiterates that "association" means PCA and FLBA and does not include System banks such as banks for cooperatives (BCs).

**Section 614.4367(d).** Paragraph (d) requires that each association taking any action which will result in a change in the effective interest rate, must, at least 10 days prior to the date of the change, notify borrowers of the new effective interest rate, the date the new rate will become effective, and provide a statement describing the cause of the change.

The Iowa group reiterated its comment to paragraph (c) that the notice period should be extended from 10 to 30 days. The Board rejected the suggestion for the same reasons discussed with respect to paragraph (c).

**Section 614.4367(e).** Paragraph (e) requires that each BC disclose to its borrowers the current interest rate, the projected effective interest rate, and, if a variable rate loan, the amount and frequency by which a rate can be changed and the standard adjustment factors used to compute a change.

The CBC commented that it cannot comply with the projected average effective interest rate disclosure requirement for international borrowers because its rates are computed on factors other than those enumerated in the regulation. Furthermore, the CBC believes such disclosure is futile and meaningless to its international borrowers. According to the FCCA, there is no statutory basis for the FCA to require effective interest rate disclosures by BCs. In its view, the proper approach, as authorized by § 4.13, is for BCs to disclose the effect of equity investments through the use of representative examples.

The FCCA states that the proposed regulations would not provide meaningful information to BC borrowers because: (1) Stock investments of borrowing cooperatives are not tied to individual loans, (2) projections of annual patronage distributions and numerous other factors would have to be taken into consideration to compute the average effective interest rate, and (3) the capital stock investment calculation would be imprecise due to the arbitrary nature of the assumptions to be made and ambiguities in the regulation, e.g., the distinction between (iii) and (iv) is unclear. Furthermore, the FCCA asserts that cooperative borrowers are generally quite sophisticated and employ many varied techniques for evaluating the effective interest rate on their BC loans and, therefore, such disclosure is of no value to borrowers. The FCCA also suggested that the FCA amend the regulation to exempt the credit operations of any System bank involved in direct international lending or which purchased a participation in an international loan made by the CBC. Finally, the FCCA requested that the FCA clarify the meaning of the phrase in paragraph (e), "each loan applicant, who is not a borrower."

The Board rejects the recommendation that the disclosure requirements should be inapplicable to international borrowers. Section 4.13 is applicable to all System institutions and sets forth disclosure requirements for the benefit of all borrowers. The statute does not distinguish between domestic and international borrowers of BCs. Furthermore, regardless of whether the borrower is an international or domestic entity, the disclosure of a projected effective interest rate would be equally useful. The CBC is correct in its observation that paragraph (e) does not incorporate factors unique to international lending. To the extent such factors are inapplicable to a transaction involving an international borrower or any other borrower, they would not be included in any disclosure to that borrower.

For the same reasons discussed with respect to paragraph (a), the Board rejects the contention that there is no statutory basis for the FCA to require BCs to disclose effective interest rates or, alternatively, that BCs should be allowed to disclose the effect of equity investments through the use of representative examples. It is true that stock investments of borrowing cooperatives are not tied to individual loans and that numerous other factors make a loan from a BC substantially different from loans made by PCAs or FLBAs. However, Congress did not incorporate any exceptions into § 4.13, but rather directed all System institutions to disclose the effective interest rate to borrowers. The fact that a BC would have to make certain estimates in order to compute an effective interest rate is not a fact unique to BCs and does not justify a regulatory exemption. While some cooperative borrowers may be quite sophisticated and employ numerous techniques for evaluating the interest cost of their BC loans, this is not true for all BC borrowers and the statute contains no provision for differentiating borrowers on such a basis. The statutory purpose of this and other disclosure requirements is to provide the information necessary for people to make informed decisions even though some may not need it and others may not want it.

In response to the request for a clarification of the difference between § 614.4367(e)(3) (iii) and (iv), the Board amended the regulation to clarify that the former refers to projected noncash distributions while the latter refers to projected cash distributions.

In response to the request for clarification as to what is meant in the subsection by the phrase "each loan applicant, who is not a borrower," the Board amended the regulation to clarify that it applies to a first-time borrower from a bank for cooperatives. The regulation does not apply to an existing borrower who is applying for a disbursement of new loan funds.

**Section 614.4367(f).** Paragraph (f) requires each BC to provide each borrower, within 90 days after the effective date of the regulation and thereafter within 30 days after the end of the fiscal year, notice of the average effective interest rate for each loan.

The CBC reiterated its comment made to paragraph (e) of this section that the disclosure of the average effective interest rate is meaningless to international borrowers.

The FCCA maintains there is no basis in the Act for requiring after-the-fact disclosure. In its opinion, such disclosure would only emphasize the discrepancy between projected and actual effective interest rates which, because of the variables involved, would likely never coincide and consequently would cause confusion and potential conflict between the BCs and their borrowers. The FCCA also stated that the 30-day period allowed for post year-end disclosure is an insufficient period of time to comply with the procedure. In addition, the FCCA suggested that the regulation should clarify what period of time is used for computing the initial disclosure of the average effective interest rate.

The Board again notes that there is no statutory basis for treating domestic and foreign borrowers differently. Moreover, the Board disagrees with the CBC's assertion that the disclosure provided for in the regulation would be meaningless to international borrowers. There is utility in informing borrowers, whether foreign or domestic, of the effective interest rate the entity paid on each loan from a BC. Even though many international borrowers are sophisticated, there is no way to gauge the relative sophistication of an international borrower just as there is no way to gauge the sophistication of a domestic borrower. In the absence of a statutory basis for distinguishing between such borrowers, the Board has no basis for amending the regulation.

In response to one comment, the Board amended the final regulation to clarify that the projected effective interest rate disclosure in paragraph (e) applies only to cooperatives that are not currently BC borrowers. Current borrowers receive a year-end notice of their actual effective interest rate paid.

The Board disagrees with the assertion that there is no statutory basis for requiring a year-end disclosure to BC borrowers. This regulation implements the statutory requirement for interest rate disclosures to all System borrowers while at the same time accommodating the unique aspects of BC lending. The regulation does not require BCs to provide interest rate disclosures to each cooperative borrower each time a loan increase is applied for because such requirement would be burdensome and not useful to BC customers. Similarly, the regulation takes into account the fact that BC lending involves many variables that are difficult to predict. Accordingly, the regulation minimizes the use of interest rate projections and substitutes the requirement for a year-end disclosure of the actual effective interest rate paid. Interest rate projections are only required for new cooperatives which are not current borrowers of the BC.

In response to the comment that 30 days is an insufficient period to prepare and distribute the year-end disclosure statement, the Board reiterates the comments made regarding paragraph (c).

In response to the FCCA request for clarification of the period to be covered by the disclosures that are to be made within 90 days of the effective date of the regulation, paragraph (f) is amended to clarify that the disclosure shall be for the period of the fiscal year ending on the effective date of the regulation.

**Appendix to 12 CFR 614.4367.** The appendix provides model disclosure forms that can be used to comply with the requirements of Subpart K. The attorneys general recommended that model Form 1 should advise borrowers that they will be given 30 days' notice of any changes in the interest rate and 30 days' notice of any changes in the standard adjustment factors. They also recommended that the notice should advise borrowers to consult an attorney regarding questions concerning the loan.

For the same reasons discussed above to paragraph (c), the Board believes the 10-day notice period is sufficient. However, consistent with the change in the regulation, model Form 1 is revised to include a notice that borrowers will be provided 10 days' notice of an increase in the interest rate, or a notice simultaneously with a decrease in the interest rate.

The Board rejects the recommendation that a provision be added to the model disclosure form to provide a 30-day notice period prior to a change in the standard adjustment factors. Such a requirement is not contained in § 4.13, nor would it provide any meaningful information to the borrower. Changes in the factors do not mean the rate is changed. As with these provisions, if at any time the borrower believes that better financing terms are available elsewhere, the loan can always be refinanced with another lender. The borrower is not prejudiced by not having advance notice of these changes.

The Board does not accept the recommendation to include language advising borrowers to consult an attorney regarding questions concerning their loans. Such language is beyond the proper scope of this type of disclosure provision and may unnecessarily encourage conflict between the borrower and the lender. The Board is satisfied that System borrowers have the business acumen to know that if they do not receive satisfaction from a lending institution they can consult with legal counsel.

**Section 614.4440 Definitions.** The FCA received comments on the definitions of "applicant" and "System institutions." The proposed regulation defined "applicant" to exclude current borrowers seeking forbearance through requests for renewals, deferrals, reamortizations, etc. The "System institutions" subject to the requirements of this subpart included FLBAs and PCAs. All of the commentators were unanimous in their view that the proposed definition of "applicant" was unduly restrictive. However, there was significant disagreement over an alternate definition. Several System borrowers proposed that "applicant" should include all new and existing borrowers in an institution. A North Dakota farmers' organization suggested that Congress intended to provide for an appeals system similar to that used by the Farmers Home Administration, which would permit an appeal of any adverse credit decision. The group believes excluding forbearance actions is too restrictive and, as such, diminishes borrower protections, contrary to the intent of Congress. A Minnesota legal services group argued that the definition should include borrowers who seek to extend or renew an existing loan commitment. The group asserted the existence of provision in the legislative history of the 1985 Amendments indicating that current borrowers are intended to be beneficiaries of the notice and review provisions. The attorneys general believe that the 1985 Amendments support including loan reduction, acceleration, and denial of forbearance requests in the definition, but at a minimum, the definition should include loan extension requests of current borrowers.

The FCCA generally agreed with the definition as written, but suggested it be expanded to include individuals seeking loan renewals who are also making a request for additional funds. The FCCA also suggested that where multiple persons are applying for a loan the term should include any of the principal signatories on the application. In addition, the FCCA suggested that the definition be amended to exclude borrowers seeking loan servicing remedies. The FCCA also inquired as to why System banks were excluded from the regulation.

In response to the comments, the Board amended the final regulation to define the term "applicant" to include borrowers seeking forbearance, such as loan renewals, extensions, restructuring, and compromises of indebtedness. Through this amendment and comparable amendments to § 614.4513, borrowers who seek forbearance by applying for loan renewals, extensions, etc., will have access to the same credit review procedures as are applicable to borrowers seeking initial extensions of credit.

In adopting this amendment, the Board notes that in the past, the FCA has encouraged System institutions to adopt forbearance policies that would provide borrowers with essentially the same review procedures as were statutorily applicable to loan applicants requesting review of denials of new funds. However, each institution, through the adoption of a district policy, had the discretion to include this type of review procedure in its forbearance policy.

By the adoption of the 1985 Amendments, Congress altered the loan review process in an effort to make it more responsive. In addition, the 1985 Amendments also required the FCA to issue regulations governing forbearance policies. These provisions, together with the legislative history of the 1985 Amendments, evidence the intent of Congress that all borrowers, including those experiencing difficulties and facing possible foreclosure, be given a reasonable opportunity to present financing alternatives that can satisfy their needs as well as the requirements of the institution. For this reason, the Board believes that at this time, the forbearance policy in each district should include the same type of review mechanisms as are provided to loan applicants. In order to clarify the regulatory responsibility of System institutions, the credit application and the forbearance policy regulation have been amended to provide the same review procedures in both cases.

The Board also believes that the use of these procedures will be of benefit to institutions. Providing a right of review in the case of forbearance helps ensure that the institution gives careful consideration to the merits of an applicant's forbearance request before making a final decision. This encourages the institution to fully evaluate which course of action will result in the institution realizing the greatest net return on its funds as well as considering the resources and needs of the borrower. In addition, where a legal dispute arises between the borrower and the institution over the propriety of a foreclosure action, the record of the credit review committee documenting such review could support the institution's foreclosure action.

Accordingly, the final regulation defines "applicant" to include current borrowers seeking forbearance. Similarly, the final forbearance regulation, § 614.4513, requires that the institution's forbearance policy shall specify that a denial of a request for forbearance involving a loan application is an adverse credit decision subject to review by the institution's credit review committee(s). In addition, the provisions of § 614.4512 -- Compromise of indebtedness, are incorporated in the forbearance regulation since the review standards are the same. (See discussion to § 614.4513.) The Board believes that the extensive comments received supporting the approach adopted in the final regulation evidences that the relevant issues clearly were a subject of the public comment process.

In response to a recommendation, the Board has amended § 614.4441 to provide that in the case of a multiple party loan, the institution is only required to provide notice to one of the primary obligors on the loan. However, as discussed with respect to § 614.4513, in the case of a forbearance notice that does not involve a loan application, all primary obligors on the loan must be provided notice of a pending collection action.

In response to the FCCA's question regarding the exclusion of System banks from the regulation, this is a result of the statutory structure of the System. While the statute refers to all institutions, some institutions do not extend credit to borrowers. The FLBs are not excluded from coverage under these regulations. Section 614.4442 requires FLBAs to establish credit review committees on the basis of guidelines from the FLB, including the required level of FLB membership on the review committee. The regulation accommodates the unique relationship between FLBs and FLBAs and establishes a process which will only require one level of review. The FICBs do not extend credit to borrowers other than PCAs and other financing institutions, and existing FCA regulations govern those lending relationships.

As noted by the FCCA, the proposed regulation was not applicable to BCs. During the comment process, the BCs advanced no arguments to support their exclusion from this provision. While it can be argued that the primary purpose of §§ 4.13 and 4.14 was not to protect agricultural cooperatives, there is no statutory language or legislative history to support that position. Therefore, consistent with other similar regulations, the Board amended the final regulation to include BCs within the provision of this subpart.

**Section 614.4441 Notice of action on loan application.** The regulation directs each System institution to act expeditiously on a loan application and to promptly notify the loan applicant of the institution's decision and reasons for same.

A PCA commented that application of this provision in the instance where the loan is approved is unnecessary since the applicant is usually notified of approval at the time of the loan application, at which time such loan is usually executed. In a general comment, a number of borrowers stated that the regulation should include notice of the reasons for an adverse decision, notice of an applicant's right of review, and a brief explanation of the review process.

In response to the PCA comment, the Board notes that § 4.13B of the Act specifically requires that an institution shall provide written notice of its decision to the applicant. However, written notice can be provided in different ways. In the event the loan documents are executed at the time of application, or if the borrower receives a copy of the loan application which has been marked "approved," the regulatory requirements would be satisfied. With respect to the borrowers' comments, the Board observes that the proposed regulation already incorporates their recommendations.

As discussed with respect to § 614.4440, the final regulation is amended to adopt the recommendation related to the notice requirements applicable to applications with multiple obligors.

**Section 614.4442 Credit review committees.** The regulation requires each FLBA and PCA to establish a credit review committee which includes at least one member of the institution's board of directors. The board may, upon a unanimous vote, delegate a board member's duties to another person. The proposed regulation also provides that the FLB shall establish guidelines under which the boards of directors of FLBAs establish and operate their credit review committees.

The Iowa group, the North Dakota farmers' organization, and the attorneys general believe that the intent of Congress was to require that a board member sit on the review committee and that no delegation of duties is permissible. The Minnesota legal services organization stated that the Act requires the board member on the committee to be a "farmer" member and that the regulation does not include that specific requirement.

The FCCA and a Congressman commented that the delegation provision is not authorized by the 1985 Amendments and is not in accord with the intent of Congress. Both stated that Congress amended an earlier draft of § 4.13 by deleting "member of the board of directors" and substituting "farmer board representation." They argued that this change was enacted to alleviate the potential burden that could face a director of a districtwide association who would have to simultaneously serve on the institution's board of directors and its credit review committee. They argue that this language permits an individual serving on a service center or advisory board to be appointed to a credit review committee in lieu of the appointment of a member of an association's board of directors.

The FCCA suggested that the regulation be amended to provide for the establishment of separate credit review committees by FLBs and FICBs to review adverse credit decisions made by bank personnel. The FCCA believes borrowers are entitled to reconsideration of an adverse credit decision by the institution rendering such decision and adds that it is totally unacceptable for a credit review committee of an association to reverse a credit decision made by the district bank.

The Board disagrees with these commentators' interpretations of section 4.14 of the Act. The express language of § 4.14 and the published legislative history of that provision do not support the interpretations advanced by these parties. Section 4.14 specifies that the credit review committee "shall include farmer board representation." The term "farmer board" is redundant in that the Act and regulations mandate that in order for a person to serve on the board of directors of an association, that person must be a farmer, rancher, or producer or harvester of aquatic products. To strictly interpret this language would result in only farmers, and not ranchers or producers or harvesters of aquatic products, serving on credit review committees. That result would clearly be contrary to congressional intent.

Stripped of this redundancy, the section merely requires that the credit review committee include a representative of the board of directors. Neither the language of § 4.14 nor its legislative history precludes the delegation of the duties of the member of the board of directors sitting on the credit review committee. This language does not direct that such representative must be a member of the board of directors. Rather, the provision leaves the designation of the representative to the discretion of the board of directors. The authority of the board to delegate the board members' duties on the committee is necessary in light of the problem faced by a director of an association in a district with only one or a very small number of associations. For example, the director of a districtwide association, which can cover as many as five states, is likely to be seriously burdened were that person required to function both as a member of the credit review committee and the board of directors. There is a substantial risk that such burden may result in that board member's being unable to devote necessary time and attention to board matters, thereby impairing the efficient functioning of the association's board of directors and consequently that of the association. Considering that Congress passed the 1985 Amendments in order to strengthen the operation of the System, it is highly unlikely that Congress would include a provision that could seriously impair the operation of an institution.

The regulation balances the potentially conflicting goals of enhancing the operational efficiency of the System and protecting borrowers' rights. The regulation ensures that the board of directors may only delegate this function with the unanimous consent of the board. Since the shareholders elect the board of directors, the unanimous consent requirement will ensure that the interests of all shareholders are protected and that a delegation will not occur unless all of the directors believe that such delegation is in the best interests of shareholders and the association. Should shareholders object to the directors' action, they can effect their will through the election of directors who will not permit such delegation.

The comments of the Congressman and the FCCA support the FCA's interpretation that the board may delegate its representation on the committee. Both observed that an earlier version of the legislation expressly required that a member of the board of directors of the association must sit on the committee. They stated that in recognition of the burden that would fall on directors of districtwide associations, this language was subsequently changed to the present version. They agree that this language permits the association's board to designate persons other than board members to serve on the credit review committee. However, they go on to argue that the board's designee must be a member of a service center advisory board. They argue that Congress used the term "farmer board" to restrict the designee of the board to members of advisory boards. There is, however, no authoritative legislative history supporting this position.

Section 4.14 uses the term "board." There is only one board of directors for each institution. The institution's board of directors is a statutorily created entity possessing certain authorities, rights, duties, and responsibilities with respect to the institution. Advisory boards only provide advice, and have no legal authority with respect to the activities of the institution. Advisory board members are not directors, officers, or employees of the institution. The legal relationship of advisory board members to the institution is the same as that of ordinary stockholders to the institution. Just as it would be improper for an institution to allow a stockholder to commit association funds to a borrower, it would also be inappropriate for an association to permit an advisory board member to undertake similar actions. As such, the language of § 4.14 may not reasonably be construed to provide that "board" also means advisory boards. Accordingly, the Board rejects the commentators' request that the FCA amend the regulation to provide for the delegation of board representation to members of advisory boards.

The Board disagrees with the FCCA's comments concerning the right of FLBs and FICBs to review the credit decisions made by associations and bank personnel. The 1985 Amendments changed the process by which the appeal of an adverse credit decision is conducted. The purpose of this amendment was to provide for an objective review of adverse credit decisions through a process that would be made more responsive to borrowers. The statutory framework within which the FLBs/FLBAs and FICBs/ PCAs operate has not been changed by § 4.14. All loans to borrowers by or through associations must continue to meet the separate standards and criteria established by the banks. Section 4.14 does not authorize an association to approve a loan application that does not meet the standards of FLBs, who make loans through FLBAs, or FICBs, who lend the funds for PCA loans. Thus, the FCCA's concern is unfounded and no change is made to the regulation.

As discussed above with respect to § 614.4440, the regulation is amended to include BCs.

**Section 614.4443 Review process.** The regulation provides that an adverse credit decision is subject to review by the institution's credit review committee. An applicant may submit to such committee information that person believes will demonstrate that the loan satisfies the credit standards of the institution. Thereafter, the committee is required to notify the applicant, in writing, of its decision and the reasons therefore.

The FCCA objected to the regulation because it would permit an applicant to submit new material to the committee that was not available to the institution at the time of the applicant's loan application. The FCCA stated there is no statutory or logical basis for permitting such action and added that it can imagine nothing doing more damage to the System's regular lending operations. It believes that a credit review committee should review the basis upon which the loan was denied and not take into account information previously unavailable to the loan officer. An applicant should submit any new information as part of an amended or new loan application. The FCCA also suggested that the proposed regulation be amended to provide that the lender rather than the committee shall notify the borrower. Separately, the Iowa group requested the FCA clarify whether a credit review committee is the final decisionmaker on an application.

The Board agrees with the FCCA's concerns regarding the interrelationship between the activities of the committees and the regular decision-making process of the institutions. The purpose for providing for the review of an adverse credit decision is to enable the applicant to demonstrate, on the basis of the loan application and any further documentation submitted to support the contents of the application, that the loan request satisfies the credit standards of the institution. The regulation does not change the existing review practice of System institutions, which is not to accept any information in a review that is not included or otherwise reflected in an application. The FCCA is correct in its observation that § 4.14 does not allow an applicant to submit information not included in an application, such as materials relating to an additional source of income, which that person did not mention in the application and of which the institution therefore had no knowledge. If the applicant submits new material, such as additional collateral or income, the appropriate action by the committee would be to direct that a new application be prepared and submitted through the normal loan approval process. In order to address the FCCA's concern, the final regulation has been amended to clarify that evidence or documentation submitted must relate to information contained in an applicant's loan application.

The Board agrees with the recommendation that the institution should have the responsibility for notifying the borrower of the credit review committee's decision. The regulation, consistent with § 4.14, provides that the decision of the credit review committee is the final decision of the institution. However, in making its decision, the credit review committee is acting on behalf of the institution, not on its own behalf. Therefore, all communications should be between the institution and the borrower. The Board amended the final regulation to clarify this point.

**Section 614.4444 Records.** The regulation requires System institutions to maintain a file of all decisions by the credit review committee.

The FCCA expressed a concern that the language in the provision suggests that such files will be available to the public or to member/borrowers of an association. It believes there is no basis for such disclosure and requests that the FCA clarify this point.

The Board does not share the concern expressed over the disclosure of credit review committee decisions. Access to these records and other records of System institutions is governed by existing FCA regulations. This provision is merely designed to ensure that the institutions maintain sufficient documentation of decisions to enable FCA examiners to determine whether System institutions are complying with § 4.14 and the regulations.

**Subpart N -- Loan Servicing Requirements**

**Section 614.4510 General.** No comments were received on the proposed regulation.

Section 614.4513 Forbearance. The regulation directs each district board and the Capital Corporation to develop a written policy regarding the exercise of forbearance and provides guidance to System institutions with respect to the content of such forbearance policies. The regulation does not require associations to develop separate forbearance policies but rather directs that their forbearance-related operating procedures shall be approved by the district bank. Each System institution is required to provide a copy of its forbearance policy to a borrower at least 10 days prior to the commencement of any collection action and, in addition, shall make available at its office a copy of such policy.

The CBC stated that its forbearance policy should not be applicable to international borrowers. It argued that: (1) International borrowers are not BC stockholders; (2) forbearance policies are designed to assist American agricultural borrowers, not foreign entities; and (3) a decision to seek collection remedies with respect to a foreign debtor involves considerations beyond the scope of the forbearance policy. The FCCA concurred with the CBC's comments and also urged the FCA to exclude any bank purchasing a participation in international loans made by the CBC and the international operations of any district bank involved in direct international credit.

The remaining commentators, except the FCCA, believe the forbearance regulation is too narrow in scope. The FCCA generally supported the approach in the proposed regulation and agreed that when an institution makes a forbearance decision it should take into account the interests of stockholders, investors, and borrowers.

The Iowa group and the attorneys general commented that the proposed regulation should be changed to require System institutions to consider forbearance options. More specifically, the attorneys general stated that the regulation should actively encourage institutions to take forbearance actions. In support of their position, the attorneys general stated that Congress has encouraged increased forbearance by System institutions in a recent resolution passed by the House of Representatives.

A North Dakota farmers' organization and the Iowa group advocated requiring an institution to forbear when it is less costly to an association to provide forbearance than to liquidate the loan. The North Dakota organization also recommended that the regulation should be expanded to itemize the full range of considerations that should be taken into account when an institution is considering a forbearance request. In addition, the organization stated that forbearance decisions should be based on both the long- and short-term costs and benefits. The Iowa group recommended that the regulation be amended to require institutions to focus on the likelihood of the borrower being able to repay the debt, rather than the financial impact of the forbearance decision on the institution.

A number of the commentators stated that forbearance options should include reductions in the rate of interest or principal on a loan. These commentators argued that the definition of forbearance is unreasonably restrictive and shortsighted and reduces the flexibility of a System institution to consider reasonable actions which may increase the likelihood of the repayment of the debt to the benefit of all parties. These commentators stated that, since the purpose of forbearance is to keep farmers on the land, it is not unreasonable to have the other borrower/stockholders of an institution pay a little more interest to assist their less fortunate brethren.

A Georgia farmers' association commented that while it agrees generally with the proposed forbearance regulation, it believes the regulation should require institutions to practice forbearance actions, such as restructuring loans using the two-tier program or simple interest loan schedule. Another commentator opined that the proposed forbearance regulations were too vague and suggested they be made more specific.

A Minnesota legal services organization argued that the regulation is inconsistent with the Act since it does not require associations to have policies on forbearance. Similarly, the Iowa group recommended the deletion of paragraph (e) which requires bank approval of association forbearance procedures. It noted that the Act only requires that the policies shall be consistent with FCA regulations and does not grant banks the power to approve association forbearance policies.

There were a number of comments regarding the requirement that each institution provide borrowers a copy of the forbearance policy at least 10 days prior to the commencement of any collection action. The FCCA supported this requirement as a general rule, but argued that the 10-day rule should not apply where there exist reasonable grounds to believe that a borrower may take action to dissipate or divert collateral or the collateral is in danger of deterioration. It also suggested that an institution should be deemed to have complied with this regulation if it sends a copy of the policy by first class mail to the borrower at that person's last known address at least 10 days prior to the commencement of collection action. In order to avoid any controversy, the FCCA recommended that the final regulation should apply only to collection actions commenced after the effective date of the regulation. The FCCA also proposed that, in the case of multiple borrowers, the notice requirement should be satisfied if the institution furnishes a copy of the policy to any of the principal obligors on the loan.

A number of the other commentators suggested alternatives to either the 10-day requirement or the time at which the forbearance policy is provided to borrowers. The attorneys general recommended that the FCA follow the decision in Curry v. Block, which held that the Farmers Home Administration must provide notice of its forbearance policy at the outset of the loan term, at the beginning of each production season, when the borrower is notified that he or she is delinquent on the loan, and when the borrower is given an acceleration notice. The Iowa group recommended that the forbearance policy be provided at the time of the execution of the loan agreement and at least 30 days prior to the commencement of collection action unless a court determines after notice and a hearing that the 30-day period would cause the institution to suffer irreparable harm. The North Dakota farmers' organization countered that the proposed regulation should provide for at least a 20-day notice period prior to the start of any collection action. These commentators believe that the timing of disclosure and the 10-day provision are inadequate in that a borrower does not have sufficient time to fully appreciate the extent of his or her rights and propose an alternative to the collection action.

In contrast, the Minnesota legal services organization agreed that a 10-day notice is sufficient, but added that the proposed regulation should be amended to provide that a policy may not be mailed any more than 30 days prior to the commencement of any collection activity. They argued that without this limitation, a System institution can provide this policy at any time, even though most borrowers may not appreciate the rights afforded by such policy until they are experiencing financial difficulties.

Although no change was proposed to the existing regulation regarding compromise of indebtedness, § 614.4512, a number of borrowers commented on its contents. They suggested that such regulation should correspond to the forbearance regulation, allow forgiveness of interest and principal, and consider the production value of the farm and the propriety of the initial loan.

The Board rejected the suggestion that the regulation be amended to exclude international borrowers from the forbearance provisions. As discussed with respect to § 614.4367, neither the language of § 4.13 nor its legislative history authorizes differential treatment between international and domestic borrowers. With respect to the concern expressed over the issue raised in applying forbearance to an international borrower, the Board notes the regulation does not prohibit a BC from tailoring its forbearance policy to meet the unique needs of its international lending operations.

The Board does not agree with the comment that the regulation should be amended to impose additional requirements on System institutions to consider forbearance. It has been the consistent position of the FCA that the determination of whether or not to forbear on a loan is a business decision which rests with the institution in furtherance of the objective of maximizing the institution's recovery of the loan, taking into account the interest of stockholders, borrowers, and investors. When a borrower is suffering financial difficulties, it is incumbent on the institution to consider forbearance options as a means of increasing the likelihood of collection of the loan. However, the precise determination of whether and when forbearance should be granted is a determination to be made by the institution in the context of its forbearance policy and that determination rests solely within the institution's discretion. Section 4.13(b) of the Act specifically requires System institutions to address the issue of forbearance and delineate policies that would provide for the active consideration and consistent application of such policies by the institutions. Section 4.13(b) is not intended as a vehicle for the FCA or any other party to interfere with or second guess the exercise of the discretion by a System institution in making their decisions regarding forbearance.

Similarly the Board does not agree that the regulation should be amended to require institutions to provide forbearance when it is less costly to an institution than liquidation. This type of requirement would only lead to endless litigation since the types of cost determinations are not easily proved. Since a decision to forbear involves myriad factors, such as the likelihood of repayment, the economic health of the institution, and the cost to the institution, the decision to forbear must be left to the discretion of the institution. While cost is a factor in forbearance, it need not be controlling. The ultimate decision rests with the institution based on its analysis of all of the factors involved in accordance with a methodology which it chooses to adopt and follow. It is the FCA's responsibility to ensure that the institution has developed a forbearance policy in accordance with the regulation and applies such policy on a consistent basis. The exact factors that the institution should consider in determining whether or not to forbear are matters that are determined at the discretion of the institution. When stockholders are concerned about specific aspects of a forbearance policy, those concerns can be voiced to their elected board of directors consistent with the process by which the boards of directors of corporations and cooperatives provide for consideration of the views of their stockholders and members.

The Board disagrees with the recommendation that the regulation be amended to require institutions to make forbearance decisions based on the likelihood of the borrower being able to repay the debt rather than the effect on the institution. The regulation contemplates that forbearance policies will provide for consideration of all relevant matters, including the interests of a borrower and his or her likelihood of being able to repay the debt. However, this is only one of a number of factors and cannot be the sole criterion by which forbearance is to be determined. The foremost consideration in developing the forbearance policy must be consideration of all the factors which enable the institution to maximize the collection of the debt and thereby protect the interest of investors and other stockholder-borrowers who are repaying their loans in a timely fashion.

A number of commentators objected to the exclusion of compromises of indebtedness from the forbearance policy regulation. In the past the FCA has addressed compromises of indebtedness separately from regulations governing forbearance policies. However, as discussed with respect to § 614.4440, the Board has amended the final regulations to consolidate all forbearance and compromise of indebtedness provisions. In addition, for the reasons mentioned in § 614.4440 and in view of the comments therein, the final regulation provides that requests for forbearance which involve applications for credit are subject to review by the institution's credit review committee in accordance with §§ 614.4440-614.4444.

With respect to the commentators' request that the regulation require banks to practice specific types of forbearance actions, such as the two-tier program or simple interest loan schedule, the Board reiterates its position that those determinations rest solely within the discretion of the individual institutions. This fact was emphasized in the 1985 Amendments when Congress directed the institutions, not the FCA, to develop forbearance policies. Congress has expressed its concern on this matter through the passage of House and Senate Concurrent Resolutions 310 and 138. These resolutions reinforce the position taken by the FCA. Among other things, both resolutions suggest the System grant forbearance where appropriate, i.e., it is more cost effective for the institutions to forbear than foreclose. Like the regulations, the resolutions place the responsibility for drafting forbearance policies on the System institution. Consistent with the intent of the resolutions, the FCA encourages System institutions to consider all reasonable loan servicing options in developing their forbearance policies.

The Board disagrees with the suggestion that the regulation should require associations to develop separate forbearance policies and should not authorize banks to approve association forbearance procedures. These provisions are consistent with the Act and present operating practice of this System. At the outset, it must be noted that in the FLB/FLBA system, the FLB is the lender. The FLBA does not extend credit, but rather originates and processes applications and services loans in accordance with the policies and procedures of the FLB. Any forbearance decision, like any other credit decision, is ultimately made by the FLB. While certain authorities may be delegated to FLBAs, the responsibility still rests with the FLB. In the PCA/FICB system, the PCA does extend credit to borrowers, but only in accordance with statutory, regulatory, and contractual controls exercised by the FICB. Sections 2.1 and 2.12 of the Act, 12 CFR 614.4510, and the PCA/FICB General Financing Agreement authorize the FICBs to approve loan servicing policies and loan servicing actions of the PCAs. Since forbearance is a part of the loan servicing activities of an association, the district bank is also responsible for the association's forbearance policy. FICB approval of association forbearance actions is required since the FICB is underwriting the loans extended by the PCAs. This regulation does not create any new FICB power or limit PCA decision-making authority. It merely recognizes the long-standing financial interrelationship between FICBs and PCAs and sets forth a policy development process that accommodates those relationships. If a PCA had a forbearance policy that was not approved by the FICB, then the FICB would have to constantly monitor and scrutinize every forbearance decision to determine if it agrees to extend credit to the PCA on the new loan agreement or accept the security offered as collateral for the FICB's loan to the PCA.

In response to the commentators who believe that 10 days is an insufficient period of time for a borrower to fully appreciate his/her rights and propose an alternative to collection action, the Board has made two changes to the final regulation. First, as discussed above, borrowers who request forbearance and submit a new loan application will be able to seek review of that decision through the review committee in accordance with §§ 614.4440-614.4443. As provided for in those regulations, a formal loan application must be in writing. The borrower will have a minimum of 30 days to complete the review process if the application is denied. For borrowers seeking forbearance who do not submit a loan application, the final regulation has been amended to provide a 14-day notice period. While making these changes the Board recognizes that the purpose of providing a copy of the forbearance policy is to apprise the borrower of his/her rights under the institution's forbearance policy. In most instances, the institution and the borrower have been aware of and have attempted to work out the borrower's financial condition for a long period of time. In the course of those discussions, most alternative options will have been explored. If a borrower is not aware of his/her financial difficulties until a copy of the forbearance policy is received, the borrower will have 14 days to contact the institution and attempt to resolve the matter. If during that time the borrower submits a loan application that incorporates a restructuring plan, the provisions of §§ 614.4440-614.4443 will apply.

The Board agrees with the recommendation that forbearance procedures should not be sent to the borrower more than 30 days prior to the commencement of a collection action. By requiring an institution to provide the forbearance policy not more than 30 days before the commencement of collection action the regulation ensures that the borrower will receive timely notice of forbearance and also precludes an institution from satisfying this requirement by providing a policy at any time during the loan rather than when it may be most useful to a borrower. The Board also agrees with the recommendation that the regulation be amended to provide for the mailing of forbearance policies. Accordingly, the final regulation is amended to authorize the mailing of materials by first class mail and the addition of 3 days to the time periods specified to allow for delivery.

The Board rejects the attorneys general comment that the FCA should amend the regulation to follow the decision in Curry v. Block. The Board believes it is unnecessary to provide a copy of the forbearance policy on four separate occasions and is concerned that such a requirement could give a borrower the false impression that he/she is not expected to repay the loan in a timely fashion. The Board believes the final regulation strikes an appropriate balance by providing borrowers with adequate notice of their rights without placing unreasonable burdens on the institution.

In response to another comment, the final regulation permits an institution to waive the 10-day rule when it can demonstrate that reasonable grounds exist to believe a borrower may take action to dissipate or divert collateral or the collateral is in imminent danger of deterioration. The Board agrees that this type of exception is necessary to protect the interest of the institutions and the stockholders of those institutions who would ultimately bear the costs associated with such losses. The Board disagrees with the FCCA's suggestion that the institution should be able to satisfy the regulatory requirements by furnishing a forbearance policy to any one of the primary obligors on the loan. The Board believes it is very important to inform borrowers of any types of forbearance available from the institution. Since a collection action on a multiple party loan can affect all primary obligors, the Board believes all such parties should be made aware of the options that are available to them.

In response to a request for a clarification of the effective date of this requirement, the requirements contained in all of these regulations will not apply until the regulations are effective and therefore will not apply to collection actions that are commenced before the effective date.

**Section 615.5255 Notice of Retirement of Capital Stock.** The regulation provided that an association may not retire the stock of a borrower in default unless that person is provided with written notice of retirement at least 10 days prior to the effective date of such retirement.

A Minnesota legal services organization and a North Dakota farmers' organization stated that the 10-day notice period does not give a borrower sufficient time to explore other options. The Minnesota commentator suggested that the notice period should be increased to 30 days, while the North Dakota commentator proposed 20 days. In contrast, the FCCA believes the 10-day notice requirement is unnecessary and not required by the 1985 Amendments. The FCCA stated that it is aware of no reason why advance notice would be useful to a borrower. The FCCA stated that if a notice period is retained, the 10-day period contained in the regulation is sufficient.

The FCCA suggested that the regulation be expanded to include notice to holders of participation certificates. The FCCA also reiterated a recommendation made with respect to the proposed forbearance regulation which would allow the institution to satisfy the notice requirement if it can certify that a copy of the policy was mailed by first class mail to the borrower at that person's last known address at least 10 days prior to the stock retirement. With respect to the contents of the notice, the FCCA believes that it is unnecessarily broad and potentially confusing. The FCCA stated that the notice should be required to contain a statement (1) that the association records show the addressee to be a current stockholder of the association, (2) that the association has the right to cancel the stock, (3) the amount of stock the association will retire, and (4) the date or event that will trigger retirement.

The Board does not agree with the recommendations to expand the notice period to either 20 or 30 days. At the outset, it should be noted that a borrower is not injured by reason of a stock retirement. Rather, this action is taken for the sole purpose of reducing the borrower's indebtedness to the institution. At the time notice is given, the borrower should be well aware that he/she has failed to fulfill the terms of the loan contract and that he/she should also have been studying alternatives to repaying his/her loan in a timely fashion. This 10-day period provides ample time for the borrower to contact the institution to determine his/her options with respect to preventing the retirement of stock or seek other funds to correct any delinquent payments and thereby prevent retirement of the stock.

The Board disagrees with the assertion that the 10-day prior notice provided for in the regulation is not authorized by the 1985 Amendments.The Act requires institutions to provide notice to stockholders prior to the retirement of capital stock. This regulation implements that statutory requirement by providing a reasonable period for such notice. The Board disagrees with the FCCA's assertion that the information contained in the notice is unnecessarily broad and potentially confusing. The regulation only requires borrowers to be provided with the information necessary to be aware of the proposed action and its effects on the borrowers. The regulatory requirement is not substantially different from the recommendation of the FCCA except for the requirement that the stockholder be advised that the loan is in default and informed of the consequences of the pending stock retirement. The Board believes it is necessary for stockholders to be apprised of these matters in order to determine what corrective steps they should take.

In response to FCCA suggestions, the Board amended the final regulation to include coverage for holders of participation certificates and to provide that the regulatory requirement is satisfied by mailing the notice to the borrower's last known address at least 13 days prior to the projected date of stock retirement.

**Section 618.8310 Lists of Borrowers and Stockholders.** The regulation provides for the release of lists of stockholders and borrowers under certain circumstances. The regulation restates the prior regulatory authority for institutions to disclose lists of borrowers to persons who deal in agricultural products for the purpose of informing such persons of the existence of security interests. In addition, the regulation contains a new provision which authorizes lists of stockholders to be provided to a stockholder seeking to communicate with other stockholders regarding the business operations of the institution. In lieu of disclosure of the stockholder list the institution may, with the agreement of the requesting stockholder, mail a communication furnished by the requester to other stockholders.

The Iowa group claims that paragraph (a) conflicts with an Iowa law adopted in response to certain provisions contained in the Food Security Act of 1985 (1985 Farm Bill). In relevant part, the 1985 Farm Bill was intended to remedy deficiencies in existing State laws regarding the protection of buyers and holders of security interests in agricultural products. The 1985 Farm Bill preempts State law but provides States with the option of giving notice to purchasers of agricultural products of any attached security interest through either the adoption of a notification system or a centralized filing system. Iowa has adopted a notification system that prohibits holders of security interests from indiscriminately distributing to buyers lists containing the names of borrowers and their property on which the holder possesses a security interest. The Iowa commentator believes that paragraph (a) of the proposed regulation allows a blanket notification that violates the relevant provisions of Iowa law enacted in response to the 1985 Farm Bill. Accordingly, the Iowa group requested that paragraph (a) be made consistent with the 1985 Farm Bill or deleted.

An association objected to the regulation on the grounds that a release of a stockholder list would violate the privacy rights of the stockholders. An FLBA and an attorney stated that in all situations where a stockholder wants to communicate with other stockholders, the association should be responsible for mailing the correspondence. The attorney observed that it has been his experience that borrower/stockholders wish their names to be kept private and that the regulation does not adequately protect this privacy interest because there are no sanctions against a stockholder's using a list for an impermissible purpose.

In a similar vein, the FCCA suggested that the FCA follow the practice of the Securities and Exchange Commission (SEC) and the Comptroller of the Currency in connection with proxy solicitations and designate as the ordinary means of communication that the institution shall mail or otherwise furnish a communication to stockholders on behalf of a requesting stockholder. In the alternative, the FCCA recommended that the institution should have the authority to determine whether it wishes to either undertake a mailing or provide a stockholder list to a stockholder, but in any event, the institution should be able to prohibit that stockholder from making photocopies of the list. In addition, the FCCA proposed that the 10-day period provided in the proposed regulation for furnishing a list of stockholders should not begin until the requesting stockholder has agreed, in writing, to the conditions of disclosure. As a final point, the FCCA suggested that the institution should have the responsibility and accompanying liability to determine whether a stockholder's purpose for requesting a list is permissible.

Several commenting borrowers endorsed all provisions that would encourage communication between member/borrowers. They stated that the general principles of corporate law that apply to the disclosure of stockholder lists should also apply to System institutions. The Minnesota legal services organization commented that the FCA should clarify whether a stockholder has the option of obtaining a list or having the communication mailed by the institution. It believes that it is the intent of Congress that borrowers have this option.

The Board notes that the only substantive difference between paragraph (a) of the proposed regulation and existing regulation § 618.8310 is the inclusion of all System institutions rather than only FICBs and PCAs. Section 618.8310 authorizes the disclosure of lists of names of borrowers with which the institution has a security agreement to various interested parties as a means by which the institution could further protect its security interest and avoid needless litigation. In the absence of this express authority, such disclosures would be prohibited by other FCA regulations. The proposed regulation does not effect the creation and perfection of a security interest. To possess a valid security interest, the institution would have to comply with applicable state law. As such, the proposed regulation does not preempt nor is it intended to preempt state law adopted in response to section 1324 of the 1985 Farm Bill regarding security interests in farm products. In response to the Iowa group's comment, the Board amended the final regulation to clarify that the disclosures authorized in paragraph (a) are subject to restrictions contained in state laws which were adopted in accordance with section 1324 of the 1985 Farm Bill.

In response to the comments regarding the privacy interest of stockholders, the Board notes that the regulation recognizes that stockholders have a privacy interest which must be protected and that a stockholder list is a valuable asset of the institution. However, those interests must be weighed against the right of a stockholder to communicate with other stockholders. The regulation protects the interest of the stockholders and the institution by requiring a stockholder to agree and certify in writing that he/she will utilize the list only for authorized purposes and not disclose the list without the written permission of the institution. While the regulation does not provide for specific sanctions, failure of a stockholder to comply with these conditions would be grounds for an action by the institution to enforce such an agreement.

The Board agrees that the regulation should be amended to clarify that the decision to provide a list or mail correspondence rests with the requester rather than the institution. The approach adopted in the final regulation is analogous to the rights of stockholders or members under corporate statutes, rather than under securities statutes and regulations. Stockholders need this discretion in order to use the method of communication which will most effectively and efficiently allow them to communicate with other stockholders. For example, should a stockholder who is interested in running for a director position desire to communicate his/her candidacy telephonically, that person would need access to a list of stockholders. Were the discretion of the means of communication left with the institution, its refusal to allow such access would unreasonably frustrate the stockholder. In order to prevent such decisions and to protect the rights of stockholders, the regulation is amended to clarify that stockholders have the right to choose the means of communication.

The Board disagrees with the suggestion offered by the FCCA that the 10-day notice shall not begin until the requesting stockholder has agreed, in writing, to the conditions of disclosure. Such a provision would give the institution no incentive to expedite the process of communicating with and responding to the requester. If within the 10-day period, the requester has failed to agree to the conditions of the release, the institution will not have violated the regulation since it would have taken every step within its power to comply. Once the requester agrees to the conditions, it should take no more than a matter of hours for the institution to produce a list of its stockholders.

Section 618.8325 Disclosure of loan documents. The regulation requires each System bank and association to provide borrowers with copies of any documents they sign at the execution of a loan, as well as any documents related to subsequent modifications of a contract. In addition, an institution must provide such documents at any time upon request of a borrower.

A PCA commented that furnishing such documents to borrowers at a loan closing is too costly and unjustified. It believes that providing these documents upon request to a borrower is sufficient. In contrast, the North Dakota farmers' organization commented that the regulation is too narrow in that borrowers should be provided full access to their loan files, including any financial records, loan officer recommendations, or notes that are placed into a borrower's file that may or have been used by a loan officer in making a decision relating to the borrower's loan. The organization also requested that the FCA clarify that institutions are required to provide copies of articles of incorporation and bylaws at no cost to the borrower.

The Board does not agree that furnishing copies of loan documents is unjustified and too costly. The regulation implements section 4.13A of the Act, which specifically directs that copies of all documents signed or delivered by the borrower shall be provided to such person at any time on request. Congress has determined that such documents shall be provided irrespective of the costs involved. The provisions of this regulation are consistent with the Act and general business practices. The North Dakota commentator's request that borrowers should be provided full access to their loan files is overbroad and infringes on the rights of the institution. Section 4.13A was intended to resolve a complaint of borrowers that certain System institutions were reluctant to provide copies of information which, as a matter of general business practice, borrowers have a right to obtain. As such, section 4.13A is very specific.The recommendation, analysis, and other information in the loan file does not have to be provided to a borrower since it is the property of the institution and contains confidential materials that are not disclosed without the agreement of the institution. With respect to the commentator's request concerning providing copies of documents at no cost to the borrower, such decision is up to the institution and not the regulator. Accordingly, no change is made to the regulation.

**Miscellaneous**

Section 307 of the 1985 Amendments directs System institutions to review each loan placed in nonaccrual status to determine if, due to the enactment of the 1985 Amendments, such loan can be restructured, and to notify each such borrower of the provisions of this section. A Minnesota legal services organization commented that, to its knowledge, the FCA has failed to take any action to instruct System institutions regarding their responsibility under this section. The organization requested the FCA issue regulations to implement this section.

The Board notes that section 307 of the 1985 Amendments did not require the FCA to issue implementing regulations and the Board has determined that regulations are not required. The statutory provision is clear and does not require implementing regulations. However, the FCA has sent a communication to all System institutions directing their attention to section 307 and informing them of their obligation to comply with that provision.

**List of Subjects in 12 CFR Parts 614, 615, and 618**

Accounting, Agriculture, Archives and records, Banks, Banking, Credit, Government securities, Investments, Rural areas.

As stated in the preamble, it is proposed that Parts 614, 615, and 618 of Chapter VI, Title 12, of the Code of Federal Regulations be amended as follows:

**PART 614 -- LOAN POLICIES AND OPERATIONS**

1. The authority citation for Part 614 is revised to read as follows:

**Authority:** Secs. 4.12, 4.13, 4.13A, 4.13B, 4.14, 5.9, 5.10, and 5.17, Pub. L. 99-205, 99 Stat. 1678, 12 U.S.C. 2251(a)(10).

2. Part 614 is revised by adding a new Subpart K, Disclosure of Loan Information, with the table of contents to read as follows:

**Subpart K -- Disclosure of Loan Information**

Sec.

614.4365 Applicability.

614.4366 Definitions.

614.4367 Required disclosures.

**Subpart K -- Disclosure of Loan Information**

**§ 614.4365 Applicability.**

This subpart applies only to System institution loans that are not subject to the Truth in Lending Act.

**§ 614.4366 Definitions.**

For purposes of this subpart, the following definitions shall apply:

(a) "Adjustable rate loan" means a loan on which the interest rate payable over the term of the loan may be changed by a System institution. The term includes loans which are titled "adjustable rate" or "variable rate" or any other similar designation.

(b) "Effective interest rate" means the interest rate applicable to the loan at a point in time adjusted to take into consideration the amount of any stock or participation certificates as a percentage of the initial net proceeds of the loan which the borrower is required to hold in order to obtain the loan.

(c) "Fixed rate loan" means any loan on which the interest rate is not subject to adjustment or variation over the term of the loan, even though the effective interest rate on the loan may be so subject.

(d) "Interest rate" means the stated rate of interest applicable to the loan at a point in time, excluding any fees payable by the borrower in obtaining the loan.

(e) "Standard adjustment factors" means those financial elements, including, but not limited to, an institution's costs of funds, operating expenses, and provision for loan losses, which are typically taken into consideration by an institution in adjusting the interest rate on loans.

**§ 614.4367 Required disclosures.**

(a) Each association shall furnish the following information in writing to a prospective borrower at or before the time the person executes the loan documents:

(1) The current interest rate on the loan; and

(2) In the case of an adjustable rate loan:

(i) The amount and frequency by which the interest rate can be adjusted during the term of the loan or, if there are no limitations on the amount or frequency of such adjustments, a statement to that effect; and

(ii) An identification of the specific standard adjustment factors that are taken into account in making adjustments to the interest rate on the loan; and

(3) The current effective interest rate on the loan with one or more representative examples of the impact of stock or participation certificate ownership requirements on the current interest rate computed on an annualized basis.

(b) Not later than 90 days after the effective date of these regulations, each association shall furnish in writing to each of its borrowers the information specified in paragraph (a) of this section with respect to each loan outstanding as of the date the information is furnished.

(c) Each association that adjusts the interest rate on an outstanding loan shall furnish the following information in writing to the borrower:

(1) The new interest rate on the loan;

(2) The date on which the new rate is effective; and

(3) A statement of any factors other than standard adjustment factors which were taken into account in establishing the new interest rate. The notice required by this paragraph shall be made not later than the effective date of a decrease in the interest rate and not later than 10 days before the effective date of an increase in the interest rate.

(d) Each association that takes any action that changes the amount of stock or participation certificates that borrowers are required to own and that modifies the effective interest rate on a loan shall furnish the following information in writing to the borrower at least 10 days before the date on which such action takes effect:

(1) The new effective interest rate;

(2) The date on which the new rate is effective; and

(3) A statement of the action(s) taken by the institution that have resulted in the new effective interest rate.

(e) Each bank for cooperatives shall provide to each loan applicant, who is not a current borrower of the bank, on or before the date of the loan closing, the following information:

(1) The current interest rate; or

(2) In the case of an adjustable rate loan:

(i) The amount and frequency by which the interest rate can be adjusted during the terms of the loan, or if there are no limitations on the amount or frequency of such adjustments, a statement to that effect; and

(ii) An identification of the specific standard adjustment factors that are taken into account in making adjustments to the interest rate on the loan; and

(3) The projected average effective interest rate on the loan for the next 12-month period, taking into consideration:

(i) The current interest rate;

(ii) Current stock requirements;

(iii) Projected noncash allocated patronage distributions; and

(iv) Projected cash distributions of annual patronage.

(f) Each bank for cooperatives shall provide each borrower:

(1) Within 90 days after the effective date of this regulation, a statement of such borrower's average effective interest rate for the period of the current fiscal year ending on the effective date of the regulation, taking into consideration the criteria specified in paragraph (e)(3) of this section; and

(2) Within 30 days after the end of each fiscal year thereafter, a statement of such borrower's average effective interest rate for such fiscal year, taking into consideration the criteria specified in paragraph (e)(3) of this section.

**Appendix to 12 CFR 614.4367 -- Required Disclosure**

**Model Disclosure Forms**

**General**

The following are model disclosure forms which System institutions may use to satisfy the notification requirements of section 4.13(a) of the Act and of 12 CFR 614.4367. The forms have been developed in order to give System institutions an idea of the type and extent of information that should be contained therein. System institutions are not required to follow the format of the sample forms. System institutions may develop and use other forms provided the statements contain comparable disclosures in clear, understandable English and otherwise meet the requirements of the Act and regulations.

**Form 1**

This loan is NOT subject to the Truth in Lending Act, 15 U.S.C. 1601, et seq. The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

Interest Rate Disclosure

Date:

Lender: (Name)

--

Stated Interest Rate

The rate of interest currently applicable to your loan.

(Percentage)

--

Borrower: (Name)

--

Effective Interest Rate \*

The stated rate of interest adjusted to take into account the purchase of stock

(Percentage)

--

Check Applicable Box

square This is a Fixed Rate Loan -- the stated rate of interest is not subject to change during the life of the loan.

square This is an Adjustable Rate Loan -- the stated rate of interest is subject to change during the life of the loan.

If an Adjustable Rate Loan --

The interest rate on the loan may be changed (Period).

The interest rate may be changed a maximum T1# (Percentage).

\* This is a projection subject to change should particular loan provisions be modified during the term of the loan, such as the amount of stock or participation certificates held or the timing of repayment.

You will be notified 10 days prior to any increase in the effective rate or simultaneously with any decrease in the effective rate.

The Standard Adjustment Factor(s) which the institution takes into account in making adjustments to the interest rate is (are) (list the factors).

The Standard Adjustment Factors may square or may not square be changed during the life of the loan.

See your contract documents for further information on loan terms and conditions.

Should you have any questions concerning the information contained in this form please contact us at (Telephone Number).

**Form 2**

This loan is not subject to the Truth in Lending Act, 15 U.S.C. 1601, et seq. The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

Disclosure of a Change in The Effective Interest Rate

Date:

Lender: (Name)

--

Borrower: (Name)

--

This is to inform you that on (loan and loan number),

square The effective rate of interest will be adjusted effective (Date).

The effective rate of interest on your loan is changed to (Percentage) from (Percentage).

This change resulted from a:

square 1. Change in the amount of stock borrowers are required to hold in the lender to (Percentage) from (Percentage).

square 2. Change in the stated rate of interest on your loan effective (Date).

The stated rate of interest on your loan changed to (Percentage) from (Percentage).

The change was computed based on the:

square Standard adjustment factors -- factors mentioned on the initial interest rate disclosure.

square Other -- describe.

square 3. Change for other reasons -- -describe.

Should you have any questions concerning the information contained herein, please contact us at (Telephone Number).

**Form 3**

This loan is not subject to the Truth in Lending Act, 15 U.S.C. 1601, et seq. The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

Interest Rate Disclosures -- Cooperatives

Date:

Lender: (Name)

--

Current Interest Rate

(Percentage)

--

Borrower: (Name)

--

Effective Interest Rate\*

(Percentage)

--

Check applicable box

square This is a Fixed Rate Loan

square This is an Adjustable Rate Loan

If an Adjustable Rate Loan --

The interest rate on the loan may be changed (state frequency of changes).

The interest rate on the loan may be adjusted a maximum of (limitation).

The Standard Adjustment Factor(s) which the institution takes into account in making adjustments to the interest rate on the loan is (are) (list the factors).

The Standard Adjustment Factors may square may not square be changed during the life of the loan.

\*This is a projection of the average effective interest rate for the 12-month period following the execution of the loan.

Should you have any questions concerning the information contained in this form please contact us at (Telephone Number).

**Form 4**

This loan is not subject to the Truth in Lending Act, 15 U.S.C. 1601, et seq. The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

Annual Effective Interest Rate Disclosure-Cooperatives

Date:

Lender: (Name)

--

Borrower: (Name)

--

This is to inform you that the effective rate of interest for your outstanding loans for the year ended (Date) is as follows:

Loan type Loan No. Effective

 interest

 rate

Should you have any questions concerning the information contained in this form please contact us at (Telephone Number).

**Subpart L -- Notice of Action and Review**

3. The title of Subpart L is revised to read as follows:

**Subpart L -- Notice of Action and Review**

4. Section 614.4440 is revised to read as follows:

**§ 614.4440 Definitions.**

For purposes of this subpart, the following definitions shall apply:

(a) "Adverse credit decision" means a decision on a formal application to deny the credit applied for, or approve an extension of credit in an amount less than the amount applied for.

(b) "Applicant" means any person who completes and executes a formal application for an extension of credit from a System bank or association. "Applicant" includes a person seeking forbearance through formal application for credit which involves a request for the deferral or rescheduling of the payment of principal or interest, the renewal or extension of the terms of a loan, a reduction of the principal or interest due on a loan, or any other similar action.

(c) "System institution" means: (1) Banks for cooperatives; (2) Federal land bank associations; and (3) production credit associations.

5. Section 614.4441 is revised to read as follows:

**§ 614.4441 Notice of action on loan application.**

Each System institution shall render its decision on a loan application in as expeditious a manner as is practicable. Upon reaching a decision on a loan application, the institution shall provide prompt written notice of its decision to the applicant. In the case of a loan application involving more than one primary obligor, the notice may be provided to any one of such parties. Where the institution makes an adverse credit decision, the notice shall include:

(a) The reasons for the institution's action;

(b) Notification that the applicant can request a review of the decision;

(c) Notification that any request for review must be made in writing within 30 days after the applicant's receipt of the institution's notice; and

(d) A brief explanation of the process for seeking review of the decision, including the right to appear before the credit review committee.

6. Section 614.4442 is revised to read as follows:

**§ 614.4442 Credit review committees.**

(a) Each Federal land bank is the primary lender for loans that originate in the Federal land bank associations in its district. As primary lenders, each Federal land bank shall establish guidelines under which the board of directors of each Federal land bank association establishes one or more credit review committees. Such guidelines shall include, among other things, the required level of Federal land bank representation on each credit review committee. The membership of each committee shall include at least one member of the association board, and a majority of each committee shall be composed of persons who were not involved in making the adverse credit decision under review. The duties of the members of the review committees may not be delegated to any other person, except that the duties of the association board member on the committees may be delegated upon the unanimous vote of the association board.

(b) The board of directors of each production credit association and bank for cooperatives shall establish one or more credit review committees. The membership of each committee shall include at least one member of the institution's board, and a majority of each committee shall be composed of persons who were not involved in making the adverse credit decision under review. The duties of the members of the review committees may not be delegated to any other person, except that the duties of the board member on the committees may be delegated upon the unanimous vote of the board.

7. A new § 614.4443 is added to read as follows:

**§ 614.4443 Review process.**

Each applicant who has received an adverse credit decision can request that such decision be reviewed by the institution's credit review committee. The applicant may submit any documents or other evidence to support the information contained in the loan application which the applicant believes will demonstrate that the loan applied for is an eligible loan that satisfies the credit standards of the institution. The applicant may also appear in person before the committee. The credit review committee shall reach a decision on the application in its sole discretion and such decision shall be the final decision of the institution. The credit review committee shall make every reasonable effort to conduct reviews and render decisions in as expeditious a manner as possible. The institution shall notify the applicant in writing of the institution's decision and the reasons therefore.

8. A new § 614.4444 is added to read as follows:

**§ 614.4444 Records.**

System institutions shall maintain a complete file of all requests for reviews, including the disposition of the review by the credit review committee, and other written inquiries concerning adverse credit actions. Such file shall not include confidential documents prepared by the institution for the purpose of evaluating the loans.

**Subpart N -- Loan Servicing Requirements**

9. Section 614.4510 is amended by revising paragraphs (d), the introductory text, (d)(1), (d)(2), (d)(2)(i), (ii), and (iii) to read as follows:

**§ 614.4510 General.**

\* \* \* \* \*

(d) In the development of bank and association loan servicing policies and procedures, the following criteria shall be included:

(1) Term loans. The objective shall be to provide borrowers with prompt and efficient service with respect to actions in such areas as personal liability, partial release of security, insurance requirements or adjustments, loan divisions or transfers, or conditional payments. Procedures shall provide for adequate inspections, reanalyses, reappraisals, controls on payment of insurance and taxes (and for payment when necessary), and prompt exercise of legal options to preserve the lender's collateral position or guard against loss. Loan servicing policies for rural home loans shall recognize the inherent differences between agricultural and rural home lending.

(2) Operating loans. The objective shall be to service such loans to assure disbursement in accordance with the basis of approval, repayment from the sources obligated or pledged, and to minimize risk exposure to the lender. Procedures shall require:

(i) The procurement of periodic operating data essential for maintaining control, for the proper analysis of such data, and prompt action as needed;

(ii) Inspections, reappraisals, and borrower visits appropriate to the nature and quality of the loan; and

(iii) Controls on insurance, margin requirements, warehousing, and the prompt exercise of legal options to preserve the lender's collateral position and guard against loss.

\* \* \* \* \*

**§ 614.4512 [Removed]**

10. Section 614.4512 is removed.

11. A new § 614.4513 is added to read as follows:

**§ 614.4513 Forbearance.**

(a) Each System institution has an obligation to its borrowers, stockholders, and investors in System debt obligations to collect all debts owed to the institution. In pursuit of that obligation, when a borrower is encountering financial difficulties the institution should consider alternative actions that will increase the likelihood of the borrower's being able to repay the debt in an orderly fashion or that will improve the ability of the institution to collect the indebtedness.

(b) For purposes of this section, the term "forbearance" means a voluntary refraining by a System institution from the enforcement of the terms of any loan document relating to a borrower's obligation to make any payment of principal or interest or comply with any other provision of such document, or the exercise by the institution of its rights under those documents or applicable law with respect to the loan. The types of forbearance actions available to an institution include the deferral or rescheduling of the payment of principal or interest, the renewal or extension of the terms of a loan, a reduction in the amount or rate of principal or interest due on a loan and other similar actions.

(c) Each district board and the Farm Credit System Capital Corporation board shall develop a written policy regarding the exercise of forbearance. The policy shall address, at a minimum, the following areas:

(1) The general circumstances under which the institutions will consider forbearance;

(2) The general criteria which the institutions will use in deciding whether to engage in forbearance;

(3) The person(s) responsible for making forbearance decisions;

(4) The nature and timing of communications which the institution will provide to a borrower concerning its consideration of a request for forbearance, its decision on whether to forbear, the nature and duration of any forbearance action which it proposes to take, and any change in its decision as to whether to forbear; and

(5) The procedures available to the borrower to seek review by the credit review committee, in accordance with §§ 614.4440-614.4443 of this part, of a denial of a request for forbearance.

(d) A borrower who is seeking forbearance by making a formal application for an extension of credit in accordance with §§ 614.4440-614.4443 of this part, shall be provided a copy of the institution's forbearance policy at the time of such application.

(e)(1) Each institution shall make a copy of the policy available at its offices to any party upon request. Except as provided in paragraphs (d) and (e)(2) of this section, each institution shall provide a copy of the applicable policy to a borrower at least 14 days, but not more than 30 days, prior to the commencement of any collection action.

(2) An institution is not required to provide a borrower with a copy of the forbearance policy prior to the commencement of a collection action if the institution has reasonable grounds to believe the borrower may dissipate assets or divert collateral or that the collateral is in imminent danger of deterioration.

(3) In the event the forbearance policy is provided to the borrower through the mail, the materials shall be mailed by first class mail to the borrower's last known address and the institution shall allow 3 days for delivery in addition to the time periods specified in § 614.4513 of this part.

(4) Each institution that is required to provide its forbearance policy to a borrower in accordance with this section shall provide a copy of such policy to each primary obligor on the loan.

(f) All Federal land bank association and production credit association procedures concerning forbearance shall be approved by the bank for which the association serves as agent or which is the principal creditor of that association.

(g) Each System institution shall conduct its operations in a manner which is consistent with the applicable forbearance policy. No institution is authorized to take any forbearance action unless it determines, taking into consideration all relevant facts and legal options, including the effect of such action on the liability of cosigners or guarantors, that such action will result in the greatest net return to the institution for the ultimate benefit of its borrowers, stockholders, and investors.

**PART 615 -- FUNDING AND FISCAL AFFAIRS**

12. The authority citation for Part 615 continues to read as follows:

**Authority:** Secs. 4.3, 5.9, 5.17, Pub. L. 99-205, 99 Stat. 1678, 12 U.S.C. 2154, 2243, 2252.

**Subpart J -- Prescription, Subscription, and Retirement of Stock**

13. A new § 615.5255 is added to read as follows:

**§ 615.5255 Notice of retirement of capital stock and participation certificates.**

(a) Where the debt of a holder of capital stock or participation certificates issued by a production credit association or Federal land bank association is in default, the association may, but shall not be required to, retire at book value, not exceeding par or face value, all or part of the equity owned by such borrower on which the association has a lien as collateral for the debt, in total or partial liquidation of the debt.

(b) Any retirements made by a production credit association or Federal land bank association under this section shall be made only upon the specific approval of or in accordance with approval procedures issued by the district Federal intermediate credit bank or Federal land bank, respectively.

(c) Prior to making any retirement pursuant to this section, the association shall provide the stockholder with written notice of the following matters:

(1) A statement that the association has declared the borrower's loan to be in default;

(2) A statement that the association will retire all or part of the equities of the borrower in total or partial liquidation of his or her loan;

(3) A description of the effect of the retirement on the relationship of the borrower to the association;

(4) A statement of the amount of the outstanding debt that will be owed to the association after the retirement of the borrower's equities; and

(5) The date on which the association will retire the equities of the borrower.

(d) The notice required by this section shall be provided in person at least 10 days prior to the retirement of any equities of a holder, or by mailing a copy of the notice by first class mail to the last known address of the equity holder at least 13 days prior to the retirement of such person's equities.

**PART 618 -- GENERAL PROVISIONS**

14. The authority citation for Part 618 is revised to read as follows:

**Authority:** Secs. 4.12A, 5.9, 5.10, and 5.17, Pub. L. 99-205, 99 Stat. 1678.

**Subpart A -- Technical Assistance and Financially Related Services**

**§§ 618.8010 and 618.8020 [Removed]**

15. Subpart A is amended by removing §§ 618.8010 and 618.8020.

**Subpart G -- Releasing Information**

16. Section 618.8310 is revised to read as follows:

**§ 618.8310 Lists of borrowers and stockholders.**

(a) Any System institution, for the purpose of protecting the security position of the institution, may provide lists of borrowers to buyers, warehousemen, and others who deal in produce or livestock of the kind that secures such loans, except to the extent such actions are prohibited by State laws adopted in accordance with the Food Security Act of 1985, Pub. L. 99-198, 99 Stat. 1354. Lists of borrowers or stockholders shall not otherwise be released by any bank or association except in accordance with paragraph (b) of this section.

(b)(1) Each bank for cooperatives, Federal land bank association, and production credit association shall provide a copy of a current list of its stockholders within 10 days of the receipt of a written request by a stockholder. As a condition to providing the list, the bank or association may require that the stockholder agree and certify in writing that he or she will:

(i) Utilize the list exclusively for communicating with stockholders for permissible purposes; and

(ii) Not make the list available to any person, other than the stockholder's attorney or accountant, without first obtaining the written consent of the institution.

(2) As an alternative to receiving a list of stockholders, a stockholder may request the institution to mail or otherwise furnish to each stockholder a communication for a permissible purpose on behalf of the requesting stockholder. This alternative may be used at the discretion of the requesting stockholder, provided that the requester agrees to defray the reasonable costs of the communication. In the event the requester decides to exercise this option, the institution shall provide the requester with a written estimate of the costs of handling and mailing the communication as soon as practicable after receipt of the stockholder's request to furnish a communication.

(3) For purposes of paragraph (b) of this section "permissible purpose" is defined to mean matters relating to the business operations of the bank or association. This shall include matters relating to the effectiveness of management, the use of corporate assets, and the performance of directors and officers. This shall not include communications involving commercial, social, political, or charitable causes, communications relating to the enforcement of a personal claim or the redress of a personal grievance, or proposals advocating that the bank or association violate any Federal, State, or local law or regulation.

17. A new § 618.8325 is added to read as follows:

**§ 618.8325 Disclosure of loan documents.**

(a) For purposes of this section, the following definitions shall apply:

(1) "Borrower" means any signatory to a loan contract who is either primarily or secondarily liable on such contract, including guarantors, endorsers, cosigners or the like.

(2) "Execution of the loan" means the time at which the borrower and the System bank or association have entered into a legal, binding, and enforceable loan contract and any subsequent amendment or modification of such contract.

(3) "Loan contract" means any written agreement under which a System bank or association loans or agrees to loan funds to a borrower in consideration for, among other things, the borrower's promise to repay the loaned funds at an agreed-upon rate of interest.

(4) "Loan document" means any form, application, agreement, contract, instrument, or other writing to which a borrower affixes his or her signature or seal and which the lending bank or association intends to retain in its files as evidence relating to the loan contract entered into between it and the borrower, but shall not include any document related to a loan which the borrower has not signed.

(b) Each System bank and association shall provide copies 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, a bank or association shall provide, as soon as practicable, copies of any loan documents signed by the borrower or other documents delivered by such borrower to that bank or association.

(c) Each System bank and association shall have available in its offices, copies of the institution's articles of incorporation or charter, and bylaws for inspection, and shall furnish a copy of such documents to any owner of stock or participation certificates upon request.

(d) The Farm Credit System Capital Corporation shall, upon written request of a borrower or a borrower's legal representative, provide copies of any loan document signed by the borrower or other documents delivered by such borrower to the Capital Corporation.

**Frank W. Naylor,**

Chairman, Farm Credit Administration.

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