

# Rules and Regulations

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## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 611, 620, and 630

RIN 3052-AD00

#### Organization; Disclosure to Shareholders; Disclosure to Investors in System-Wide and Consolidated Bank Debt Obligations of the Farm Credit System; Advisory Vote

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA) adopts as final without change an interim final rule which amended FCA regulations to remove the requirement that Farm Credit System (System) banks and associations hold non-binding, advisory votes on senior officer compensation in certain circumstances.

**DATES:** *Effective Date:* June 18, 2014.

**FOR FURTHER INFORMATION CONTACT:** Deborah Wilson, Associate Director, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4224, TTY (703) 883-4056,

or

Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4056.

**SUPPLEMENTARY INFORMATION:** On March 31, 2014, the FCA published the interim final rule (79 FR 17854) removing the FCA regulatory requirement that (1) associations hold non-binding advisory votes on senior officer compensation when 5 percent of the voting stockholders petition for the vote, and (2) Farm Credit banks and associations hold non-binding advisory votes on senior officer compensation if senior officer compensation increased by 15 percent or more from the previous reporting period (hereafter referred to as

“advisory voting rule”).<sup>1</sup> The interim final rule responded to the provisions of Title VI of the Consolidated Appropriations Act, 2014 (Appropriations Act)<sup>2</sup> and the “Findings by Congress” in section 5404 of the Agricultural Act of 2014 (Farm Bill).<sup>3</sup> In adopting the interim final rule, the FCA explained the Appropriations Act provided that no funds available to the FCA during the current fiscal year may be used to “implement or enforce” the advisory voting rule and the Farm Bill directed the FCA to review its rules to ensure they reflect Congressional intent that a primary responsibility of the boards of directors of System institutions is to oversee compensation practices.

The FCA received two comments on the interim final rule. In its comment letter, the Farm Credit Council (Council), on behalf of its System members, supported the FCA deleting the non-binding, advisory vote provisions in response to the actions taken by Congress in both the Appropriations Act and the Farm Bill. In its comment letter, the Independent Community Bankers of America (ICBA) expressed the view that the FCA did not need to remove the advisory vote provisions in order to comply with recent Congressional action and suggested that FCA modify the rule through a re-proposal. The ICBA asserted that neither the Appropriations Act nor the Farm Bill require the FCA to withdraw the advisory vote provisions and that a re-proposal would pose no compliance conflict. The ICBA comment letter also mentioned several times the need to allow non-binding, advisory votes at System institutions.

After careful consideration of the comments, the FCA has determined that no changes to the interim final rule are warranted. FCA believes that further notice and comment rulemaking on this subject would be neither practical nor meaningful based on the aforementioned Congressional actions. We note, however, in response to the commenter that advisory votes are not

prohibited by this rule. System institutions may employ advisory votes of shareholders on a variety of topics.

Therefore, the FCA adopts as a final rule the interim final rule, which removed from parts 611, 620, and 630 the requirement for advisory voting. Specifically, the following non-binding advisory voting provisions are withdrawn:

- § 611.100(a), defining the term “advisory vote”;
- § 611.360, requiring policies and procedures for non-binding, advisory votes on senior officer compensation;
- § 611.410, addressing non-binding, advisory votes on senior officer compensation;
- § 620.5(a)(11), requiring disclosure of any advisory votes held during the reporting year at the institution;
- § 620.6(c)(6), requiring disclosure (adjacent to the compensation table) in the annual report of a stockholder’s right to petition for a non-binding, advisory vote on senior officer compensation; and
- § 630.20(i) (last sentence), requiring disclosure of any advisory votes held during the reporting year within the System.

All other regulatory provisions and changes resulting from the October 3, 2012 (77 FR 60582) rulemaking remain in effect. In addition, the interim final rule and this action close the rulemaking petition filed by the Council on December 4, 2012.<sup>4</sup>

#### 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 this final rule will not have a significant economic impact on a substantial 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.

<sup>1</sup> See 77 FR 60582 (10/03/2012). The rule was effective December 17, 2012, but non-binding, advisory votes on compensation increases of 15 percent or more were not required until 2015 (77 FR 76215, December 27, 2012).

<sup>2</sup> 113 Public Law 76, 128 Stat. 5 (H.R. 3547), signed by the President on January 17, 2014.

<sup>3</sup> 113 Public Law 79, 128 Stat. 649 (H.R. 2642), signed by the President on February 7, 2014.

<sup>4</sup> On December 4, 2012, the Council, on behalf of the System banks and associations, filed a petition requesting that the FCA repeal the advisory voting rule. Interested parties have the right to petition a Federal agency to issue, amend, or repeal regulations under 5 U.S.C. 553(e). The FCA published the petition in the **Federal Register** on February 19, 2013 (78 FR 11551), and invited comments.

**List of Subjects***12 CFR Part 611*

Agriculture, Banks, banking, Rural areas.

*12 CFR Part 620*

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

*12 CFR Part 630*

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

Accordingly, the interim rule amending 12 CFR parts 611, 620, and 630, which was published on March 31, 2014 (79 FR 17854), is adopted as a final rule without changes.

Dated: June 12, 2014.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

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**BUREAU OF CONSUMER FINANCIAL PROTECTION****12 CFR Part 1081**

[Docket No.: CFPB-2013-0030]

RIN 3170-AA29

**Rules of Practice for Issuance of Temporary Cease-and-Desist Orders**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Final rule.

**SUMMARY:** On September 26, 2013, 78 FR 59163, the Consumer Financial Protection Bureau (Bureau) published in the **Federal Register** an interim final rule establishing procedures for the issuance of a temporary cease-and-desist order (TCDO) pursuant to section 1053(c) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which requires the Bureau to prescribe rules establishing procedures for the conduct of adjudication proceedings. After reviewing and considering the single public comment offered on its interim final rule, the Bureau adopts the interim final rule without change.

**DATES:** This final rule takes effect on July 18, 2014.

**FOR FURTHER INFORMATION CONTACT:** John R. Coleman, Senior Counsel, Legal Division, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552; at (202) 435-7254.

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

On June 29, 2012, the Bureau published in the **Federal Register** the final Rules of Practice for Adjudication Proceedings pursuant to sections 1022(b)(1) and 1053(e) of the Dodd-Frank Act, 12 U.S.C. 5512(b)(1) & 5563(e).<sup>1</sup> That final rule, however, does not apply to the issuance of a TCDO pursuant to section 1053(c) of the Dodd-Frank Act.<sup>2</sup> The Bureau previously invited comments as to whether special rules governing such proceedings are necessary and, if so, what the rules should provide.<sup>3</sup> One commenter recommended that the Bureau promulgate rules governing temporary cease-and-desist proceedings initiated pursuant to section 1053(c) of the Dodd-Frank Act and pointed to the Federal Deposit Insurance Corporation's (FDIC) rules governing temporary cease-and-desist proceedings, 12 CFR 308.131, as an example of such rules.<sup>4</sup>

On September 26, 2013, 78 FR 59163, the Bureau published its interim final rule establishing procedures for the issuance of a temporary cease-and-desist order (TCDO) pursuant to section 1053(c) of the Dodd-Frank Act. In developing the interim final rule, the Bureau considered the procedures related to temporary cease-and-desist orders that are followed by other regulatory agencies, including the FDIC, the Securities and Exchange Commission, and the Office of the Comptroller of the Currency. The interim final rule most closely follows the FDIC's approach as codified in 12 CFR 308.131. The Bureau issued the interim final rule to clarify (1) the basis for the issuance of a TCDO; (2) the content, scope, and form of a TCDO; (3) the procedures governing the issuance of a TCDO and the remedies available to the Bureau in issuing a TCDO; and (4) the rights of persons subject to a TCDO.

The interim final rule described each section of the rule and explained the basis of the rule with reference to rules of other agencies as appropriate. After reviewing and considering the single public comment offered, the Bureau adopts the interim final rule without change.

**II. Legal Authority**

The Bureau promulgates this final rule pursuant to its authority to implement section 1053 of the Dodd-

Frank Act, 12 U.S.C. 5563(e), as well as its general rulemaking authority to promulgate rules necessary or appropriate to carry out the Federal consumer financial laws, 12 U.S.C. 5512(b)(1).

**III. Public Comment on the Interim Final Rule**

In response to the interim final rule, the Bureau received one comment letter that did not contain any specific comments or suggestions pertaining to the interim final rule. Accordingly, the Bureau is adopting the interim final rule without change.

**IV. Section 1022(b) Provisions**

In developing the interim final and final rules, the Bureau has considered the potential benefits, costs, and impacts and has consulted or offered to consult with the prudential regulators, the Department of Housing and Urban Development, and the Federal Trade Commission, including with regard to consistency with any prudential, market, or systemic objectives administered by such agencies.<sup>5</sup>

The Dodd-Frank Act requires the Bureau to prescribe rules establishing such procedures as may be necessary to carry out section 1053 of the Act, which provides for temporary cease-and-orders in subsection (c). The final rule itself does not impose significant costs upon covered persons, but, consistent with section 1053, provides a straightforward and efficient process for the issuance of a temporary cease-and-desist order, and a direct route to judicial review.

The final rule has no unique impact on insured depository institutions or insured credit unions with \$10 billion or less in assets described in section 1026(a) of the Dodd-Frank Act, nor does it have a unique impact on rural consumers.

**V. Regulatory Requirements**

As the Bureau noted in publishing the interim final rule, this rule relates solely

<sup>5</sup> Section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) directs the Bureau to consult with the appropriate prudential regulators or other Federal agencies regarding consistency with objectives those agencies administer. The manner and extent to which these provisions apply to a rulemaking of this kind, which establishes Bureau procedures and imposes no standards of conduct, is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analyses and consultations described in those provisions of the Dodd-Frank Act.

<sup>1</sup> See 77 FR 39058 (June 29, 2012) (codified at 12 CFR Part 1081).

<sup>2</sup> *Id.* at 39058.

<sup>3</sup> See 76 FR 45338, 45338 (July 28, 2011).

<sup>4</sup> See 77 FR 39058, 39060 (June 29, 2012).