

Farm Credit Administration

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INFORMATIONAL MEMORANDUM



February 24, 2004

To: Chairman, Board of Directors
Chief Executive Officer
All Farm Credit Institutions

From: Roland E. Smith, Chief Examiner
Farm Credit Administration

Subject: Loan Syndication Authorities for Banks and Associations

At the meeting of the Farm Credit Administration (FCA or Agency) Board on February 10, 2004, the General Counsel of the FCA reaffirmed that under the Farm Credit Act of 1971, as amended (Act), syndication loans to eligible borrowers are direct loans, not participations. Therefore, Farm Credit System (FCS or System) banks and associations must treat all syndication loans to eligible borrowers as direct loans. This Informational Memorandum explains the scope of your institution's authority to engage in loan syndication transactions, and it provides you with guidance for compliance with the Act and FCA regulations.

Authorities

Farm Credit banks operating under title I of the Act are not authorized to directly engage in syndication loans to eligible borrowers because they have transferred their direct lending authority to their associations. FCS associations have authority to directly engage in syndication loans to eligible borrowers as long as they comply with all relevant statutory and regulatory requirements that apply to direct loans. Similarly, the agricultural credit bank (ACB) has authority to engage in syndication loans to borrowers who are eligible for credit under title III of the Act as long as it complies with all relevant statutory and regulatory requirements that apply to such loans.

Assignments are interests in loans. Under sections 1.5(16), 2.2(11), and 3.1(13)(B) of the Act, no FCS bank or association has authority to buy assignments in syndication loans to eligible borrowers from non-FCS lenders. However, FCS banks and associations may buy assignments in syndication loans to eligible borrowers from other FCS lenders.

System institutions have authority to buy participation interests in syndicated loans to eligible borrowers from each other and non-System lenders. However, purchases of participation interests from non-FCS lenders are subject to title restrictions that do not apply to participations purchased from other FCS institutions.

Farm Credit banks operating under title I of the Act have authority to buy participation interests in long-term syndicated loans that are secured by a first lien on real estate from non-System lenders. An FCS association has authority to buy participation interests from non-System lenders in the types of syndicated loans that it could directly engage in under its respective title I or II powers. The ACB is authorized to buy participations from non-System lenders in a syndication loan to a borrower who is eligible for credit under both titles I and III of the Act.

Every FCS bank or association may buy participation interests from other FCS institutions in syndication loans made to eligible borrowers under titles I, II, or III of the Act.

System associations that engage in syndications must comply with all requirements in the Act and FCA regulations that apply to direct loans to eligible borrowers. Thus, any association that takes part in a syndication loan to an eligible borrower must (1) issue voting stock to the borrower, (2) provide borrower rights, (3) obtain consent for out-of-territory syndications, and (4) maintain a first lien on borrower stock, and in the case of a title I lender, on real estate collateral.

The ACB must issue voting stock to the borrower that is subject to a first lien whenever it takes part in a loan syndication transaction to a borrower who is eligible for credit under title III of the Act.

All FCS banks and associations may (1) take part in syndicated loan transactions to similar entities, and (2) buy assignments in syndications to similar entities from non-System lenders. Borrower rights, borrower stock, territorial consent, and first lien requirements do not apply to similar entity transactions. However, similar entity transactions are subject to the requirements in sections 3.1(11)(B) and 4.18A of the Act, and § 613.3300 of FCA regulations.

Compliance

System institutions must (1) report all syndication loans to eligible borrowers as direct loans in the FCA Call Report System, and (2) comply with all applicable statutory and regulatory requirements that apply to direct loans. Except as indicated below, no Farm Credit bank operating under title I of the Act can enter into a syndication loan to an eligible borrower. In addition, no FCS bank or association can buy assignments in syndicated loans from a non-FCS lender.

Banks (Title I)

As previously noted, if your institution is a Farm Credit bank operating under title I of the Act, you are not authorized to enter directly into syndications to eligible borrowers because you have transferred your direct lending authority to your associations. Recognizing that you may have syndicated loans in your portfolios already, you may continue to honor existing loan contracts with current borrowers, including planned disbursement of commitments. You may also honor any written or verbal commitments for syndication loans to eligible borrowers that you agreed to prior to the date of this Informational Memorandum. However, you should cease entering into any new loan syndication transactions. This means you should not renew or extend any contract, or commit any new funds to existing syndication loans to eligible borrowers. You may advance new money only in those instances where it is necessary to protect your collateral, or ensure full collection of the existing indebtedness in the normal course of managing risk to the bank.

The FCA also recognizes that in some instances you may have made commitments to take part in syndicated loans, but legal instruments that formalize and finalize the syndication loan transaction have not yet been completed. The FCA is mindful of your obligation to honor your written or verbal commitments, because reneging on such commitments could expose your bank to legal, financial and reputation risks, and possibly disrupt the normal business operations of borrowers. Therefore, you may continue to honor such commitments, but you should not make any additional commitments that would bind the bank to engage in unauthorized lending activities.

Associations

Syndications to eligible borrowers are direct loans that are subject to borrower stock, borrower rights, territorial consent, and first lien requirements. If your association entered into a loan syndication transaction to an eligible borrower, but did not adhere to these requirements, it must follow this guidance to come into compliance with the law. The association must sell voting stock to the borrower the next time you renew or extend the loan, and you must hold a first lien on such stock from that date forward. If your association is a Federal Land Credit Association or an Agricultural Credit Association (exercising the powers under title I of the Act to take part in such loan syndication transactions), it must obtain a first lien on real estate collateral the next time that the loan is renewed or extended. Additionally, territorial consent must be obtained from other FCS associations that are chartered to serve the territories where the borrower is located the next time that the loan is renewed or extended.

The ACB

The ACB must sell voting stock to borrowers who are eligible for credit under title III of the Act the next time the syndicated loan is renewed or extended. At that time, the ACB must also maintain a first lien on the borrower's stock.

Borrower Rights

Under the Act, borrower rights apply to all loans that title I or II FCS lenders make to farmers, ranchers, and aquatic producers and harvesters, unless such loans are subject to the Truth-In-Lending Act. For this reason, borrower rights apply to any loan syndication that you entered into for an eligible borrower. If a syndicated loan becomes distressed, you must (1) notify the borrower of any adverse action, (2) honor the borrower's right to appeal the adverse credit decision to the credit review committee, (3) allow the borrower the opportunity to restructure distressed loans in accordance with sections 4.14A, 4.14B, and 4.14D of the Act and the regulations in part 617, and (4) when applicable, give the borrower the right of first refusal on foreclosed real estate. You must give the borrower an effective interest rate disclosure when a variable interest rate is adjusted on an existing loan, or when the loan is renewed or extended. You should consider notifying the other syndicated members that you are subject to statutory borrower rights.

Assignments at all FCS institutions

Assignments are interests in loans and, therefore, no FCS bank or association has authority to buy assignments in syndication loans to eligible borrowers from a non-System lender. If your bank or association has purchased an assignment in a syndication from a non-System lender, you may continue to hold it until the date that the loan contract between the borrower and the lender expires. You cannot renew or extend your assignment.

If you have any questions regarding this Informational Memorandum, please contact the appropriate Field Office Director, or me, Roland E. Smith, Director, Office of Examination at (703) 883-4121, or write to me on the Internet at e-mail address smithr@fca.gov.