

# Proposed Rules

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Wednesday, May 25, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 73

[NRC-2011-0014; NRC-2011-0015; NRC-2011-0017; NRC-2011-0018]

RIN 3150-AI49

### Public Meeting To Discuss the Proposed Rule on Enhanced Weapons, Firearms Background Checks, and Security Event Notifications

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Public meeting.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is holding a public

meeting on June 1, 2011, to provide an opportunity for the NRC and the public to discuss the proposed enhanced weapons rule, the two draft regulatory guides, and the draft weapons safety assessment documents.

**DATES:** Wednesday, June 1, 2011, 8:30 a.m. to 5 p.m. (Eastern Daylight Time).

**ADDRESSES:** Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Beall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-000; Telephone: 301-415-3874; E-mail: Robert.Beall@nrc.gov.

**SUPPLEMENTARY INFORMATION:** The main purpose of this meeting is to facilitate external stakeholder understanding of the proposed rule and the supporting documents to enable submission of well-informed comments. Representatives from the NRC, FBI, and

ATF will discuss and answer questions on the content of the proposed rule and guidance documents during the meeting.

This meeting is not a forum to negotiate the content of the draft proposed rule or guidance documents. No formal comments on the proposed enhanced weapons rule or the draft guidance documents will be collected, and no requests for an extension of the public comment period will be entertained at this meeting. Comments on the proposed rule and/or guidance documents and requests for extensions of the comment periods should be submitted to the NRC according to the instructions in each of the draft rulemaking and/or guidance documents.

### Availability of Documents

The following table indicates the proposed rule and related documents that are available to the public and how they may be obtained.

Document	PDR	Web	NRC Library (ADAMS)
Proposed Rule (76 FR 6200; February 3, 2011) [NRC-2011-0018]	X	X	ML082740160
Draft Regulatory Guide DG-5019 (72 FR 37058, July 6, 2007) [NRC 2011-0014]	X	X	ML100830413
Draft Regulatory Guide DG 5020 (76 FR 6086, February 3, 2011) [NRC 2011-0015]	X	X	ML100321956
Draft Weapons Safety Assessment (76 FR 6087, February 3, 2011) [NRC 2011-0017]	X	X	ML103190273
Agenda for June 1, 2011 Meeting	X	X	ML111300017

You can access publicly available information related to these documents using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

- *NRC's Agencywide Documents Access and Management System (ADAMS):*

Publicly available documents created or received at the NRC are available Online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, or

301-415-4737, or by e-mail to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov).

- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this proposed rulemaking can be found at <http://www.regulations.gov> by searching on Docket ID: NRC-2011-0018.

### Availability of Services

The NRC provides reasonable accommodations to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this meeting (e.g., sign language), or need this meeting notice or other information from the meeting in another format, please notify the NRC meeting contact, Robert H. Beall at 301-415-3874 by May 25, 2011, so arrangements can be made. All expected attendees must register with the NRC meeting contact by close of business on May 25, 2011. The NRC is located across the street from the White Flint Metro

Station. Visitor parking near the NRC buildings is limited.

Dated at Rockville, Maryland, this 20th day of May 2011.

For the Nuclear Regulatory Commission.

**Shana R. Helton,**

*Chief, Rulemaking Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011-12959 Filed 5-24-11; 8:45 am]

**BILLING CODE 7590-01-P**

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 618

RIN 3052-AC66

### General Provisions; Operating and Strategic Business Planning

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA, we or us) proposes to amend its regulation requiring the board of directors of each Farm Credit System (FCS or System) institution to adopt an operational and strategic business plan (business plan) to include, among other things, an emphasis on diversity and inclusion. The proposed amendment would require each plan to contain a human capital plan that includes strategies and actions to achieve diversity and inclusion within the institution's workforce, management and governance structure, and an assessment of the progress the institution has made in accomplishing these strategies and actions; assesses the strengths and weaknesses of the institution's workforce, management and governance structure; and describes the institution's workforce and management succession programs. In addition, each plan would be required to include a marketing plan to, among other things, further the objective that the FCS be responsive to the credit needs of all eligible and creditworthy agricultural producers and other eligible persons with specific attention to diversity and inclusion.

**DATES:** You may send comments on or before July 25, 2011.

**ADDRESSES:** We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).
- *FCA Web site:* <http://www.fca.gov>. Select "Public Commenters," then "Public Comments" and follow the directions for "Submitting a Comment."
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Acting Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments" and follow the directions for "Reading Submitted

Public Comments." We will show your comments as submitted but, for technical reasons, we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

**FOR FURTHER INFORMATION CONTACT:**

Jacqueline R. Melvin, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TTY (703) 883-4434, or

Jennifer A. Cohn, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

**SUPPLEMENTARY INFORMATION:**

**I. Objectives**

The objectives of this proposed amendment are to:

- Ensure that each System institution understands that promoting diversity and inclusion is critical to the institution's long-term success;
- Internalize diversity and inclusion into the corporate culture of each System institution;
- Ensure that each System institution develops strategies and actions to achieve diversity and inclusion within its workforce, management and governance structure, and assesses progress towards accomplishing these strategies and actions; assesses the strengths and weaknesses of its current workforce, management and governance structure; and considers succession planning; and
- Ensure that each System institution considers how it will further the objective of being responsive to the credit needs of all eligible and creditworthy agricultural producers and other eligible persons with specific attention to diversity and inclusion.

**II. Importance of Human Capital and Marketing Plans**

Planning is critical to the success of any organization, including FCS institutions.<sup>1</sup> As stated in EM-515 of FCA's Examination Manual (EM), "In its simplest terms, planning is the process of determining: (1) [W]here the institution is; (2) where it would like to be; and (3) how it plans to get there."<sup>2</sup>

<sup>1</sup> The application of the amendment to § 618.8440 does not apply to Farmer Mac. FCA has a provision in § 652.60 that applies to Farmer Mac's business planning requirements.

<sup>2</sup> Our EM is currently in the revision process. Accordingly, any citations to or quotes from the EM

The EM recognizes several benefits of effective planning, including that it provides a better approach to decision-making because it minimizes the element of surprise and maximizes the ability to manage change effectively and provides a basis for monitoring and measuring performance. The proposed amendment would require each institution to include a human capital plan and marketing plan as a part of its operational and strategic business plan required under § 618.8440.

We recognize that many institutions are developing human capital and marketing plans, either as part of formulating their business plans or separately, but some institutions may not have a formalized process for developing human capital (including succession) or marketing plans. Formally incorporating the human capital and marketing plan requirements into an institution's business plan recognizes the importance of planning for the future of the institution.

**III. Embracing Diversity and Inclusion Is Vital to the Future of the FCS**

One of the key elements we are proposing—for both the human capital and the marketing plan—is the element of diversity and inclusion. Institutions would have to consider diversity and inclusion within their workforce, management and leadership as well as in their outreach to all eligible and creditworthy persons within their territories.

The United States—including its farming communities and rural areas—is becoming increasingly diverse. The pool of eligible and creditworthy borrowers includes men and women from a variety of racial and ethnic backgrounds. It includes young farmers, as well as older ones. It consists of producers with small, part-time operations, as well as producers with thousands of acres and millions of dollars in gross income. It also consists of producers who operate within local food systems, which typically involve small farmers producing heterogeneous organic or specialty crops, and short supply chains in which farmers also perform marketing functions, including storage, packaging, transportation, distribution and advertising. According to the 2007 U.S. Census of Agriculture, most farms that sell directly to consumers are small farms with less than \$50,000 in total farm sales and are

are subject to change. However, we do not expect that we will retract any of the ideas we express on planning.

located in or near metropolitan counties.<sup>3</sup>

The 2007 Census of Agriculture found that of the 2.2 million farms in the United States, 370,000 had a principal operator—the person who is in charge of day-to-day decisions—that was not a white male. Between 2002 and 2007, farm operators who were women, American Indian, Asian, Black and Hispanic/Latino increased.<sup>4</sup> Clearly, agriculture in America is becoming more diverse.

If the FCS is to continue as a strong and vibrant supporter of agriculture in America, it must develop specific marketing plans to reach all potential borrowers, including those in market segments that may currently be underserved. In addition, in order to effectively reach and serve these potential borrowers, each institution will have to ensure that its staff and boards of directors reflect the diversity of its chartered territory. Unless System institutions commit to embracing diversity and inclusion in lending, employment and governance, they risk losing market share and relevance in the marketplace.

In addition to this “business case” for diversity and inclusion, section 1.1(b) of the Farm Credit Act of 1971, as amended (Act), requires the System to be inclusionary in its lending. Section 1.1(b) provides that the System was established as a “permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit. \* \* \*” As a Government-sponsored enterprise (GSE), the System has a statutory obligation to serve all types of eligible and creditworthy persons.<sup>5</sup>

#### IV. Current Efforts of the FCS To Advance Diversity and Inclusion

Many System institutions have already taken steps in the area of diversity and inclusion. Some of these steps are explicitly designed to increase

<sup>3</sup> The information in this paragraph concerning local food systems can be found at [http://www.ers.usda.gov/Publications/ERR97/ERR97\\_ReportSummary.pdf](http://www.ers.usda.gov/Publications/ERR97/ERR97_ReportSummary.pdf).

<sup>4</sup> The information in this paragraph can be found at <http://www.agcensus.usda.gov>.

<sup>5</sup> Congress has expressly imposed diversity and inclusion requirements on the housing GSEs. The Housing and Economic Recovery Act of 2008 requires the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal Home Loan Banks to promote diversity and the inclusion of women and minorities in all activities including, but not limited to, their management, employment and contracting. Public Law 110-289, 122 Stat. 2643, section 1116. The Federal Housing Finance Agency recently adopted a regulation implementing this requirement. 75 FR 81395 (Dec. 28, 2010).

diversity and inclusion, while others may have enhanced diversity and inclusion as a consequence. These measures are a good foundation for the planning that this proposed amendment would require.

#### A. Young, Beginning, and Small (YBS) Farmer Activities

In 1980, Congress added section 4.19 to the Act. This provision requires each System association to prepare a program for furnishing sound and constructive credit and related services to YBS farmers and ranchers.<sup>6</sup> Because YBS farmers and ranchers can include women and/or members of minority, socially disadvantaged, and other traditionally underserved groups, System YBS programs may often include service to these groups as part of the overall YBS population. Although the programs may not have the explicit objective of advancing customer diversity and inclusion, many of the program activities institutions engage in for YBS education, marketing and outreach could also be catalysts for diversity and inclusion.

#### B. Section 4.38 of the Act

Section 4.38 of the Act requires all System institutions with more than 20 employees to “establish and maintain an affirmative action program that applies the affirmative action standards otherwise applied to contractors of the Federal government.” As stated in EM-530:

In general, an acceptable [affirmative action program (AAP)] plan must include an analysis of areas where the institution is deficient in the utilization of minority groups and women. The [AAP] plan also should set goals and timetables to which the institution's good faith efforts must be directed to correct deficiencies in utilizing minorities and women at all levels and in all segments of its work force.

This AAP plan requirement yields information about each institution's utilization of women and minorities in its workforce. It does not, address the larger issues of diversity and inclusion, but it does provide a sound basis and foundation for a comprehensive human capital plan.

#### C. FCS Diversity Workgroup

The System established a Diversity Workgroup (Workgroup) in 2006 to increase diversity awareness, promote understanding of inclusiveness, and serve as a diversity resource within the System. The Workgroup recognizes the business case for diversity and

inclusion; the Workgroup's belief is that fulfillment of its mission will assist the System in being more responsive to marketplace needs, strengthen its public position and contribute to enhanced workplace engagement. Since its founding, the Workgroup has sponsored a diversity conference, several training workshops, speakers, outreach and communications; furthermore, it is in the process of developing a longer-term work plan. The Workgroup has publicized the successful bottom line business results that institutions that embrace diversity and inclusion have achieved. We encourage all System institutions to support and work closely with the Workgroup to achieve a more inclusive workforce and borrower base.

#### D. Current Diversity and Inclusion Activities of Institutions

Some System institutions are already taking significant actions to assure their future success by reaching out to increase the diversity of their employees and customers. They recognize that a cultural and workforce transformation is required to grow their lending. Institutions have taken steps such as the following:

- Adding minority staffing to reflect the demographics of their territories, recognizing that new customers want to do business with lenders that understand their language and culture;
- Producing sales materials and providing financial and business training in various languages spoken in their chartered territories;
- Marketing through ethnic business and community organizations;
- Marketing to Hispanic/Latino communities via Web sites that have information translated into Spanish;
- Conducting diversity and inclusion education and training sessions for their directors, managers and employees;
- Establishing diversity and inclusion councils;
- Recruiting new employees through female and minority organizations;
- Establishing mentoring relationships with new employees, particularly women and minorities from different ethnic groups and backgrounds;
- Creating career tracks to ensure that all employees have the opportunity to ascend into positions of management and leadership;
- Partnering with minority youth development organizations; and
- Closely analyzing the demographics of their marketplace to understand that outreach to minority and other underserved producers can lead to tremendous growth.

<sup>6</sup> FCA's implementing regulation is at 12 CFR 614.4165. We provide guidance in FCA Bookletter BL-040.

According to institutions that have taken actions such as these, material increases in loan volume, net earnings, return on equity and assets, operating efficiency, cost efficiency and staff retention have resulted.

With this proposed amendment, we believe that all System institutions should take actions such as those listed above. The United States is becoming more diverse, and any lending institution that fails to include all potential customers in its outreach runs a serious risk, in the long run, of not being a vital source of financing in America.

## V. What is diversity and inclusion?

Diversity should not be viewed as a list of demographic criteria. Rather, diversity is best thought of as the inclusion of *all* individuals of varying race, ethnicity, sexual orientation, age, disability, social class, religious and ideological beliefs. Where a particular institution needs to focus its attention depends on the nature of its territory and what groups have traditionally been underrepresented or underserved.

Diversity and inclusion in employment focus on using the talents of people of different backgrounds, experiences, and perspectives to improve the workforce environment and productivity. These differences have a strong influence on how individuals approach challenges and solve problems, make decisions and identify opportunities.

Diversity and inclusion in lending focus on looking beyond the traditional customer base to ensure that all eligible and creditworthy persons have access to credit and related financial services. Examples of non-traditional customers may include women and minorities who operate traditional farm businesses as well as those who operate within local food systems.

Diverse employees and/or effective outreach and marketing programs could aid the System in reaching new customers. For example, diverse employees may more effectively reach diverse borrowers, thereby widening the pool of potential customers. Moreover, diverse employees bring different perspectives to an organization and may develop more creative and innovative products and services, which can also increase the customer base.

## VI. Overcoming Barriers to Advancing Diversity and Inclusion

Many different kinds of barriers to achieving diversity and inclusion may exist. Some may not fully appreciate the business opportunity that diversity and inclusion can provide. Others may

recognize the opportunity but may not know what steps to take to further diversity and inclusion.

In Section IV. above, we discuss specific steps institutions have taken in furtherance of diversity and inclusion. In Section VII. below, we discuss the requirements of the proposed amendment that we believe will advance diversity and inclusion. In this section, we provide more conceptual suggestions for bringing about the institutional cultural change that is necessary to achieve diversity and inclusion.

### A. Include Diversity and Inclusion in the Mission Statement

Including diversity and inclusion in an institution's mission statement is a key element in informing stakeholders about the institution's business philosophy and how it will operate.

As stated by a leading diversity Web site, although corporate mission statements may seem simple on the surface, they are an important clue as to how a company operates and what its core values are. "Given the increasing diversity of the American [workforce] and the multicultural consumer base, companies that express a commitment to [workforce], marketplace and supplier diversity and inclusion will attract the most talented employees and gain loyal investors and customers."<sup>7</sup>

A company should use its mission statement to develop trust among its varied constituencies of employees, customers, shareholders and other stakeholders—suppliers, members of the community and anyone else who has an interest in or is affected by the company's operations and policies. References in a mission statement to "inclusive," "diverse," "nondiscrimination," "integrity" and "trust" may communicate that the company is committed to respecting people and adhering to its own values.

Diversity and inclusion in the mission statement are essential to communicating an institution's commitment to these principles; however, it will not, on its own, be sufficient in creating a diverse and inclusive environment in the institution's culture. The suggestions that follow provide ideas for how institutions can instill diversity and inclusion into their culture.

<sup>7</sup> Diversity, Inc.'s fifth edition of *The Business Case for Diversity* dated April 2, 2006. Retrieved online at <http://diversityinc.com/content/1757/article/208/>.

### B. Promote Inclusiveness, Not Just Diversity

Increasing diversity—recruiting from underrepresented groups—is only part of what is necessary to create an organization in which all individuals have a sense of value. An employer's efforts must also be focused on inclusiveness, which involves intentional, ongoing engagement of diversity and inclusion within organizations, removal of hidden barriers and recognition of unconscious bias. Inclusiveness is not just about numbers; it is also about creating an inclusive organizational culture.

Members of majority groups may feel excluded from diversity and inclusion initiatives because they feel like those initiatives have nothing to do with them. Or they may even feel threatened by a change in the status quo. If this is the case, diversity and inclusion will not occur.

Members of the majority group, particularly those in influential or leadership positions, must be part of making the workforce reflect the demographics of their market segment (or segmentation). If the majority group decides that change must happen, it will happen quickly. Moreover, this group's hands-on involvement will send a powerful message to the rest of the organization about the importance of diversity and inclusion.<sup>8</sup>

### C. Make Diversity and Inclusion Part of the Corporate Culture

The boards of directors, chief executive officers, and senior management have the authority to create a corporate culture that is reflective of the demography of the constituents working and doing business in the institution's territory. Establishing diversity and inclusion at the highest level of the organization is only the beginning of a successful program. By continuously reinforcing diversity and inclusion initiatives and holding management accountable, the institution can create an environment of inclusion and acceptance.

## VII. The Proposed Amendments

The proposed amendments to our regulations would require each institution to adopt a human capital plan—a plan that would strategically address diversity and inclusion as well as other specified matters—as part of its business plan. The regulation would

<sup>8</sup> See, *Practical Steps for Engaging White Men in Diversity and Inclusiveness Efforts*. Retrieved online at [http://www.centerforlegalinclusiveness.org/clientuploads/NALP%20September%202010\\_Nalty.pdf](http://www.centerforlegalinclusiveness.org/clientuploads/NALP%20September%202010_Nalty.pdf).

also require each institution to adopt a marketing plan that assesses how the institution will further the Act's objective that the System be responsive to the credit needs of all types of agricultural producers having a basis for credit. Both of these plans would have to be included in the operational and strategic business plan required under § 618.8440 of our regulations.

Before we discuss the specific requirements of the proposed amendments, we want to reiterate our views of diversity and inclusion. Diversity is best thought of as the inclusion of *all* individuals of varying race, ethnicity, sexual orientation, age, disability, social class, religious and ideological beliefs, rather than simply as a list of demographic criteria. Where a particular institution needs to focus its attention depends on the nature of its territory and what groups have traditionally been underrepresented or underserved.

#### A. Section 618.8440(b)(7)—Human Capital Plan

Proposed § 618.8440(b)(7) would require institutions to include a human capital plan in their operational and strategic business plan.

Proposed § 618.8440(b)(7)(i) would require the human capital plan to include strategies and actions to achieve diversity and inclusion within the institution's workforce, management and governance structure and an assessment of the progress the institution has made towards accomplishing these strategies and actions.

Proposed § 618.8440(b)(7)(ii) would require the human capital plan to describe the institution's current workforce, management and governance structure and to assess their strengths and weaknesses. We believe such an assessment is a prudent human resources management practice that every employer should engage in to ensure long-term success. We expect that institutions are already undertaking such assessments.

Proposed § 618.8440(b)(7)(iii) would require the human capital plan to describe the institution's workforce and management succession programs. We believe that prudent succession planning is necessary to ensure the long-term success of an institution.

These requirements would complement the guidance that has long been provided in FCA's EM-530, which states that a sound human resources management plan must address the areas in which an institution will grow, decline or change as a result of alterations to the institution's mission

and function and how such alterations will affect staffing needs. Management succession plans should address levels ranging from middle management to the chief executive officer. The succession plan should be in writing and should include strategies for preparing candidates for succession.

This proposed regulation would not specify the content of succession plans, but it would require that the succession planning be described in writing as part of an institution's human capital plan. We would continue to use our examination function to ensure that the succession plan is adequate.

We discussed above many of the strategies an institution could employ to achieve diversity and inclusion in its workforce, including its management. There are many resources that institutions can use to learn more about how to advance diversity and inclusion in their workplaces. We encourage all institutions to take advantage of these resources.

We also want to draw attention to FCA Bookletter BL-009,<sup>9</sup> which addresses the authority of Farm Credit banks and associations to appoint directors. In BL-009, we stated that bank and association boards of directors may appoint directors—both outside directors and “other appointed directors” (stockholders who are appointed)—for specific public policy purposes, such as facilitating diversity. We encourage all institutions to consider appointing directors for this purpose when feasible.<sup>10</sup>

#### B. Section 618.8440(b)(8)—Marketing Plan

Proposed § 618.8440(b)(8) would require each institution to include a marketing plan in its operational and strategic business plan. The marketing plan would have to include specific steps the institution will take to further the objective of the Act, set forth in section 1.1(b), that the System be responsive to the credit needs of *all* types of agricultural producers having a basis for credit. The marketing plan would have to include, at a minimum, the following:

<sup>9</sup> Dated December 15, 2006.

<sup>10</sup> We also note that § 611.325(d)(1) of FCA regulations directs institution nominating committees, which submit slates of eligible borrowers wishing to run for stockholder-elected director positions, to “endeavor to ensure representation from all areas of [an institution's territory] and as nearly as possible, all types of agriculture practiced within the territory.” This regulation implements a specific requirement of section 4.15 of the Act. As an institution's borrower base becomes more diverse, nominating committees should consider seeking out qualified and representative borrowers of diverse backgrounds.

- A description of the institution's chartered territory by geographic region, types of agriculture practiced, and market segment; and

- Strategies and actions to provide the institution's products and services to all creditworthy and eligible persons with specific attention towards diversity and inclusion within each market segment, and an assessment of the progress the institution is making towards accomplishing these strategies and actions.

In order to be able to describe its chartered territory, and to understand whom it should be striving to reach, an institution must know the characteristics and market segmentation of its territory. Market segmentation is the identification of portions of the market that are different from one another and can include, but is not limited to, geographic or demographic segmentation or types of agriculture practiced. Market segmentation allows a business to better satisfy the needs of its potential customers.<sup>11</sup>

A vast amount of demographic information, down to the county level, is available on the Web sites of the Census of Agriculture,<sup>12</sup> the U.S. Census Bureau,<sup>13</sup> and the United States Department of Agriculture's Economic Research Service.<sup>14</sup> In addition to information about women and minorities, institutions should also consider non-traditional local food systems. Producers in all of these groups may be underserved.

Once an institution knows its marketplace, it must then formulate strategies and actions to provide the institution's products and services to all creditworthy and eligible persons. As discussed above, one strategy should be to ensure the institution's workforce and boards of directors generally reflect the demographics and other characteristics of its territory. Institutions should be especially mindful of employee characteristics—such as not speaking languages other than English—that can pose high barriers to doing business with potential borrowers.

Marketing plans should include grassroots outreach activities and education efforts that market to underserved populations regarding business and financial planning and leadership and loan programs for persons who are creditworthy and eligible to borrow.

<sup>11</sup> The NetMBA Business Knowledge Center's Web site provides a discussion of market segmentation. Retrieved at <http://www.netmba.com/marketing/market/segmentation/>.

<sup>12</sup> <http://www.agcensus.usda.gov>.

<sup>13</sup> <http://www.census.gov>.

<sup>14</sup> <http://www.ers.usda.gov/data/ruralatlas>.

System institutions should also continue to demonstrate their commitment to diversity and inclusion through ongoing training and workshops that reinforce leadership's and management's commitment to new markets. These activities can be viewed as opportunities for leadership and management to educate the workforce on the negative consequences of unconscious bias that may stifle or reverse diversity and inclusion initiatives.

The marketing plan must also assess the progress the institution has made in accomplishing its strategies and actions to serve all creditworthy and eligible persons within each market segment.

It may be difficult for institutions to measure the success of their outreach in some respects, because the Equal Credit Opportunity Act (ECOA) currently precludes creditors from asking most applicants for information such as race, ethnicity or gender (even if that information is collected by an independent third party after the loan decision has been made).<sup>15</sup> In the recent Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), however, Congress amended the ECOA to require financial institutions (including FCS institutions) to ask all business applicants applying for credit whether they are women-owned, minority-owned or small businesses.<sup>16</sup> Although the requirement will technically be effective on the "designated transfer date" of the Dodd-Frank Act, which has been established by the Secretary of the Treasury as July 21, 2011, implementing regulations to be adopted by the Consumer Financial Protection Bureau will specify when compliance should begin.

Moreover, a significant amount of information about borrowers is available even today. Institutions should certainly know if they are serving borrowers in languages other than English—if they have the capability to serve those borrowers. They should have demographic information about borrowers receiving Farm Service Agency-guaranteed socially disadvantaged farmer and rancher loans, which are available to members of groups whose members have been subject to racial, ethnic, or gender

prejudice because of their group membership, including American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics/Latinos and women. And they should know if they are serving non-traditional customers who operate within local food systems producing organic or specialty crops. Reaching members of all of these groups will enhance an institution's marketplace diversity.

### VIII. Conclusion

The FCA Board acknowledges that the System, under the guidance of the Diversity Workgroup, is engaging in many initiatives to address diversity and inclusion within its workforce and reach out to the diverse base of persons eligible to borrow from the System. Diversity and inclusion is a never-ending process that needs the support and direction of each institution's leaders and management. With that support and direction, diversity and inclusion can become a normal business practice that is intrinsically rewarding for all individuals doing and seeking business with the institution. Institution leaders and managers must be creators and innovators to make diversity and inclusion a part of the routine dialogue with the workforce and customers. Ultimately, each institution must review its past practices, assess its current practices, and make the right adjustments going forward to ensure that it remains relevant and fulfills its GSE mission in the current and future financial markets.

### IX. 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 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 618

Agriculture, Archives and records, Banks, banking, Insurance, Reporting and recordkeeping requirements, Rural areas, Technical assistance.

For the reasons stated in the preamble, part 618 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 618—GENERAL PROVISIONS

1. The authority citation for part 618 continues to read as follows:

**Authority:** Secs. 1.5, 1.11, 1.12, 2.2, 2.4, 2.5, 2.12, 3.1, 3.7, 4.12, 4.13A, 4.25, 4.29, 5.9, 5.10, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2019, 2020, 2073, 2075, 2076, 2093, 2122, 2128, 2183, 2200, 2211, 2218, 2243, 2244, and 2252).

### Subpart J—Internal Controls

2. Amend § 618.8440(b) by adding new paragraphs (b)(7) and (b)(8) as follows:

#### § 618.8440 Planning.

\* \* \* \* \*

(b) \* \* \*

(7) A human capital plan that includes, at a minimum, the following:

(i) Strategies and actions to achieve diversity and inclusion within the institution's workforce, management and governance structure and an assessment of the progress the institution has made in accomplishing these strategies and actions;

(ii) A description of the institution's current workforce, management and governance structure and an assessment of their strengths and weaknesses; and

(iii) A description of the institution's workforce and management succession programs.

(8) A marketing plan that strategically addresses how the institution will further the objective of the Act, set forth in section 1.1(b) of the Act, that the System be responsive to the credit needs of *all* types of agricultural producers having a basis for credit. The marketing plan must include, at a minimum, the following:

(i) A description of the institution's chartered territory by geographic region, types of agriculture practiced and market segment; and

(ii) Strategies and actions to provide the institution's products and services to all creditworthy and eligible persons with specific attention towards diversity and inclusion within each market segment, and an assessment of the progress the institution has made in accomplishing these strategies and actions.

Dated: May 19, 2011.

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<sup>15</sup> Regulation B (12 CFR Part 202), at § 202.5(b). Regulation B implements the ECOA. Regulation B, § 202.13, provides an exception to this prohibition. This provision requires creditors to ask about an applicant's race, ethnicity, sex, marital status, and age from all applicants for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling.

<sup>16</sup> Public Law 111-203, section 1071(a).