

The proposed rule does not require Farm Credit banks to pay dividends or patronage to their OFIs. It is not appropriate in this instance for FCA regulations to impose business practices on FCS institutions in the absence of a compelling safety and soundness reason.

The proposed amendments to § 614.4590 should ensure that Farm Credit banks treat their OFIs and associations equitably. If information that a Farm Credit bank discloses about how it prices funding for OFIs and FCS associations continues to raise concerns about equitable treatment, an OFI or OFI applicant could pursue this matter with the FCA Ombudsman.

5. Ombudsman

Many commercial banks and their trade associations asked us to appoint an Ombudsman to assist OFI applicants and existing OFIs in establishing and maintaining good relations with System funding banks. On February 25, 2003, the FCA Board established the Office of the Ombudsman. According to the public announcement, "The Office of the Ombudsman will be an effective, neutral and confidential resource and liaison for the public." Addressing the concerns of OFIs will be one of many duties of the Office of the Ombudsman. More information about how the Ombudsman will assist existing and potential OFIs will be forthcoming.

6. Disclosure of OFI Identities

In the ANPRM, we asked you whether we should amend our regulations so Farm Credit banks could disclose the identities of the OFIs that they fund. Our current regulations on releasing information prohibit FCS institutions from releasing information about their borrowers and stockholders to the public.¹⁵ However, these prohibitions apply only to retail borrowers, such as farmers, ranchers, aquatic producers and harvesters, and rural homeowners. We have never interpreted these regulations as prohibiting the release of names of FCS associations that borrow from Farm Credit banks. In fact, information about the identities of FCS associations is widely available because it is contained in financial statements that Farm Credit banks release to the public.

The ANPRM explained why we believe that the reasons for protecting the identity of retail borrowers do not apply to financial institutions that fund and discount loans with a Farm Credit bank. Retail borrowers often are individual consumers, and keeping their

identities confidential shields them from unwanted marketing solicitations or publicity involving their personal financial business. In contrast, OFIs could benefit from the disclosure of their identity because it could make prospective retail borrowers aware of other credit options.

We received 33 comments about the disclosure of OFI identities. Twenty-five (25) comments on this issue came from commercial banks or their trade associations; two comments were received from a non-bank entity and an OFI, while six comments came from Farm Credit banks and associations. Reaction was mixed, and neither commercial banks nor System institutions took unified positions on this issue. Most commenters believe that there is no valid justification to prohibit or otherwise restrict Farm Credit banks from disclosing the names of their OFIs. These commenters assert that disseminating this information promotes the OFI program and informs farmers, ranchers, and rural homeowners of their other credit options. These commenters also believe that the FCA regulations should treat FCS associations and OFIs the same when it comes to disclosing their identities to the public. However, other commenters opposed the disclosure of identifying information about OFIs to the public. These commenters believe that requiring such disclosures are an unwarranted intrusion by the FCA into private business transactions. Other commenters expressed the view that OFIs should advertise for customers if they want to expand market penetration, rather than relying on Farm Credit banks to inform potential borrowers of their other credit options. Some commenters suggested a compromise that would allow Farm Credit banks to disclose only the identities of OFIs that consent.

The FCA proposes a new rule, § 614.4595, which would allow Farm Credit banks to disclose to the public the names, addresses, telephone numbers, and Internet Web site addresses of those OFIs that consent in writing. The proposed regulation also requires each Farm Credit bank to adopt policies and procedures for: (1) Obtaining and maintaining the consent of its OFIs; and (2) disclosing this information to the public. Similarly, the financial statements of Farm Credit banks should disclose the identity of an OFI only with its consent. The FCA believes that this regulatory approach empowers each OFI to make the decision whether disclosure of its name, address, telephone number, and Web

site address to the public is in its best interest.

7. Associations Acting as Farm Credit Bank Agents

Both System and non-System commenters suggested that FCS associations could serve as an effective conduit for funding OFIs. These commenters pointed out that associations often have established relationships with local OFIs and other commercial lenders. In many cases, FCS associations and existing and potential OFIs already have entered into joint financing arrangements for common borrowers.

The Act allows only Farm Credit banks that operate under title I of the Act, not FCS associations, to establish funding and discount relationships with OFIs. However, section 1.5(18) of the Act allows a Farm Credit bank to delegate to associations such functions as the bank deems appropriate. Similarly, section 2.2(19) of the Act allows a direct lender association to perform functions delegated to it by its funding bank. We believe that this authority allows FCS associations to act as point-of-contact or servicing agents for the Farm Credit bank in its lending relationship with its OFIs.

While associations could not directly fund OFIs, they could help make this program more successful by acting as intermediaries or servicing agents on loans from the Farm Credit banks to OFIs. Such arrangements could help promote new, and support existing, local relationships between the associations and potential and existing OFIs. Origination and servicing fees earned by the associations as agents for the banks can also serve to increase the associations' earnings potential. Such arrangements could also serve to reduce the servicing costs for smaller OFIs. A precedent for this approach is that FCS associations acted as servicing agents on loans that the former regional banks for cooperatives made to small, local, farmer cooperatives. In this capacity, FCS associations provided efficient and effective loan administration for the banks on loans they could have made themselves.

Agreements between the parties can establish these arrangements and, therefore, no new regulation is necessary. The FCA Board supports associations serving as agents for the Farm Credit banks in establishing and maintaining funding relationships between Farm Credit banks and existing or new OFIs.

¹⁵ 12 CFR part 618, subpart G.