

**FARM CREDIT ADMINISTRATION****12 CFR Part 617**

RIN 3052-AC24

**Borrower Rights**

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA) proposes to allow a borrower to waive borrower rights when receiving a loan from a qualified lender as part of a loan syndication with non-System lenders that are otherwise not required by section 4.14A(a)(6) of the Farm Credit Act of 1971, as amended (Act) to provide borrower rights. This proposal would provide qualified lenders needed flexibility to meet the credit needs of borrowers seeking financing from a qualified lender as part of certain syndicated lending arrangements.

**DATES:** Written comments should be received on or before December 16, 2004.

**ADDRESSES:** Send us your comments by electronic mail to [reg-comm@fca.gov](mailto:reg-comm@fca.gov) or through the Pending Regulations section of our Web site, <http://www.fca.gov> or through the government-wide <http://www.regulations.gov> portal. You may also send written comments to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, or 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, Senior Policy Analyst, Office of Policy Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TTY (703) 883-4434; or Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-2020.

**SUPPLEMENTARY INFORMATION:****I. Background**

On January 17, 2003, FCA published a notice requesting comment on the regulatory treatment of loan syndications (68 FR 2540). After considering the comments, the FCA Board reaffirmed its long-standing interpretation that loan syndications come within a Farm Credit System (System) institution's direct lending authorities and, therefore, loan syndications to eligible borrowers are

subject to the borrower rights requirements of the Act, and corresponding regulations. (69 FR 8407, Feb. 24, 2004)

In their comments on the notice, the Farm Credit Council (FCC) and other System institutions stated that borrower rights are an impediment to System involvement in loan syndication transactions. Loan syndications are multi-lender transactions, generally involving a lead lender and at least one other participating lender, where each lender has a direct contractual relationship with the borrower. Typically, the loan servicing and loan collection procedures are the same for each lender, and these activities are undertaken according to standard agreements among the lenders in the transaction. System institutions commented that it is difficult to enter into these transactions when they have unique disclosure requirements and have to provide distressed loan restructuring rights and the right of first refusal on repurchasing foreclosed property. The commenters stated that commercial lenders see fulfillment of these rights as a delay to loan servicing and collection and they would rather enter into loan syndication transactions with lenders that are not required to offer such rights.

The commenters also stated that borrowers in syndications are generally sophisticated in financial transactions and represented by counsel. Thus, the commenters contend that these borrowers are in an equal bargaining position with qualified lenders and should be free to choose to waive their borrower rights.

Subsequently, we received two petitions under 5 U.S.C. 553(e) asking us to amend § 617.7010(b) to allow borrowers to waive borrower rights in loan syndication transactions. These petitions cited reasons for granting a waiver similar to the previous commenters.

**II. Section-by-Section Analysis****1. Waiver of Borrower Rights in Loan Syndications**

After reviewing System syndication transactions, we have determined that the borrower in these transactions generally possess a very high level of business sophistication. These borrowers are more likely than others to be able to provide a knowing and intelligent waiver of their rights. Therefore, we propose to amend § 617.7010 to allow a borrower to waive borrower rights when receiving a loan from a qualified lender that is part of a loan syndication package with non-

System lenders that are otherwise not required by the Act to provide borrower rights.<sup>1</sup> To ensure that the borrower understands the borrower rights being waived and is freely and intelligently waiving those rights, we require that the borrower be advised by legal counsel at the time of the waiver.

We also invite comments on whether we should consider other criteria to further differentiate what borrower and what type of loan syndication transactions should be eligible for a waiver of borrower rights.

The purpose of the waiver is to eliminate instances where borrower rights are an impediment to a borrower receiving credit from a qualified lender through a loan syndication with non-System lenders that are otherwise not required by the Act to provide borrower rights. As previously noted, borrower rights are not compatible with many loan syndication transactions because the servicing and collection practices must be the same for all lenders.

The waiver provision in this proposed regulation is intended to be used only in addressing the problems qualified lenders have encountered in entering into loan syndications due to the requirement to provide the borrower with borrower rights. Section 617.7010(c) provides that this waiver provision is not to be used as a means of circumventing the borrower rights requirements by creating a syndication relationship whose primary purpose is to avoid borrower rights. A syndicated lending package is typically sought when the total credit would exceed the lending institution's lending limit or the risk associated with the total credit would exceed the risk tolerance of the individual lending institution. Our examination process will be mindful of this issue and will take appropriate action to address any abuses of this proposed waiver.

**III. Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial

<sup>1</sup> Section 617.7000 defines "qualified lender" as: (1) A System institution, except a bank for cooperatives, that makes loans as defined in part 617; and (2) each bank, institution, corporation, company, credit union, and association described in section 1.7(b)(1)(B) of the Act (commonly referred to as an other financing institution), but only with respect to loans discounted or pledged under section 1.7(b)(1). The proposed waiver is intended to apply only to those situations where System institutions enter into loan syndications with non-System lenders that are otherwise not required by the Act (section 4.14A(a)(6)) to provide borrower rights.

number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

#### List of Subjects in 12 CFR Part 617

Banks, banking, Criminal referrals, Criminal transactions, Embezzlement, Insider abuse, Investigations, Money laundering, Theft.

For the reasons stated in the preamble, part 617, chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 617—BORROWER RIGHTS

1. The authority citation for part 617 continues to read as follows:

**Authority:** Secs. 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.36, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2199, 2200, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2219a, 2243, 2252).

#### Subpart A—General

2. Amend § 617.7010(a) by:
- Removing the reference, "paragraph (b)" and adding in its place, the reference "paragraphs (b) and (c)" in paragraph (a);
  - Redesignating and revising existing paragraph (c) as new paragraph (d);
  - Adding a new paragraph (c) as follows:

#### § 617.7010 May borrower rights be waived?

\* \* \* \* \*

(c) A borrower may waive all borrower rights provided for in part 617 of these regulations in connection with a loan syndication transaction with non-System lenders that are otherwise not required by section 4.14A(a)(6) of the Act to provide borrower rights. For purposes of this paragraph, a "loan syndication" is a multi-lender transaction in which each member of the lending syndicate has a direct contractual relationship with the borrower, but does not include a transaction created for the primary purpose of avoiding borrower rights.

(d) All waivers must be voluntary and in writing. The document evidencing the waiver must clearly explain the rights the borrower is being asked to waive and provide an explanation of such rights. Additionally, a borrower in a loan syndication must certify in writing that the borrower was advised by legal counsel prior to executing a waiver.

Dated: November 10, 2004.

**Jeanette C. Brinkley,**  
Secretary, Farm Credit Administration Board.  
[FR Doc. 04-25397 Filed 11-15-04; 8:45 am]  
BILLING CODE 6705-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 31

[REG-155608-02]

RIN 1545-BB64

#### Revised Regulations Concerning Section 403(b) Tax-Sheltered Annuity Contracts

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing.

**SUMMARY:** This document contains proposed regulations under section 403(b) of the Internal Revenue Code and under related provisions of sections 402(b), 402(g), 414(c), and 3121(a)(5)(D). The proposed regulations would provide updated guidance on section 403(b) contracts of public schools and tax-exempt organizations described in section 501(c)(3). These regulations would provide the public with guidance necessary to comply with the law and will affect sponsors of section 403(b) contracts, administrators, participants and beneficiaries. In the Rules and Regulations section of this issue of the **Federal Register**, the Treasury Department and IRS are issuing temporary regulations providing employment tax guidance to employers and employees on salary reduction agreements. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by February 14, 2005. Outlines of topics to be discussed at the public hearing scheduled for February 15, 2005, to be held in the IRS Auditorium (7th Floor) must be received by January 25, 2005.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-155608-02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-155608-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue,

NW., Washington, DC, or sent electronically via the IRS Internet site at <http://www.irs.gov/regs> or via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS-REG-155608-02). The public hearing will be held in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, R. Lisa Mojiri-Azad or John Tolleris, (202) 622-6060; concerning the proposed regulations as applied to church-related entities, Robert Architect (202) 283-9634; concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collection of information contained in this notice of rulemaking has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1341.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

##### Background

Regulations (TD 6783) under section 403(b) of the Internal Revenue Code (Code) were published in the **Federal Register** (29 FR 18356) on December 24, 1964 (1965-1 C.B. 180). These regulations provided guidance for complying with section 403(b) which had been enacted in 1958 in section 23(a) of the Technical Amendments Act of 1958, Public Law 85-866 (1958), relating to tax-sheltered annuity arrangements established for employees by public schools and tax-exempt organizations described in section 501(c)(3). Since 1964, additional regulations have been issued under section 403(b) to reflect rules relating to eligible rollover distributions and minimum distributions under section 401(a)(9).

These proposed regulations would amend the current regulations to