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December 17, 2014

Mr. Barry F. Mardock
Deputy Director, Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

Re: RIN 3052-ADO2; Proposed rule–Disclosure to Shareholders; Pension Benefit
Disclosures; Federal Register, Vol. 79, No. 221, Monday, Nov. 17, 2014

Dear Mr. Mardock / FCA Reviewers:

ICBA is writing on behalf of the nation's 7,000 community banks to express our views on the Farm Credit Administration's (FCA, agency) proposal to amend and weaken current regulations governing pension disclosures to member borrowers of FCS institutions (FCS, System).

FCA's Stated Purpose for Reducing Transparency of Pension Disclosures to Shareholders

FCA's proposed rule (PR, proposal) would amend current regulations by reducing transparency related to Farm Credit System bank and association disclosures to shareholders and investors. Under FCA's scheme, System institutions would not provide disclosures for any employee who 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.

ICBA's Position

ICBA opposes FCA's proposal for numerous reasons. First, the proposal reduces transparency to shareholders and owners of the FCS. This is inappropriate for a cooperatively owned institution. Owners of the FCS should be provided information that discloses large bonuses and payments made to employees, significant increases in an employee's pension benefits or one-time payouts whether or not they are senior officers and whether or not these changes in compensation are one-time events should be disclosed.

Disclosure of a lump sum pension payment would also provide greater information to the member owners of the System as to the level of pension benefits being provided to FCS employees. In fact, the owners of the System should especially be made aware of significant or unusual bonuses in general and significant increases to pension plans or lump sum payments and be provided an appropriate explanation of these benefits and payments.

FCA's proposal, by contrast, seeks to allow management of FCS institutions to hide significant enhancements to pensions and perhaps other compensation arrangements by simply not disclosing them. The PR states that it would, in section 620.6(c)(2)(i), extend the regulatory definition of "senior officers" to include any employee whose compensation level was among the five highest paid during the reporting period. FCA explains 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 such employees did not necessarily fall within the regulatory definition of "senior officer" during the reporting period.

ICBA believes this provision should not be limited only to the "top five" highest paid employees, particularly since very large FCS institutions may have many very highly compensated employees. Larger FCS institutions should disclose the compensation packages of the twenty-five highest paid employees during a particular reporting period including those who received large bonuses or enhanced pension arrangements.

In addition, all employees whose compensation, pension and pay packages exceed a certain level, based for example on the average income of the citizens in the surrounding geographic area, should be disclosed. There is no rationale for subjectively requiring disclosure of only the top five highest paid employees' compensation packages.

FCA's proposal also states, "the intent of this extension was not to have System banks and associations provide shareholders with compensation information regarding employees who would only reach the "highly compensated employee" threshold solely because of payments related to or change(s) in 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. For instance, the existing requirement could result in a mid-level employee being considered a top five highest paid employee and thus being considered a "highly compensated employee" solely because of a one-time or lump sum pension payment that occurred at the end of their career.

ICBA believes that a mid-level employee should be considered as a highly paid employee when the circumstances warrant and for that particular reporting period because in actuality, they are for that period. This disclosure should indeed pertain to mid-level employees who receive a one-time lump sum pension payment at the end of their career. The owners of the FCS should be provided this information since they are supposedly the "owners" of the System.

FCA adds, “Such a result would necessarily cause an otherwise highly compensated employee who is not a “senior officer” to fall out of the top five highest compensated employees for that reporting period, and thus, to not be included in the disclosure required under Sec. 620.6(c)(2)(i).”

FCA’s argument that the “top five highest paid employees” would not be considered a “highly compensated employee” without this proposal is disingenuous. The disclosure of compensation for a mid-level employee receiving a significant bonus or enhanced pension arrangement or a lump sum benefit would not need to prevent any other highly paid employee’s compensation status from being disclosed. The policy should simply require a mid-level employee’s significant or one-time payment, bonus or pension benefit to not prevent the disclosure of other highly paid employees’ compensation packages. Limiting the disclosure of compensation to the top five highest paid employees is totally inappropriate, particularly because many FCS institutions have become very large entities with several billions of dollars in assets and with staffs that have grown increasingly large.

Additionally, there could be only a few dollars difference between the fifth highest paid employee and the sixth, seventh or even tenth highest paid employee. Thus, reliance on a “top five” most highly paid scale makes little sense. A footnote in the disclosure could explain why an employee is at a higher compensation level for that reporting period.

Finally, FCA suggests this proposal is reasonable because it would be based on “a qualified pension plan that was available to all employees on the same basis at the time they joined the plan.” However, if the pension plan would allow numerous employees a one-time lump sum payment at the same time, this could represent significant outlays of the FCS institution’s funds during a reporting period and FCS owners should most definitely be made aware that numerous employees will be granted large lump-sum payouts or other significant compensation large enough to rank the employee(s) in a “top five highly compensated employee” position.

On the other hand, if the amount of the significant payout is not ultimately granted to “all employees on the same basis” but is unique to a certain individual(s), then FCS owners should be made aware the individual(s) will be receiving significant payouts not available to other employees with similar job requirements.

Conclusion

FCA curiously claims the agency’s proposal “would improve the quality of the disclosure required under existing Sec. 620.6(c)(2)(i) by eliminating the potential for unintended results.” But FCA’s rationale is weak and there are better options to achieve the stated goals while ensuring transparency, such as adopting ICBA’s recommendations.

FCA states, “Providing member-borrowers with **transparent and complete disclosures** (emphasis added) regarding the compensation of senior officers and certain other highly compensated employees is essential . . .”. Yet, this proposal does exactly the opposite.

The proposal seeks to avoid disclosing end-of-career payouts even in excessive amounts to certain individuals, thus robbing FCS owners of information they should be entitled to receive.

The PR is a diminution of transparency, apparently designed to cater to the whims of FCS management. Further, the regulation could be used to allow fraud in certain associations without disclosure. An FCS association recently disclosed that significant fraud had occurred at the institution and that their financial reports were unreliable.

ICBA urges FCA to withdraw this proposal or adopt ICBA's recommendations made herein. Thank you for considering these comments. Should you wish to discuss this letter and the attachment and questions further, please contact Mark Scanlan at 202-659-8111 (mark.scanlan@icba.org).

Sincerely,

Mark Scanlan

Mark Scanlan
Senior Vice President, Agriculture and Rural Policy