

[6705-01-P]

FARM CREDIT ADMINISTRATION

12 CFR Part 620

RIN 3052-AD02

Disclosure to Shareholders; Pension Benefit Disclosures

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we or our) amends our regulations related to Farm Credit System (System) bank and association disclosures to shareholders and investors of senior officer compensation in the Summary Compensation Table (Table). Under the final rule, System banks and associations are not required to report in the Table the compensation of employees who are not senior officers and who would not otherwise be considered "highly compensated employees" but for the payments related to, or change(s) in value of, the employees' qualified pension plans, provided that the plans were available to all employees on the same basis at the time the employees joined the plans.

DATES: Effective Date: The regulation will be effective 30 days after publication in the Federal Register during which time either one or both Houses of Congress are in session.

We will publish a notice of the effective date in the Federal Register.

Compliance Date: System banks and associations must comply with the final rule for compensation reported in the Table for the fiscal year ending 2015, and may implement the final rule retroactively for the fiscal years ended 2014, 2013, and 2012. However, retroactive application is not required, and we would expect footnote disclosure of the change in calculation for the fiscal years to which the final rule was applied.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this rule is to improve the quality of disclosure information shareholders receive on senior officer and highly compensated employee compensation.

II. Background

Congress explained in section 514 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act)¹ that disclosures of financial information and compensation paid to senior officers, among other disclosures, provide System shareholders with information necessary to better manage their institution and make informed decisions regarding the operation of their institution. In addition, the FCA Board declared its commitment to support the cooperative business model and structure by encouraging member-borrowers to participate in the management, control, and ownership of their institutions.² Providing member-borrowers with transparent and complete disclosures regarding the compensation of senior officers and certain other highly compensated employees is essential to fostering an environment wherein member-borrowers can do so effectively.

With this as one of our objectives, we issued a final rule on October 3, 2012, that enhanced disclosure of senior officer compensation and other related topics. Section 620.6(c)(2)(i) requires System Banks and associations to disclose senior officer compensation for the last 3 fiscal years. For purposes of this reporting requirement only,

¹ Public Law 102-552, 106 Stat. 4131 (1992).

² See FCA Policy Statement "Cooperative Operating Philosophy - Serving the Members of Farm Credit System Institutions" (FCA-PS-80), dated October 14, 2010.

§ 620.6(c)(2)(i) extends the regulatory definition of "senior officers" to include any employee whose compensation level was among the five highest paid during the reporting period. The intent of this extension was to ensure that System banks and associations provide shareholders with necessary compensation information on highly compensated employees even though they did not fall within the regulatory definition of "senior officer." The intent was not to provide compensation information on employees who would only reach the "highly compensated" threshold solely because of payments related to or change(s) in the value of a qualified pension plan that was available to all employees on the same basis at the time they joined the plan. We believe that application of the existing rule could create such an unintended effect and reduce the effectiveness of the disclosure.

Therefore, on November 17, 2014, we proposed amending existing § 620.6(c)(2)(i) to exclude reporting employees' compensation in the Table if the employees were not senior officers and would be considered highly compensated employees solely because of payments related to or change(s) in value of the employees' qualified pension plans provided that the plans were available to all

employees on the same basis at the time the employee joined the plan.

III. Comments and Our Response

The comment period for the proposed rule closed on December 17, 2014 (79 FR 68376, Nov. 17, 2014). We received four comment letters on our proposed rule: one comment letter from the Independent Community Bankers of America (ICBA), responding on behalf of its members; one comment from a Farm Credit bank (FCB); one comment letter from a System association; and one comment letter from the Farm Credit Council, responding on behalf of its members. Two commenters supported the proposed rule, one supported it with suggested changes, and one opposed the rule. In the discussion below, we address the significant comments. After careful consideration of the comments, the proposed rule is finalized without any changes.

A. Transparency and Quality of Disclosure

The ICBA opposes the proposed rule and urges the FCA to withdraw the proposed rule or adopt the ICBA's recommendations. The ICBA asserts that the proposed rule reduces transparency of pension disclosures to System shareholders and seeks to allow System institutions to hide significant enhancements to pensions and other compensation arrangements by not disclosing them. We agree with the

ICBA that employee compensation should be reported in this disclosure item if the employee's compensation reaches the highly compensated employee threshold due to large or significant bonuses and other such payments. As we explained in the proposed rule, however, there would be no reporting requirement for this disclosure item solely for employees who are not senior officers and who would not otherwise be considered "highly compensated employees" but for payments related to or change(s) in the value of the employee's qualified pension plan. Also, the qualified plan must have been available to all employees on the same basis at the time the employee joined the plan. Thus, the proposed rule did not seek to change the current reporting requirement regarding payments such as those concerning the ICBA. Rather, if any such payout to the employee or change(s) in value to their plan is due to a benefit plan that is not a qualified plan and the plan was not offered to all employees on the same basis when the employee joined the plan, then the payout or change(s) in value would be included in determining whether the employee's compensation reached the five highest paid threshold. Thus, we believe that the proposed rule increases the effectiveness and transparency of the disclosure and better achieves the original intent of the rule, which we did not change.

The ICBA also expressed concern that large one-time lump sum payments made to numerous employees at the same time from a qualified pension plan that was available to all employees on the same basis at the time they joined the plan could represent significant cash outlays for the institution during a reporting period. The ICBA believes that System institution owners should be made aware of these payouts. We agree with the ICBA and would expect that such payouts be included in the financial statements or notes thereto or discussed in the management's discussion and analysis section of the annual report if material to the institution's financial condition and results of operations. As discussed above, the intent of this specific disclosure item was not and is not to include such payments in the calculation of the top five highest paid employees.

In its comment letter, the ICBA also makes a number of recommendations, such as to disclose all employees' compensation if that compensation exceeds the average income of the citizens in the surrounding geographic area, or to disclose the compensation for the twenty-five (25) highest paid employees for larger System institutions. We believe these recommendations go beyond the scope of the proposed rule and cannot be addressed in this rulemaking.

B. Explanatory Notes and Method of Compliance

The FCB, the Farm Credit Council, and the System association supported our proposed rule in their comment letters. Furthermore, they expressed that our proposal improves the disclosure language and aligns it with the intended purpose. The FCB also offered two constructive suggestions. The first suggestion was to allow System institutions affected by our proposed rule to disclose in a note to the Table that the calculation formula changed and describe the reason for the change and its effects. Also, because data is reported in the Table for 3 years, the FCB's second suggestion was that each System institution be allowed to choose the method of compliance that works best for that institution's situation. We agree with the suggestion regarding explanatory notes, but do not believe a change to our proposal is necessary. Such disclosure is not prohibited so long as the disclosure is not misleading, incomplete or inaccurate. Whether a System institution opts to restate one or all of the prior years' disclosures or to report the data prospectively beginning for fiscal year ending 2015, we would expect that any change in the method of calculations versus prior years' disclosures be described in a footnote to the Table to the extent needed so that the reported data will not be misleading or

incomplete. Therefore, we agree with the FCB's suggestion to the extent that the 3-year reporting period raises issues for affected institutions, but we do not believe that a change to the regulation language is necessary. We have addressed this issue in the compliance date information.

IV. 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 final rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit 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, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 620

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

For the reasons stated in the preamble, part 620 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

1. The authority citation for part 620 continues to read as follows:

Authority: Secs. 4.3, 4.3A, 4.19, 5.9, 5.19 of the Farm Credit Act (12 U.S.C. 2154, 2154a, 2207, 2243, 2252, 2254); sec. 424 of Pub. L. 100-233, 101 Stat. 1568, 1656, sec. 514 of Pub. L. 102-552, 106 Stat. 4102.

2. Section 620.6(c)(2)(i) is revised to read as follows:

§ 620.6 Disclosures in the annual report to shareholders relating to directors and senior officers.

* * * * *

(c) * * *

(2) * * *

(i) If applicable, when any employee who is not a senior officer has annual compensation at a level that is among the five highest paid by the institution during the reporting period, include the highly compensated employee(s) in the aggregate number and amount of compensation reported in the Compensation Table. However, exclude any such employee from the Compensation Table if the employee would be considered highly compensated solely because of payments related to or change(s) in value of the employee's qualified pension plan provided that the plan

was available to all similarly situated employees on the same basis at the time the employee joined the plan.

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DATE: February 19, 2015

Mary Alice Donner,
Acting Secretary,
Farm Credit Administration Board.

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