

Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 or send them by facsimile transmission to (703) 734-5784. You may review copies of all comments we receive at our office in McLean, Virginia.

#### FOR FURTHER INFORMATION CONTACT:

Mark L. Johansen, Policy Analyst, Office of Policy Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4479, TTY (703) 883-4434;

Or

Joy Strickland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-2020.

#### SUPPLEMENTARY INFORMATION:

##### I. Objectives

The objectives of these proposed rules are to:

- Ensure that the borrower rights regulations provide the protection to applicants and distressed borrowers as mandated by the Farm Credit Act of 1971, as amended (Act).<sup>1</sup>
- Avoid placing unnecessary burdens on FCS institutions.
- Use plain language and a question and answer format.

##### II. Background

In the Farm Credit Amendments of 1985<sup>2</sup> and the Agricultural Credit Act of 1987,<sup>3</sup> Congress gave certain rights to borrowers of System institutions that operate under titles I and II of the Act. These rights include the right of review of certain loan decisions, the right to receive a notice when a loan becomes distressed, the opportunity to request a restructuring of a distressed loan, and the opportunity for the right of first refusal to repurchase or lease acquired agricultural real estate following foreclosure or voluntary conveyance. Collectively, these rights are referred to as borrower rights. On September 14, 1988, we published final borrower rights rules.<sup>4</sup> Since then we have observed differences in how System institutions apply these regulations and reviewed complaints from borrowers and applicants regarding their rights. To ensure that our expectations for borrower rights are clear, we propose these updated regulations.

##### III. Comments Received

We received comments on our existing regulations prior to developing these proposed rules. The comments were in response to a June 23, 1993, regulatory burden solicitation<sup>5</sup> and a May 17, 2000, letter from the Farm Credit Council (FCC) on behalf of its member banks and associations.

##### IV. Redesignate Portions of Part 614 to Part 617

We propose redesignating the regulations from existing subparts H, L, and N of part 614 to part 617 of the regulations. This move will make the borrower rights rules more readily identifiable. We also propose conforming changes in §§ 609.910(c), 615.5280(h), and 615.5290(a) and (b) to part 617.

##### V. General Issues

We received comments on general issues of borrower rights applicability and relationship to other laws. We will address those first and then proceed to comments concerning specific issues.

###### A. Family Farmers [§ 617.7000]

The term “loan,” defined in section 4.14A(a)(5) of the Act and existing §§ 614.4440(g) and 614.4512(f), means an extension of credit made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower’s operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products. The FCC commented that we should restrict application of borrower rights to “family farmers,” which FCC defined to mean farmers with agricultural sales equal to or less than \$500,000. The FCC’s interpretation of the legislative history of the borrower rights legislation is that Congress intended to narrow the bargaining position between borrowers and the System institutions. The FCC believes that, with increased consolidation and sophistication of farming operations, the need for a level-bargaining position has decreased.

We recognize that the consolidation among agricultural producers has resulted in more sophisticated operators, but we do not believe Congress intended that the borrower rights legislation apply only to family farmers. The statutory definition of loans covered by borrower rights is clear, unambiguous, and does not distinguish between types of farmers,

nor does it contain any sales or income limitations. Although Congress considered limiting borrower rights to only family farmers when this legislation was being debated, it ultimately chose not to do so. The Senate bill limited borrower rights and provided a definition of family farmers.<sup>6</sup> Once the Senate and House bills were reconciled in conference, limiting borrower rights to family farmers was abandoned. Congress did not adopt the Senate’s definition of family farmer. Instead, it adopted a definition of loan that includes all agricultural loans.<sup>7</sup>

We do not believe it is appropriate to restrict borrower rights to family farmers or farmers with agricultural sales of equal to or less than \$500,000 as the FCC requested. Thus, we make no changes to the existing rules.

###### B. How Do Borrower Rights Apply to Loans That Are Sold to, Participated With, or Subordinated in Favor of Non-qualified Lenders? [§ 617.7015]

Section 4.14A(a)(5)(B) of the Act provides that borrower rights do not apply to loans sold into the secondary market. The FCC recommended defining loans sold into the secondary market to include participations, subordinated debt transactions, and other sales transactions that include non-qualified lenders. The FCC asserted that non-qualified lenders are hesitant to participate in such transactions with the System because of borrower rights requirements.

Loan sales to other lenders, participations, and subordinated debt transactions are not secondary market activities. We found no evidence that Congress intended the secondary market sales exemption to apply to other types of loan transactions.

We propose moving § 614.4336 from part 614, subpart H to § 617.7015 in part 617, subpart A.

###### C. Are Borrowers With Trade Credit Loans Excluded From Borrower Rights? [§ 617.7000]

The FCC commented that borrower rights are an impediment to an effective trade credit program. They suggested that borrowers purchase participation certificates instead of stock with trade credit loans in order to exempt such loans from borrower rights.

We do not agree with this comment and do not propose such a change. Existing § 614.4525(a) allows a qualified lender to “enter into agreements with agents, dealers, cooperatives, other lenders, and individuals to facilitate its

<sup>1</sup> Pub. L. 92-181, 85 Stat. 583.

<sup>2</sup> Pub. L. 99-205, 99 Stat. 1678.

<sup>3</sup> Pub. L. 100-233, 101 Stat. 1568.

<sup>4</sup> 53 FR 35427 (September 14, 1988).

<sup>5</sup> 58 FR 34003 (June 23, 1993).

<sup>6</sup> See S. Rep. No. 100-230 at 34, 109 (1987).

<sup>7</sup> See H.R. Conf. Rep. 100-490 at 164-165 (1987).