

However, because title III generally authorizes lending to those that provide energy or utility services, it is reasonable to interpret section 3.8 of the Act to authorize financing for “non act” purposes, provided they are energy-related or public utility-related.

## 2. Related Services

CoBank also requested that we clarify that it is able to provide the same related services as Farm Credit Banks (FCBs) and BCs. We amended §§ 618.8000 and 618.8005 to clarify that CoBank has the same authority to provide related services under title I of the Act as FCBs and the same authorities to provide related services under title III of the Act as BCs.

### *B. Conforming FCA Regulations To Reflect Recent Amendments to the Act*

Enactment of the FSRIA amended the Act with respect to:

- (1) International lending by BCs, and
- (2) similar entity transactions.

## 1. International Lending

FSRIA amended section 3.7 of the Act to authorize a bank operating under title III of the Act to finance certain international transactions involving “agricultural supplies.” This section formerly authorized a bank operating under title III of the Act to finance certain transactions involving “farm supplies.” After the amendment of section 3.7, CoBank can finance certain transactions involving “agricultural supplies,” which is statutorily defined to include a farm supply, agriculture-related processing equipment, agriculture-related machinery, and other capital goods related to the storage or handling of agricultural commodities or products. Because of this amendment, the definition of “farm supplies” in part 613 no longer defines the limit of CoBank’s authority. The proposed rule makes conforming changes to part 613 to add a definition of “agricultural supply.”

## 2. Similar Entity Participations

FSRIA also amended sections 3.1(11)(B) and 4.18A of the Act so that one type of FCS institution no longer needs approval from another type of FCS institution when it participates with a non-FCS lender in certain loans to a similar entity.<sup>3</sup> These amendments to the Act have eliminated the statutory

basis for some approvals required by existing FCA regulations.

However, the FSRIA did not amend the requirement in section 3.1 for approval to finance certain similar entities having System loan commitments or who are System customers. The proposed regulation would codify the remaining approval requirement. We note that System institutions may enter into agreements on such terms and conditions as they choose, including, where appropriate, annual agreements.

### *C. Ensure Loan Making Complies With the Act and Regulations*

During examinations of some System institutions, we have identified loans that fail to comply with various requirements of the Act and our regulations. The Act provides FCA broad authorities and remedies with respect to such “ineligible” loans. For example, FCA may require a direct lender association to divest itself of the loan or cure the ineligibility. In appropriate cases, FCA may use its cease and desist or civil money penalty authorities. However, a review of general financing agreements (GFAs) between FCBs and the ACB and their direct lender associations has revealed that, while most GFAs address ineligible loans in some fashion, they do not all expressly prohibit funding ineligible loans.

Without in any way limiting FCA’s other authorities or remedies under the Act, the proposed regulations mandate that the GFA between the funding bank and the direct lender association expressly require that the calculation of financing available be based solely on loans that comply with the Act and FCA regulations.

## III. Section-by-Section Analysis

### *Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act*

Sections 613.3100(b)(2)(ii) and 613.3100(c)(1)(v)—Domestic Lending

We propose to clarify that a bank operating under title III may finance a subsidiary or other entity in which eligible cooperatives or certain eligible utilities have an ownership interest. Proposed § 613.3100(b)(2)(ii) permits a title III bank to provide limited financing to a subsidiary or other entity in which an eligible cooperative has an ownership interest. Proposed § 613.3100(c)(1)(v) permits a title III bank to provide limited financing to a subsidiary or other entity in which certain eligible utilities have an ownership interest. If the eligible

cooperative or eligible utility owns less than 50 percent of the entity, then the financing provided may not exceed the percentage of ownership attributable to the eligible cooperative or utility, multiplied by the value of the total assets of such entity.

### *Section 613.3100(c)(2)—Purposes for Financing Electric and Telecommunication Utilities*

We propose to clarify that a BC or ACB may provide financing for subsidiaries of cooperatives or other entities that are eligible under § 613.3100(c)(1)(ii) for energy-related or public utility-related purposes even if such purposes would be ineligible for financing by the RUS or the RTB. Section 3.8(b)(1)(A) of the Act authorizes BCs and ACBs to finance rural utilities that are eligible to borrow from the RUS or RTB, and their subsidiaries. Although the Rural Electrification Act prohibits the RUS or RTB from financing the activities of certain subsidiaries, section 3.8(b)(1)(A) of the Act expressly authorizes a BC or ACB to extend credit to the same subsidiaries. As FCA discussed in its preamble when the present § 613.3100 was proposed in 1996, the legislative history makes it clear the present language of section 3.8 of the Act was intended to authorize title III banks to finance activities that are ineligible for RUS or RTB loans. See 61 FR 42092, August 13, 1996. Because the present language of § 613.3100(c)(2) could be narrowly read to limit such financing to subsidiaries that “operate a licensed cable television utility,” FCA is now proposing an amendment to clarify that banks operating under title III may provide such financing for any energy-related or public utility-related purpose. We believe it is important for the System to be able to finance these operations that provide valuable services to rural consumers and essential revenues for rural utility systems.

### *Section 613.3200—International Lending*

We propose to conform our regulations to recent changes in section 3.7 of the Act made by FSRIA that authorize a bank operating under title III of the Act to finance certain international transactions involving “agricultural supplies.” We propose to amend § 613.3200(a) by adding a definition of “agricultural supply.” The proposed definition of “agricultural supply” in § 613.3200(a)(1) includes a farm supply, agriculture-related processing equipment, agriculture-related machinery, and other capital

<sup>3</sup> “Similar entity” means a party that is ineligible for a loan from a Farm Credit bank or association, but has operations that are functionally similar to the activities of eligible borrowers in that a majority of its income is derived from, or a majority of its assets are invested in, the conduct of activities that are performed by eligible borrowers.