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FARM CREDIT ADMINISTRATION

12 CFR Part 652

RIN 3052–AC80

Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Farmer Mac Capital Planning

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or we) adopts a final rule that amends regulations governing operational and strategic planning of the Federal Agricultural Mortgage Corporation (Farmer Mac). Among other things, the final rule requires Farmer Mac to submit a capital plan to the Office of Secondary Market Oversight (OSMO) on an annual basis and requires Farmer Mac to notify OSMO under certain circumstances before making a capital distribution. The final rule revises the current capital adequacy planning requirements to place more emphasis on the quality and level of Farmer Mac's capital base and promote best practices for capital adequacy planning and stress testing. We view high quality capital as the primary resource that must be available to cover unexpected losses and ensure long-term financial flexibility and viability.

DATES: This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this rulemaking is to improve Farmer Mac's long-term safety and soundness and continuity of Farmer Mac operations so that Farmer Mac will be better positioned to fulfill its public mission under a range of economic conditions. We published a notice of proposed rulemaking (NPRM) on January 25, 2013.[1] The final rule (i) establishes minimum supervisory standards for the capital planning process, including stress testing, (ii) describes how the Farmer Mac board of directors (board) and senior management should implement the process, and (iii) requires Farmer Mac to notify FCA of certain capital distributions before making them.

II. Background

A. Farmer Mac

Farmer Mac is an institution of the Farm Credit System (System), regulated by the FCA through the OSMO. Congress established Farmer Mac in 1988 to create a secondary market for agricultural real estate mortgage loans, rural housing mortgage loans, and rural utilities loans, and it is an instrumentality of the United States. Title VIII of the Farm Credit Act of 1971, as amended (Act), governs Farmer Mac.[2] To cover any obligations of Farmer Mac on the loan guarantees it has issued, Farmer Mac has a $1.5 billion line of credit with the U.S. Treasury; however, Farmer Mac has never needed to draw on this line of credit.

Other institutions of the System are the Farm Credit Banks (AgFirst Farm Credit Bank, AgriBank Farm Credit Bank, the Farm Credit Bank of Texas), the Agricultural Credit Bank (CoBank, ACB), the banks' affiliated associations, and their related service organizations.[3] Farmer Mac is financially separate from the other System entities.

However, only the other System institutions are entitled to own, and do own, Class B voting common stock in Farmer Mac and, thus, have the right to elect five directors to the Farmer Mac board. The other class of voting stock, Class A, may be held only by insurance companies, banks, and financial entities that are not part of the System, and they also have the right to elect five directors to the Farmer Mac board. The remaining five board members are appointed by the President.

B. Capital Planning

The purpose of bank capital generally is to provide a cushion to absorb unexpected losses and improve an institution's long-term resilience throughout all phases of business and economic cycles. The recent global financial crisis underscored the importance of capital adequacy planning, including maintaining high quality capital. In response to the crisis, the Basel Committee on Banking Supervision (BCBS) proposed the Basel III framework, which expands and clarifies international standards on regulatory capital with the intent to raise the quality, quantity, and transparency of regulatory capital.[4] The Basel III framework also requires banks to run stress tests to ensure they are able to sustain financial soundness under adverse market conditions. In the U.S., the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) was enacted in July 2010 to strengthen regulation of the financial sector. Section 165 of the Dodd-Frank Act requires certain financial companies whose total consolidated assets are in excess of $10 billion to conduct annual stress tests. The U.S. banking agencies (the Federal Reserve System (FRS), Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC)) and the Federal

[1] 78 FR 5320.

[2] The Act is set forth at 12 U.S.C. 2001 *et seq.* Title VIII is in 12 U.S.C. 2277aa–2279cc.

[3] The System associations make retail loans to the agricultural sector and to rural homeowners that are funded by their affiliated Farm Credit banks, and those banks obtain funds primarily by issuing System-wide obligations on which the banks are jointly and severally liable. The System-wide obligations are insured by the Farm Credit System Insurance Corporation (FCSIC). These other System institutions are examined and regulated by the FCA. They do not have authority to borrow from the U.S. Treasury to meet their obligations. Farmer Mac is not liable for the debt of the other System entities, nor are the other System entities liable for Farmer Mac's debt. Moreover, the FCSIC does not insure any debt issued by Farmer Mac.

[4] Bank for International Settlements, *Basel Committee on Banking Supervision, Basel III, A Global Regulatory Framework for More Resilient Banks and Banking Systems,* December 2010 (revised June 2011), *http://www.bis.org/publ/bcbs189.pdf.* The United States is a member of the BCBS.

Housing Finance Agency (FHFA) have issued rules and guidance to enhance capital standards and stress testing.[5] This final rule reflects our general agreement with the rulemaking actions of other banking supervision authorities, both domestic and international, which emphasize high quality capital maintenance, robust planning, and stress testing as adding value to the existing regulatory framework for capital adequacy and capital planning.

Farmer Mac's statutory capital standards were enacted in 1991[6] and have not been updated since 1996.[7] Under the Act, Farmer Mac must operate at or above a minimum ''core capital'' level and a minimum ''regulatory capital'' level. ''Core capital'' is defined in section 8.31(2) of the Act as the par value of outstanding common and preferred stock, paid-in capital, and retained earnings. Farmer Mac's minimum core capital requirement is an amount equal to the sum of 2.75 percent of on-balance-sheet assets and 0.75 percent of off-balance-sheet obligations. ''Regulatory capital'' is defined in section 8.31(5) as core capital plus an allowance for losses and guarantee claims (ALL). Farmer Mac's minimum risk-based capital requirement is the amount of regulatory capital for interest rate and credit risk determined by applying a risk-based capital stress test (RBCST) as defined in section 8.32(a) of the Act, plus an additional 30 percent of that amount for management and operations risk.

The regulatory requirements of the RBCST were implemented in FCA's regulations at part 652, subpart B in 2002 and have been revised several times. While the RBCST provides a valuable alternative perspective as a risk index of Farmer Mac's operations from quarter to quarter, the Act prescribes several components of the model's design that constrain its robustness as the only approach to calculating risk-based capital required by regulation. Under certain conditions, the Act's provisions do not impose a significant level of stress; for example, the Act's interest rate stress provisions do not impose a significantly stressful scenario of interest rate shock in very low interest rate environments such as the current one.[8] Moreover, there are a number of areas of the statutory design requirements in the RBCST that may no longer reflect best practices in economic capital modeling, which has advanced considerably since the provisions were enacted. We believe applying current best practices for comprehensive and robust stress testing approaches is prudent and warranted for capital planning.

In addition, the Act's minimum regulatory capital standards do not necessarily ensure that Farmer Mac holds a sufficient amount of high quality capital—primarily common equity and retained earnings—to survive periods of high financial stress. The statutory definition of ''core capital'' broadly defines the types of capital instruments that may be included without sufficient distinctions based on the quality of the capital components. More recent views of capital, including the Basel III framework for stock corporations, make much finer distinctions between, for example, different structures of preferred stock on the basis of the terms of their underlying contractual provisions. These finer distinctions include how much incentive is built into preferred stock terms for the issuer to redeem the shares. An example of such an incentive would be significant step-ups in dividend rates over time. Such provisions create greater uncertainty around the relative permanence of that capital and, therefore, how available it will be to cover unexpected losses in the future. The final rule revises the current capital adequacy planning requirements to increase our regulatory focus on the quality and level of capital and advance best practices for capital adequacy planning and stress testing at Farmer Mac.

III. Comment Letters

We received two comment letters, one from Farmer Mac and one from the Farm Credit Council. Both commenters generally acknowledge the value of sound capital planning practices to enable the regulated entity to fulfill its statutory mission over the long term.

Farmer Mac generally supported the NPRM's emphasis on capital planning best practices as well as its focus on quality of capital standards as being consistent with a greater ability to absorb unexpected losses and maintain safe and sound operations. The Farm Credit Council is a trade association that represents the interests of the Farm Credit banks, the banks' affiliated associations, and related service organizations. The Farm Credit Council does not represent Farmer Mac and, in its comment letter, stated that it was ''extremely concerned with the continuing lack of transparency regarding Farmer Mac's somewhat limited status as an institution of the [Farm Credit System].'' We are unsure what the Farm Credit Council means by Farmer Mac's status as an institution of the System being ''limited,'' but we refer readers of this rule to the Background section of this preamble for a delineation of the relationships between Farmer Mac and the other System institutions.[9]

In its comment letter, the Farm Credit Council made a number of recommendations for revisions to the proposed rule that are not permitted by the provisions of the Farm Credit Act that pertain to Farmer Mac. For example, the Farm Credit Council recommended that FCA include binding capital adequacy requirements through the capital plan and further require the Farmer Mac board to set capital levels consistent with all Basel III standards and at or above the levels required by regulators and financial authorities worldwide in the aftermath of the 2008 financial crisis. The Farm Credit Council further recommended that the rule limit the discretion of Farmer Mac's board so that the standard established is never less than the minimum amount required by the Basel III framework after inclusion of the conservation buffer. While the FCA has the authority and discretion to take supervisory and enforcement actions to address unsafe and unsound conditions and practices, sections 8.31 to 8.38 of the Act already

[5] *See, e.g.,* the FRS's final rule, Capital Plans, 76 FR 74631 (December 1, 2011); the FRS's proposed rule, Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, 77 FR 594 (January 5, 2012); the U.S. banking agencies' joint proposed rule, Regulatory Capital Rules; Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule, 77 FR 52978 (August 30, 2012), and joint final rule adopted in July 2013; the FDIC's final rule, Annual Stress Test, 77 FR 62417 (October 15, 2012); the OCC's final rule, Annual Stress Test, 77 FR 61238 (October 12, 2012); and the FHFA's proposed rule, Stress Testing of Regulated Entities, 77 FR 60948 (October 5, 2012).

[6] Public Law 102–237, Title V, December 13, 1991.

[7] Public Law 104–105, Title I, February 10, 1996.

[8] Section 8.32(a)(2) requires interest rate shocks to be specified as the lesser of: (a) 50 percent of the 12-month average rates on 10-year Treasury obligations; or (b) 600 basis points. In the current interest rate environment, this requirement translates into an interest rate shock of just slightly more than 100 basis points.

[9] The Farm Credit Council also asserted that the Farm Credit Act ''specifically makes clear that Farmer Mac is a separate GSE,'' or Government-Sponsored Enterprise. A GSE is a descriptive term that has generally been used to refer to a number of government-sponsored, privately owned and operated corporations with a public mission to enhance the availability of mortgage, agricultural, or other types of credit in the U.S. Sometimes Farmer Mac has been treated as a separate GSE in financial reports and other documents, such as Government Accountability Office Reports. However, no provision of the Act makes mention of the term ''Government-Sponsored Enterprise.'' Consequently, we believe the assertion by the Farm Credit Council that Farmer Mac is a separate GSE is unsettled from a legal standpoint.

specify minimum statutory and regulatory capital requirements for Farmer Mac that differ from the Farm Credit Council's recommendations.

The Farm Credit Council also recommended strengthening the rule to ensure that all business risks, capital quality and leverage are reflected, to impose specific capital measurements on Farmer Mac rather than allowing Farmer Mac some flexibility to choose what capital measurements to apply, and to eliminate risk arising from capital arbitrage. We believe this new rule, with its focus on capital planning and capital adequacy, already requires Farmer Mac to address all business risks because adverse outcomes in any risk area impact capital levels either directly (e.g., fair value changes in available-for-sale investments) or indirectly (e.g., increased provision expense reduces net income closed out to retained earnings). We expect Farmer Mac to consider stress scenarios that reflect all business risks in its stress testing operations. We believe that capital quality and risks associated with capital structure (i.e., leverage) should also be considered in stress testing, and the proposed rule specifically incorporated capital adequacy ratios that require an evaluation of capital quality through its definition of Tier 1 equity. Regarding the recommendation that the rule specify the use of Basel III Tier 1 equity definitions, we believe the proposal appropriately makes reference to Basel III Tier 1 equity as indicative of the type of high quality capital measure FCA expects Farmer Mac to establish while, also appropriately, allowing sufficient flexibility to consider adjustment of that definition where it is justified. For example, adjustments may be appropriate to take into consideration Farmer Mac's status as a GSE and the specialized nature of its business providing a secondary market for agricultural mortgages and rural utility loans.

The Farm Credit Council commented that the rule should be strengthened to eliminate the risk arising from capital arbitrage. FCA expects Farmer Mac to hold adequate capital in relation to risk at all times and not merely in relation to regulatory minimum requirements. The precise level of risk in each agricultural mortgage differs and, therefore, so would the precisely adequate capital allocation to that loan. As a practical matter, such an ideal level of precision in capital allocation (and regulation) is difficult to achieve. For that reason, FCA closely monitors Farmer Mac's loan administration processes, including the risk ratings it allocates internally to its loans—which ratings have a direct impact on capital-to-risk weighted assets ratios and assessments of Farmer Mac's capital adequacy.

Finally, the Farm Credit Council commented that the rule should include binding capital adequacy requirements. This rulemaking makes clear the Agency's position that capital must not be managed solely in relation to the requirements set forth in the Act. Rather, the requirements in the Act should be weighed in the context of other perspectives on capital adequacy, including those set forth in this rulemaking.

IV. Section-by-Section Comments and Agency Responses

A. Section 652.60—Corporate Business Planning

The Farm Credit Council commented that our reference to ''goals and objectives'' in paragraph (a) was not clear because the cited section has no specific reference to ''goals and objectives.'' We intended the citation to refer to ''measurable goals and objectives'' required in § 652.60(b)(5) rather than to § 652.61(c)(2)(i)(B) and to provide a specific example found—the newly required minimum Tier 1 ratio found at § 652.61(c)(2)(ii)(A). We have corrected this in the final rule. The Farm Credit Council also stated that § 652.60 appears to limit board accountability as written. We believe that such an interpretation largely stems from the incorrect citation and that the correction of that citation makes much clearer the board's responsibility and accountability for setting capital adequacy requirements, including specific goals and objectives, and establishing a comprehensive capital plan.

The Farm Credit Council commented that the proposed rule should have included the same diversity and inclusion in Farmer Mac's human capital plan as are currently required in similar plans of System banks and associations. Because such provisions were not in the proposed rule, the Agency is not including such provisions in this final rule. The Agency has a rulemaking pending on this topic for which an Advance Notice of Proposed Rule Making was issued in 2011,[10] and we will take this comment into consideration as we continue our review in that rulemaking process.

The Farm Credit Council commented that capital plan requirements in the proposed rule do not match those that apply to System banks and associations (§ 615.5200). While we view most if not all of these elements as appropriate for inclusion in an operational and strategic plan for Farmer Mac, we believe they are included either specifically or in substance through other regulatory requirements and supervisory processes. For example, the sufficiency of liquid funds is required in § 652.35, the capability of management is covered in the proposed rule in § 652.60(b)(2). With the improved clarity provided by the corrected reference, we otherwise adopt these provisions as proposed.

The Farm Credit Council commented that Farmer Mac should be required ''beyond stress testing'' to review its existing business practices for ''accumulation of future risks'' and gives the example of accumulating agricultural mortgages without creating an actively trading secondary market in agricultural mortgage-backed securities which the Farm Credit Council believes to be a part of Farmer Mac's ''stated mission.'' We believe that the proposed rule's requirements consider not only existing practices and conditions but also potential future practices under § 652.61(c)(2)(i) scope of operations. That element requires an assessment of the expected uses and sources of capital over the planning horizon that reflects Farmer Mac's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, including projected revenues, losses, reserves, and pro forma capital levels, including the core capital and regulatory capital ratios required by sections 8.32 and 8.33 of the Act, the Tier 1 ratio as defined in this section, and any additional capital measures deemed relevant by Farmer Mac, over the planning horizon.

We believe that excessive program asset growth, or the ''accumulation of risks,'' could raise a concern related to adequate capital regardless of whether it is held on-balance sheet or off-balance sheet. However, The Farm Credit Council's comment did not include a citation to support its view that Farmer Mac's stated mission is to create an actively trading secondary market for agricultural mortgages or mortgage-backed securities; so we are unable to address that assertion.

The Farm Credit Council made a number of comments regarding the risks on Farmer Mac's balance sheet and the use of short-term funding and derivatives as related to Farmer Mac's mission. We note that re-funding risk management is being addressed by FCA under a separate rulemaking in the proposed Liability Maturity Management Plan (LMMP) proposed in the currently pending rulemaking

[10] 76 FR 35158, June 16, 2011.

governing liquidity management.[11] For these reasons, we adopt these provisions as proposed.

B. Section 652.61—Capital Planning

Farmer Mac commented that the definition of ''Capital Action'' (§ 652.61(b)) includes issuance of debt or equity as well as any similar action that OSMO determines could impact Farmer Mac's consolidated capital. Farmer Mac believes this provision, combined with the provision requiring the inclusion in the capital plan of all planned capital actions over the planning horizon (§ 652.61(b)), could be unduly burdensome because the nature, volume, and timing of debt or equity transactions will vary, making it difficult to apply OSMO guidance received from past transactions. In response we clarify that the requirement to include planned capital actions in the capital plan does not prohibit unplanned capital actions over the planning horizon and would not prevent Farmer Mac from acting on advantageous developments in the markets that might motivate an unplanned capital action. We further clarify that our reference to debt in this context was intended to refer to debt that can impact consolidated capital, such as certain subordinated debt.

We did not intend to include normal debt issuance operations in the definition of ''capital action.'' Most of the debt routinely issued by Farmer Mac does not affect its consolidated capital; so it would not be included in this definition. To eliminate confusion, we have deleted the reference to debt in the final rule. Should Farmer Mac issue debt that does affect its consolidated capital, the FCA has authority to determine to treat it as a capital action.

The Farm Credit Council asked FCA to remove OSMO's discretion to approve an alternative definition of Tier 1 Capital that Farmer Mac might submit and instead require it to select from the analogous definitions established by Basel III, the Office of the Controller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), or the Federal Reserve. It further requested that our regulations follow specifically Basel III and establish definitions for Common Equity Tier 1 (CET1), as well as Tier 2 capital ratios and that those be set in the regulations no lower than the levels applied to ''other regulated lenders.'' The Notice of Proposed Rule Making proposed a Tier 1 capital definition (and Additional Tier 1 capital) which stipulated the selected approach must be as set forth in Basel III or as defined by the OCC, FDIC or the Federal Reserve. This provision is generally consistent with what the Farm Credit Council is requesting but includes additional flexibility for OSMO to consider a submitted alternative measure of high quality capital. The added flexibility to consider an alternative (but similar) approach is appropriate because we do not share the Farm Credit Council's view that an international standard is quickly solidifying (e.g. Basel III and Federal regulators' approaches are not exactly the same). We finalize this definition as proposed but note that OSMO will base its approval on whether any submitted alternative approach is both justified on the basis of Farmer Mac's relatively unique business model and sufficiently consistent with and as strong as the approaches adopted by other regulators.

The Farm Credit Council expressed concern that the proposed rule contains no indication of consequences for receiving an unfavorable OSMO review of a capital plan, while other System institutions would receive a capital directive ''if their capital ratios are unmet.'' It further states that FCA has not clearly identified its intent with respect to enforcing the proposed rule requirements. We clarify here that a deficient plan would result in heightened oversight and supervision as it would with any other FCA regulated entity—along with potential changes in Farmer Mac's assigned Financial Institution Rating System ratings, as well as any other enforcement tool at our disposal. We also note that § 615.5355(a), which describes the purpose of a capital directive and the scope of its issuance, does not provide for the issuance of a capital directive to a System bank or association for failure to meet the minimum capital levels the institution sets for itself under the capital planning regulation in § 615.5200, that applies to System institutions other than Farmer Mac. Likewise, the FCA does not anticipate issuing a capital directive to Farmer Mac for failure to achieve the minimum capital ratios it sets in its capital plan.

The Farm Credit Council stated its belief that it would be prudent for the FCA to notify the authorizing congressional committees if Farmer Mac submits a deficient plan to OSMO. In response, we note that such notification would be an option for FCA regardless of whether it is required by the regulations.

The Farm Credit Council expressed concern that the proposed rule does not require Farmer Mac to make public its capital plan and its ongoing compliance with internal board-established minimum capital levels. The Farm Credit Council asked FCA to require Farmer Mac to publish a summary of its capital plan including internal board-set minimum capital ratios and to disclose immediately to shareholders when it fails to comply with the plan. We believe that such a revision in the final rule is not necessary to achieve the purposes of the rule; so we are not adopting the Farm Credit Council's suggestion at this time. However, we will take this suggestion into consideration in future rulemakings.

C. Section 652.62—Notice to OSMO of Capital Distributions

Farmer Mac commented that the 15-day notice required in advance of board consideration of a capital distribution is likely to be impractical and burdensome as applied to debt instruments. As described above, in the final rule we are revising the definition of ''capital distribution'' generally to limit its application to equity instruments only. Therefore, a 15-day notice will not be required for issuances of debt unless the FCA makes a determination to treat a particular debt instrument as equity because it affects Farmer Mac's consolidated capital.

Farmer Mac also commented that redemptions of equity that are ''an inherent component'' of the instrument, such as dividend rate step-ups in preferred stock issuances, may be impractical for timing-related reasons. Farmer Mac stated that such transactions might only be raised as an item for board consideration just prior to the Board's meeting, rather than a period of more than 15 days. We believe that, despite the fact that step-ups can be thought of as making redemption an inherent component of some issuances, they are infrequent and important enough that planning for board consideration of such transactions should always be done in the context of strategic planning that is long term or at least intermediate term, rather than over a period that is very short term. We believe that boards should be provided ample time to deliberate over such requests and that management should be prepared to present and justify such requests well in advance of 15 days of the board's consideration. As we stated in the preamble to the proposed rule, we believe an enhanced level of dialogue between the Agency and Farmer Mac in advance of capital distributions will improve the level of FCA's oversight of, and communication with, the regulated entity. Such enhanced dialogue will also provide the board with valuable external perspective on such decisions from both safety and soundness and

[11] 76 FR 71798 (November 18, 2011).

mission achievement points of view. For all of these reasons, we do not view the proposed notification timeframe as impractical, and we adopt as final the provision as proposed with respect to the advance notification.

However, we believe the comment has merit as it pertains to capital distributions that the board has already been informed of through the capital planning process. A shorter time allotted for final board deliberation on planned capital distributions is appropriately left to the discretion of board's guidance to management because the board has already approved the capital plan and with it the anticipated distribution in accordance with its strategic vision and broader operational planning process. Therefore, we revise this section to eliminate the notification requirement for capital distributions set forth in the capital plan (i.e., specifically scheduled as to amount and timing along with a discussion of the planned distribution) submitted to FCA. This new exception to the notification requirement in the final rule would not apply in the event that OSMO determines a capital plan has not adequately taken into account OSMO's assessment as required under § 652.61(f) in accordance with newly added § 652.62(c).

The Farm Credit Council commented that the capital distribution notice requirement lacks specificity regarding supervisory action and should include detail on when OSMO would prohibit a distribution. The Farm Credit Council stated its belief that FCA should not allow Farmer Mac to pay any dividends if it is not in compliance with its capital plan and there should not be standing authority for Farmer Mac to pay dividends if the amount per share is unchanged from prior period. The Farm Credit Council points to the fact that the Agency has consistently taken the position that System banks and associations are not permitted to pay patronage unless the institution can demonstrate compliance with regulatory capital standards. The Farm Credit Council asks that FCA be consistent in its policy on capital distributions with System banks and associations and other banking regulators.

We believe that Farmer Mac would effectively be held to the same standard the Farm Credit Council points to in its comment. That is, if Farmer Mac were unable to demonstrate compliance with its regulatory capital standards, the Agency could bring an enforcement action which would likely put an end to common dividend payments and possibly preferred dividends as well. However, to address the Farm Credit Council's concerns in the final rule, § 652.62(c) is revised to eliminate the standing authority for Farmer Mac to pay dividends if the amount per share is unchanged from prior period (as well as planned distributions regardless of change from prior periods) if OSMO determines a Farmer Mac capital plan has not adequately taken into account OSMO's assessment as required under § 652.61(f).

Farmer Mac asked us to clarify whether the requirement in proposed § 652.61(c)(1)(iii) that the Farmer Mac board review the capital plan can be delegated to a committee and whether FCA expects the board to receive a written report that addresses all of the considerations specified in the proposed rule. The FCA confirms that the rule requires the entire board of Farmer Mac to review and approve the written capital plan before submission to the FCA, and such review is not delegable to a committee.

V. Regulatory Flexibility Act

Farmer Mac has assets and annual income in excess of the amounts that would qualify it as a small entity. Therefore, Farmer Mac is not a ''small entity'' as defined in the 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 will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 652

Agriculture, Banks, banking, Capital, Investments, Rural areas.

For the reasons stated in the preamble, part 652 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 652—FEDERAL AGRICULTURAL MORTGAGE CORPORATION FUNDING AND FISCAL AFFAIRS

■ 1. The authority citation for part 652 continues to read as follows:

Authority: Secs. 4.12, 5.9, 5.17, 8.11, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

■ 2. Revise § 652.60 to read as follows:

§ 652.60 Corporate business planning.

(a) Farmer Mac's board of directors is responsible for ensuring that Farmer Mac maintain capital at a level that is sufficient to ensure continued financial viability and provide for growth. In addition, Farmer Mac's capital must be sufficient to meet statutory and regulatory requirements as well as the goals and objectives required by paragraph (b)(5) of this section, including the Tier 1 ratio required in § 652.61(c)(2)(ii)(A). Farmer Mac must notify the OSMO within 10 calendar days of determining that capital is not sufficient to meet those goals and objectives.

(b) No later than 65 days after the end of each calendar year, Farmer Mac's board of directors must adopt an operational and strategic business plan for at least the next 3 years. The plan must include:

(1) A mission statement;

(2) A business and organizational overview and an assessment of management capabilities;

(3) An assessment of Farmer Mac's strengths and weaknesses;

(4) A review of the internal and external factors that are likely to affect Farmer Mac during the planning period;

(5) Measurable goals and objectives;

(6) A discussion of how these factors might impact Farmer Mac's current financial position and business goals;

(7) Forecasted income, expense, and balance sheet statements for each year of the plan;

(8) A marketing plan, and

(9) A capital plan in accordance with § 652.61.

■ 3. Add §§ 652.61 and 652.62 to read as follows:

§ 652.61 Capital planning.

(a) *Purpose.* This section establishes capital planning requirements for Farmer Mac.

(b) *Definitions.* For purposes of this section and § 652.62, the following definitions apply:

Basel III means the Basel Committee on Banking Supervision's document ''Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems,'' June 2011 and as it may be updated from time to time.

Capital action means any issuance of an equity capital instrument, and any capital distribution, as well as any similar action that OSMO determines could impact Farmer Mac's consolidated capital.

Capital distribution means a redemption or repurchase of any equity capital instrument, a payment of common or preferred stock dividends, a payment that may be temporarily or permanently suspended by the issuer on any instrument that is eligible for inclusion in the numerator of any minimum capital ratio, and any similar transaction that OSMO determines to be in substance a distribution of capital.

Capital plan means a written presentation of Farmer Mac's capital planning strategies and capital adequacy process that includes the mandatory elements set forth in paragraph (c)(2) of this section.

Capital policy means Farmer Mac's written assessment of the principles and guidelines used for capital planning, capital issuance, usage and distributions, including internal capital goals; the quantitative or qualitative guidelines for dividend and stock repurchases; the strategies for addressing potential capital shortfalls; and the internal governance procedures around capital policy principles and guidelines.

Planning horizon means the period of at least 12 quarters, beginning with the quarter preceding the quarter in which Farmer Mac submits its capital plan, over which the relevant projections extend.

Tier 1 Capital means the components meeting the criteria of Common Equity Tier 1 Capital and Additional Tier 1 Capital and the regulatory adjustments as set forth in Basel III, or Tier 1 Capital as defined in regulations of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve, or the Federal Deposit Insurance Corporation, as revised from time to time; or another measure of high quality capital as approved for use under this regulation by the Director of OSMO.

Tier 1 ratio means the ratio of Farmer Mac's Tier 1 Capital to Total Risk-Weighted Assets.

Total Risk-Weighted Assets means a risk-weighting approach that is appropriate given Farmer Mac's business activities and consistent with broadly accepted banking practices and standards (*e.g.,* one of the frameworks of the Basel Committee on Banking Supervision or similar U.S. regulations).

(c) *General requirements.* (1) *Annual capital planning.*

(i) Farmer Mac must develop and maintain a capital plan each year.

(ii) Farmer Mac must submit its complete annual capital plan to OSMO by March 1 or such later date as directed by OSMO, after consultation with the FCA Board.

(iii) Prior to submission of the capital plan under paragraph (c)(1)(ii) of this section, Farmer Mac's board of directors must:

(A) Review the robustness of Farmer Mac's process for assessing capital adequacy,

(B) Ensure that any deficiencies in Farmer Mac's process for assessing capital adequacy are appropriately remedied; and

(C) Approve Farmer Mac's capital plan.

(2) *Mandatory elements of capital plan.* The capital plan must contain at least the following elements:

(i) An assessment of the expected uses and sources of capital over the planning horizon that reflects Farmer Mac's size, complexity, risk profile, and scope of operations, assuming both expected and stressful conditions, including:

(A) Projected revenues, losses, reserves, and pro forma capital levels, including the core capital and regulatory capital ratios required by sections 8.32 and 8.33 of the Act, the Tier 1 ratio as defined in this section, and any additional capital measures deemed relevant by Farmer Mac, over the planning horizon under expected conditions and under a range of at least two progressively severe stress scenarios developed by Farmer Mac appropriate to its business model and portfolios, as well as any scenarios provided by the Director of OSMO. At least 15 calendar days prior to this stress testing, Farmer Mac must provide to OSMO a description of the expected and stressed scenarios that Farmer Mac intends to use to conduct its annual stress test under this section.

(B) A description of all planned capital actions over the planning horizon.

(ii) A detailed description of Farmer Mac's process for assessing capital adequacy, including:

(A) A discussion of how Farmer Mac will, under expected and stressed conditions, maintain capital commensurate with its risks, maintain capital above the minimum core capital and regulatory capital ratios and above the Tier 1 ratio set in accordance with a well-articulated risk tolerance policy established by the board of directors;

(B) A discussion of how Farmer Mac will, under expected and stressed conditions, maintain sufficient capital to continue its operations by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve its statutory purposes; and

(C) A discussion of the results of the risk-based stress test required by section 8.32 of the Act and the stress tests required by this section, as well as any other stress test required by law or regulation, and an explanation of how the capital plan takes these results into account.

(iii) Farmer Mac's capital policy; and

(iv) A discussion of any expected changes to Farmer Mac's business plan that are likely to have a material impact on the Corporation's capital adequacy or liquidity.

(d) *Review of capital plan by OSMO.* (1) OSMO will consider the following factors in reviewing Farmer Mac's capital plan:

(i) The comprehensiveness of the capital plan, including the extent to which the analysis underlying the capital plan captures and addresses risks stemming from activities across Farmer Mac's business lines and operations;

(ii) The reasonableness of Farmer Mac's assumptions and analysis underlying the capital plan and its methodologies for reviewing the robustness of its capital adequacy process; and

(iii) Farmer Mac's ability to maintain capital above the minimum core capital and regulatory capital ratios and above a Tier 1 ratio set in accordance with a risk tolerance policy established by the board of directors on a pro forma basis under expected and stressful conditions throughout the planning horizon, including but not limited to any stressed scenarios required under paragraphs (c)(2)(i)(A) and (c)(2)(ii) of this section.

(iv) All supervisory information about Farmer Mac and its subsidiaries;

(v) Farmer Mac's regulatory and financial reports, as well as supporting data that would allow for an analysis of its loss, revenue, and projections;

(vi) As applicable, OSMO's own pro forma estimates of Farmer Mac's potential losses, revenues, and resulting capital adequacy measurements under expected and stressful conditions, including but not limited to any stressed scenarios required under paragraphs (c)(2)(i)(A) and (c)(2)(ii) of this section, as well as the results of any other stress tests conducted by Farmer Mac or OSMO; and

(vii) Other information requested or required by OSMO, as well as any other information relevant to Farmer Mac's capital adequacy.

(e) *OSMO action on a capital plan.* (1) OSMO will review the capital plan and provide an assessment to Farmer Mac of the capital adequacy and planning process through its ongoing examination and oversight process.

(2) Upon a request by OSMO, Farmer Mac must provide OSMO with sufficient information regarding its planning assumptions, stress test strategies and results and any other relevant qualitative or quantitative information requested by OSMO to facilitate review of Farmer Mac's capital plan under this section.

(3) OSMO may require Farmer Mac to revise and re-submit its capital plan.

(f) *Farmer Mac response to OSMO's assessment.* Regardless of whether re-submission is required, Farmer Mac

must take the results of the stress tests conducted under paragraphs (c)(2)(i)(A) and (c)(2)(ii) of this section (including any revisions required under paragraph (e)(3) of this section) as well as OSMO's assessment into account in making changes, as appropriate, to Farmer Mac's capital structure (including the level and composition of capital); its exposures, concentrations, and risk positions; any plans for recovery and resolution; and to improve overall risk management. Farmer Mac must document in writing its actions in response to the stress tests and assessment, as well as decisions not to take actions in response to any issues raised in the assessment.

§ 652.62 Notice to OSMO of capital distributions.

(a) Farmer Mac must provide OSMO with notice 15 calendar days prior to a board consideration of a declaration of a capital distribution or any material changes in capital distributions policies.

(b) Except as provided in paragraph (c), notice under paragraph (a) of this section is not required with respect to capital distributions set forth (i.e., specifically scheduled as to amount and timing along with a discussion of the planned distribution) in the capital plan or a regular periodic payment of dividends on common stock and preferred stock when there is no change in the amount of payment per share from the previous period.

(c) In the event that OSMO determines a capital plan has not adequately taken into account OSMO's assessment as required under § 652.61(f), the exception described in paragraph (b) of this section shall not apply, and Farmer Mac must provide notification of any and all capital distributions as set forth in paragraph (a) of this section.

Dated: October 25, 2013.

Mary Alice Donner,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 2013–25892 Filed 10–30–13; 8:45 am]

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1805

Modification of Financial Reporting Requirements for Non-Profit Organizations

AGENCY: Community Development Financial Institutions Fund (CDFI Fund), Department of the Treasury.

ACTION: Interim rule.

SUMMARY: The mission of the Community Development Financial Institutions Fund (CDFI Fund) is to increase economic opportunity and promote community development investments for underserved populations in distressed communities in the United States. Its long-term vision is to economically empower America's underserved and distressed communities. The purpose of the Community Development Financial Institutions Program (CDFI Program) is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). Under the CDFI Program, the CDFI Fund provides financial assistance in the form of grants, loans, equity investments and deposits to CDFIs selected through a merit-based application process. The CDFI Fund provides financial assistance to CDFIs to enhance their ability to make loans and investments, and to provide related services for the benefit of designated investment areas, targeted populations, or both. In addition, through the CDFI Program, the CDFI Fund provides technical assistance grants to CDFIs and entities that propose to become CDFIs, for the purpose of increasing their capacity to serve their target markets.

The CDFI Fund is amending its regulations regarding the financial reporting requirements for non-profit organizations. The regulatory change requires CDFI Program awardees that are non-profit organizations to provide audited financial statements within 180 days after the end of the awardee's fiscal year end. This regulatory action conforms to the financial reporting requirements for non-profit awardees to the statutory provisions governing the CDFI Program.

DATES: *Effective date:* October 31, 2013. *Comment due date:* December 30, 2013.

ADDRESSES: All comments concerning this interim rule should be addressed to the CDFI Program Manager, Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington DC 20220; by email to; by email to *cdfihelp@cdfi.treas.gov;* or by facsimile at (202) 453–2466.

Electronic Submission of Comments: Interested persons are encouraged to submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Department to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

All properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov*. In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Adam Martinez, Program Manager, CDFI Program, by mail to the CDFI Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington DC 20220; by email to *cdfihelp@cdfi.treas.gov;* or by facsimile at (202) 453–2466 (This is not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The CDFI Fund was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.)* (the Act). Subsequent legislation placed the CDFI Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the CDFI Fund as set forth in the Act.

The CDFI Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. Access to credit, investment capital, and financial services are essential ingredients for creating and retaining jobs, developing affordable housing,