

equitably. More specifically, § 614.4590(a) states that Farm Credit banks must apply comparable and objective loan underwriting standards and pricing requirements to both OFIs and FCS associations. Under § 614.4590(b), the total charges that a System bank assesses its OFIs must be comparable to the total charges it imposes on its affiliated associations. This regulation also states that any variation between the overall funding costs that OFIs and FCS associations are charged by the same funding bank must result from differences in credit risk and administrative costs to the FCB or ACB.

Many responses to the ANPRM and several speakers at the public meeting expressed the view that Farm Credit banks do not treat OFIs equitably with FCS associations, which own and control each System bank. According to these commenters, the perception of unfair treatment discourages potential OFIs from establishing a funding and discount relationship with an FCB or ACB. Many commenters informed us that existing OFIs often feel that Farm Credit banks favor the associations.

Many commercial bank commenters suggested that our regulations should mandate equal, rather than equitable, treatment of OFIs and FCS associations. These commenters believe that the disparity of treatment is especially evident in the price of funding that Farm Credit banks charge their OFIs and FCS associations. Several commenters want us to require Farm Credit banks to disclose to OFIs exactly how they price their loans to both OFIs and FCS associations. Several commercial bank trade associations asked the FCA to require Farm Credit banks to identify the specific components that make up their cost of funds to OFIs and the amount of these components in terms of basis points. Commercial banks and their trade associations also requested that the FCA enact regulations that expressly prohibit Farm Credit banks from charging OFIs fees that are not charged to FCS associations. Some commenters asked the FCA to require Farm Credit banks to pay dividends or patronage to OFIs.

The FCA sought to address many of these concerns in the rulemaking that ended in 1998 by adopting § 614.4590, which requires Farm Credit banks to treat OFIs and FCS associations equitably. The FCA notes that the OFI program has not significantly expanded since 1998, but many of the same complaints about disparate treatment by Farm Credit banks of OFIs and FCS associations have surfaced once again. The FCA has decided to address these concerns by proposing amendments to

§ 614.4590 that would strengthen regulatory requirements concerning equitable treatment.

Fundamental differences between OFIs and direct lender associations mean that regulations can only require Farm Credit banks to treat OFIs and FCS direct lender associations equitably, but not equally. The following are some of the fundamental differences between these two types of financial institutions that preclude identical treatment:

- OFIs have access to several funding sources whereas direct lender associations do not.
- FCS associations have invested significant amounts of capital in the funding bank, while most OFIs have not.
- A direct lender association pledges all of its loans to the Farm Credit bank, whereas OFIs do not.
- FCS associations are members of a cooperative credit system that shares gains and losses, whereas OFIs have limited exposure to such losses.
- Administrative costs for funding a direct lender association and an OFI differ because OFIs are not required to maintain a long-term commitment with a System funding bank.

These fundamental differences mean that OFIs expose Farm Credit banks to different credit risks and administrative costs than direct lender associations. As a result, some disparity in cost of funds that an FCB or ACB charges FCS associations and OFIs may be justified. For this reason, § 614.4590 requires that Farm Credit banks treat OFIs comparably, but not identically, to FCS associations in pricing loans. In fact, § 614.4590(b) states that the total charges that an FCB or ACB assesses an OFI through capitalization requirements, interest rates, and fees shall be comparable to the charges that the same Farm Credit bank imposes on its direct lender associations. This regulation also specifies that any variation in the overall funding costs that the same FCS funding bank charges OFIs and direct lender associations must be attributed to differences in credit risk and administrative costs to the bank.

The current regulation, however, does not require Farm Credit banks to explain and justify variations in the cost of funds to existing OFIs and OFI applicants. As a result, it is difficult to ascertain whether Farm Credit banks are pricing credit comparably for OFIs and FCS associations, as § 614.4590(b) requires. Commercial bank commenters have repeatedly asked the FCA to resolve this problem by requiring Farm Credit banks to disclose to OFIs how they price funding for both OFIs and

associations. In 1998, we reasoned that disclosing such pricing information was unnecessary because the regulation did not compel Farm Credit banks to charge identical rates to OFIs and System associations.¹⁴ The comments that we received during this rulemaking have persuaded us to propose a change on this issue. Disclosing pricing information will make the OFI program more transparent and address concerns by existing and potential OFIs that they are not treated fairly. The FCA hopes that this change will attract more agricultural lenders to this program and, therefore, make affordable credit more available for farmers, ranchers, and other eligible rural residents.

The FCA plans to achieve this objective by proposing to add two new provisions to § 614.4590. Proposed § 614.4590(c) would require each FCB or ACB to provide any OFI or OFI applicant, upon request, a copy of its policies, procedures, loan underwriting standards, and pricing guidelines for OFIs. This provision would also specify that the pricing guidelines must identify the specific components that make up the cost of funds for OFIs and the amount of these components in basis points. We believe this requirement is consistent with the information that is available to the associations, and is analogous to EIR disclosures that associations provide to retail borrowers.

Proposed § 614.4590(d) would require each FCB or ACB to explain in writing the reasons for any variation in the overall funding costs it charges OFIs and FCS associations if such information is requested by an OFI or OFI applicant. This provision would require a Farm Credit bank to compare the costs that it charges OFIs and FCS associations as groups or, if possible, variations between groups of OFIs and FCS associations that are of a similar size. However, proposed § 614.4590(d) would expressly prohibit System funding banks from disclosing financial or confidential information about individual FCS associations. Such information is confidential and proprietary information affecting the bank and its other customers and, therefore, it cannot be disclosed to OFIs.

The FCA also proposes a conforming amendment to § 614.4540(c) that would require each FCB or ACB to establish objective policies, procedures, pricing guidelines, and loan underwriting standards for determining the creditworthiness of each OFI applicant. Currently, § 614.4540(c) does not mention procedures or pricing guidelines.

¹⁴ See 63 FR 35541 (July 7, 1998).