Farm Credit Administration

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INFORMATIONAL MEMORANDUM

November 19, 2012

To: Chief Executive Officer
All Farm Credit System Institutions

From: Samuel R. Coleman, Director and Chief Examiner
Office of Examination

Subject: Clarification to FCA Regulation §618.8320(b)(7)

The purpose of this Informational Memorandum is to clarify FCA Regulation §618.8320(b)(7). This clarification is necessary in light of an interpretation of the Fair Credit Reporting Act (FCRA) by the staff of the Federal Trade Commission (FTC).

FCRA Requirements

The FTC has interpreted Section 615(a) of the FCRA (15 U.S.C. §1681m(a)) to require a creditor to provide notice to an applicant/co-applicant who is an individual when it takes adverse action in a commercial credit transaction based, in whole or in part, on the personal credit report of an individual, whether this individual is the applicant/co-applicant or whether this individual is a guarantor or would otherwise be liable on the credit. See PDF provided below, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations*, Federal Trade Commission (July 2011), pages 10, 21, 34, 45, and 83, and references cited therein.

FCA Regulatory Requirements

FCA regulation §618.8320(a) generally requires System institutions and their personnel to hold in strict confidence all information regarding the character, credit standing, and property of borrowers and applicants for loans. FCA regulation §618.8320(b)(7) authorizes System institutions to comply with FCRA section 615(a) by providing an exception to this general rule; the exception requires institutions to provide an FCRA notice to each "unsuccessful applicant for credit which primarily is for personal, family, or household purposes, if his application was rejected either wholly or partly because of information contained in a personal credit report." ***We now clarify that a System institution does not violate FCA Regulation §618.8320(a) when it complies with FCRA section 615(a) by providing to an individual who is an***

applicant/co-applicant the required FCRA notice when the creditor takes adverse action in a commercial credit transaction based, in whole or in part, on a report on the personal credit of an individual (whether that individual is the applicant/co-applicant or whether that individual is a guarantor or is otherwise liable on the debt).

We remind you that the FTC enforces the FCRA with respect to System institutions. While FCA has no enforcement authority under the FCRA, FCA will examine for compliance under its general authority to protect the safety and soundness of System institutions.

The Farm Credit Administration is providing this information as a courtesy to keep you informed of issues that may affect your institution. This information should not be seen as a replacement for management's due diligence in monitoring issues that may affect your institution.

If you have any questions about this Informational Memorandum, please contact Jennifer A. Cohn, Senior Counsel, Office of General Counsel, at 703-883-4028, or by email at cohnj@fca.gov, and/or David Stephens, Office of Examination, at 703-883-4412, or by email at stephensd@fca.gov.