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## FARM CREDIT ADMINISTRATION

### 12 CFR Part 618

RIN 3052-AC66

#### General Provisions; Operating and Strategic Business Planning

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration (FCA, we, or our) amends 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 or plan) to include, among other things, outreach toward diversity and inclusion. Each business plan must contain a human capital plan that describes the institution's workforce and management and assesses their strengths and weaknesses; describes succession programs; and includes strategies and actions to strive for diversity and inclusion within the institution's workforce and management. In addition, the business plan of each direct lender institution must include a marketing plan that discusses how the institution will 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 outreach toward diversity and inclusion. Further, the regulation requires including skills and diversity as part of the required assessment of the needs of the board of directors and establishes annual reporting requirements to the board.

**DATES:** *Effective Date:* 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**.

*Compliance Date:* System institutions must comply with this regulation no later than January 30, 2013.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### I. Objectives

The objectives of this amendment are to ensure that:

- Each System institution promotes diversity and inclusion as critical to its success in the long term and incorporates diversity and inclusion as a vital component of its corporate culture;
- Skills and diversity are explicitly included in the assessment of the needs of the board of directors;
- Each System institution assesses the strengths and weaknesses of its current workforce and management; addresses succession planning; and develops strategies and actions to strive for diversity and inclusion within its workforce and management;
- 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 outreach toward diversity and inclusion; and
- Each System institution's board of directors receives reports on the institution's progress in accomplishing the strategies and actions in its human capital and marketing plans, which will help the board establish accountability and plan new strategies and actions.

##### II. Background and Overview of Comments

On May 25, 2011, the FCA published a proposed rule to amend § 618.8440, which requires the board of directors of each System institution to adopt a business plan.<sup>1</sup> The proposed rule required, among other things, human capital and marketing plans that include

outreach toward diversity and inclusion.

We received approximately 75 comment letters from 48 System institutions. We also received two letters from the Farm Credit Council (Council), the trade association for the System.<sup>2</sup> Of the System letters, approximately eight opposed our proposed rule entirely and requested complete withdrawal of the proposal. Most of the remainder of the System commenters supported the premise of the proposed rule to consider human capital and marketing outreach, including diversity and inclusion, in the business plan, but they requested extensive revisions to the final rule or to the explanatory preamble to reduce what they viewed as undue burden. As discussed below, we are making a number of changes in the final rule in response to many of these comments. Many System commenters appeared to misunderstand some of the intended requirements of the proposed rule, because they opposed requirements that the rule would not have imposed. Throughout this preamble, we clarify the requirements of the final rule.

We received approximately 325 comments from non-System commenters, including sustainable agriculture advocacy and assistance groups, academics in the field of sustainable agriculture, small farmers, consumers, and others. The vast majority of these commenters supported the proposed rule. Many of these commenters requested that FCA include a number of specific requirements in the marketing plan provision that would, among other things, require institutions to train potential customers in business planning and financing; develop infrastructure such as cooperatives and farmers' markets; partner with governmental and non-governmental entities and investors for funding local and regional food systems (LRFS); set numerical investment goals for lending to LRFS; and make their marketing goals and progress assessments public.

We also received approximately 40 electronically submitted comment letters that contained the names and

<sup>2</sup> One Council letter was submitted on behalf of its membership, after soliciting input from all System institutions. The other Council letter was submitted on behalf of its President and CEO, with the endorsement and support of the Council Board of Directors.

<sup>1</sup> See 76 FR 30280.

addresses of the commenters but were otherwise blank.

### III. Requirements of the Final Rule

The final rule requires each institution to:

- Determine the skills and diversity needs of its board of directors;
- Study and know its workforce, labor market, and management succession plans;
- Reach out to potential employees within its labor market who may not have previously been considered for reasons other than merit;
- Study and know its marketplace, as applicable;
- Reach out to potential borrowers who may not have previously been considered for reasons other than eligibility or creditworthiness; and
- Report annually to its board of directors on the progress the institution has made in accomplishing planned outreach strategies and actions, as applicable.

The rule does not require an institution to:

- Establish quotas—it does not require specific outcomes in employment or lending;
- Complete redundant plans or actions—an institution may use existing documents to satisfy these new planning requirements, provided the existing documents are approved annually by the board;
- Disclose confidential or sensitive information in public documents;
- Hire persons who are not the best qualified for the position for which they are applying;
- Extend credit to any persons who are not eligible, creditworthy, or within the scope of financing rules;
- Favor any type or group of agricultural producers in its underwriting of credit;
- Gather or record data on customer or employee characteristics not currently legally gathered or recorded;
- Implement strategies or actions that extend beyond its marketplace and labor market;
- Develop marketing plans unless it is exercising title III lending authorities or is a direct lender association; or
- Implement strategies or actions inconsistent with existing lending and employment laws and rules or with safety and soundness standards.

### IV. What is diversity and inclusion?

For purposes of this rule, we consider diversity and inclusion in employment to mean seeking out and 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.

For purposes of this rule, we consider diversity and inclusion in lending to mean looking beyond the traditional customer base to ensure that all eligible and creditworthy persons have access to credit and related financial services. Where a particular institution needs to focus its outreach depends on the nature of its territory and what groups have traditionally been underrepresented or underserved.

A diverse workforce could aid the System in gaining new customers. A diverse range of employees may more effectively reach a broader and more diverse base of producers, thereby widening the pool of potential customers. Moreover, diverse employees bring different perspectives to an organization and may influence the development of more creative and innovative products and services, which can also increase the customer base.

### V. Why Outreach Toward Diversity and Inclusion Is Necessary

As discussed in the preamble to the proposed rule, agriculture in America is becoming increasingly diverse. However, some non-System commenters believe that the System is not serving diverse agricultural producers. For example, the Rural Coalition, an alliance of more than 70 rural community-based organizations of African-American, Asian-American, American-Indian, Euro-American, Latino and women farmers, farmworkers and rural communities in the United States, commented that among its members who were contacted, “there exists a universal perception that the Farm Credit System institutions are not accessible to the underserved farmer and have failed to conduct outreach to these communities to educate them regarding the institutions’ programs and services.”

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. \* \* \*” If some producers, including those who would bring diversity to an institution’s customer base, have a perception that the System is not available to serve them, then greater outreach is needed. While not every farmer is creditworthy (under any reasonable standard), has

credit needs that are within FCA’s scope of financing regulations, or is interested in financing his or her operations with debt, unless System institutions reach out to underserved farmers there is no way to know whether they might become customers.

As strong and vibrant supporters of agriculture in America, System direct lender institutions must develop specific marketing plans to reach all potential customers, including those in diverse market segments that may currently be underserved. Institutions must ensure that there are no unnecessary barriers in place, such as lack of employee training, lack of appropriate loan products, or lack of appropriate creditworthiness standards. They must consider programs such as grassroots outreach activities and education efforts that market to diverse and underserved populations regarding business and financial planning and leadership and loan programs for persons who are eligible and creditworthy. In addition, to more effectively reach and serve these potential customers, institutions must continue to strive for diversity and inclusion among their employees, management, and boards of directors, because diverse perspectives within institutions can help increase diversity among customers. Unless System institutions commit to embracing diversity and inclusion in lending, employment, and governance, they may not be able, or understand how, to provide sufficient access to the System’s products for all potential eligible and creditworthy customers, and they may risk losing market share and relevance in the marketplace in the long run.

### VI. Comments on Proposed Rule and FCA’s Responses

#### A. Premise of Rule

The Council, as well as many System institutions that submitted their own comments, generally endorsed the premise of the proposed rule. Specifically, they recognized that human capital and marketplace outreach, along with diversity and inclusion, are important and appropriate topics to address in business plans.

Several System institutions, as well as one non-System commenter, disagreed with our premise that diversity and inclusion are beneficial for the System and the nation as a whole. These commenters stated that mandating diversity will inevitably result in decisions based on race, sex, and other inappropriate characteristics and toward quotas or measurable results, which the

commenters state are illegal, divisive, unfair, and inefficient; these commenters state that the System's focus should simply be on "nondiscriminatory inclusion"—that is, on equal opportunity and on decision-making unbiased by race, sex, or other inappropriate characteristics; that favoring certain groups over other groups is discriminatory and will make the former feel entitled and the latter feel aggrieved; and that demographic imbalances often result from factors other than overt or covert discrimination.

As discussed throughout this preamble and as evident in the regulation language itself, this rule does not mandate particular hiring or lending decisions or specific results. We do not require institutions to make employment or lending decisions based on any factors other than qualifications and creditworthiness. We will not examine for quotas or specific results in employment or lending, and we do not require institutions to establish quotas. We do not require institutions to favor any groups over any other groups. We recognize that to do so would be illegal.

We agree with the commenters that demographic imbalances often result from factors other than overt or covert discrimination. A lack of diversity in a System institution could occur for a whole host of non-discriminatory reasons, many of which are beyond the control of the institution. We do want to be sure, however, that institutions do not have barriers in place that could contribute to such imbalances, even if these barriers are in place for non-discriminatory reasons. Such barriers could include, for example, a lack of employee training, lack of appropriate loan products, lack of appropriate creditworthiness standards, or lack of outreach toward certain populations.

For this reason, we disagree that it is sufficient for System institutions to focus only on "nondiscriminatory inclusion" and equal opportunity. This rule requires institutions to reach out to potential employees within their labor markets who may not have previously been aware of the opportunities to work for the System or whom institutions may not have considered for reasons other than merit. It also requires institutions to reach out to potential customers who may not have been previously aware of the System's services or whom institutions may not have considered for reasons other than eligibility and creditworthiness. This outreach is necessary even if an institution's previous failure to consider these potential customers is not due to discrimination.

#### *B. FCA Authority, Burden, and Relationship With Other Legal Requirements*

A number of System commenters questioned the legal authority of FCA to impose human capital and marketing plan requirements. Some stated that FCA has authority only over safety and soundness matters. Some stated that the regulation is inconsistent with a 1996 congressional mandate that FCA must eliminate regulations that are "unnecessary, unduly burdensome or costly, or not based on law." And some stated that because Congress has imposed diversity requirements on the housing Government-sponsored enterprises (GSEs) but not on the System, there is no authority for FCA to impose such requirements on the System.

FCA is not limited to regulating safety and soundness matters. FCA has broad authority over all matters relating to the System and the Act. As part of implementing the Act and for safety and soundness reasons, FCA has authority to adopt regulations governing the business planning of System institutions. Moreover, section 1.1(b) of the Act states that the FCS 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. \* \* \*" While this provision does not expressly mention diversity and inclusion, it does state Congress' desire that the FCS be responsive to all types of creditworthy agricultural producers. Moreover, the passage of a law imposing diversity requirements on the housing GSEs does not limit FCA's authority to impose business planning requirements, including in the area of diversity and inclusion, on System institutions.

Regarding the 1996 congressional mandate to review and eliminate unnecessary regulations, we have discussed above why this regulation is necessary. With the clarifications we have made to the regulation text and throughout this preamble, we believe compliance with the rule will not be unduly burdensome or costly.

Several System commenters requested that we modify proposed § 618.8440(b)(7) and (b)(8) to each be one-sentence requirements. They suggested that § 618.8440(b)(7) should simply require that the business plan include a summary of the human capital plan that addresses diversity, inclusion, affirmative action, and management succession. And they suggested that § 618.8440(b)(8) should simply require that the business plan include a

summary of the marketing plan that addresses diversity, inclusion, and marketplace outreach.

We believe, in order to fulfill the objectives of this rule, the human capital and marketing plans must include all the items that we have required. We do not believe a requirement that the human capital plan simply address diversity, inclusion, affirmative action, and management succession, or that the marketing plan simply address diversity, inclusion, and marketplace outreach, is sufficient.

To eliminate unnecessary burden, we have revised § 618.8440(b)(7) and (b)(8) to provide that items required to be included in the human capital plan and marketing plan may be contained in other documents that are approved by the board and adopted annually, as long as those items are summarized in, and incorporated by reference into, the human capital plan and marketing plan, respectively.

Accordingly, if an institution has separate documents (such as section 4.38 affirmative action program (AAP) plans or Young, Beginning, and Small (YBS) farmer and rancher program documents) that contain the items that are required to be included in the human capital plan or marketing plan component of the business plan, the institution can use those other documents to satisfy the business plan requirements, as long as the other documents are approved by the board annually (as the business plan itself is) and the items are summarized in, and incorporated by reference into, the human capital plan or marketing plan components of the business plan. If the separate documents do not include these items, however, or if the board does not approve these separate documents, then the board will have to include the required items in the human capital plan and marketing plan components of the business plan.

Additionally, to further address concerns about burden, we have made a number of changes to the regulation in response to specific requests made by commenters. For example, among other changes, we have revised language that was viewed as requiring redundant plans or actions. We have removed language that was viewed as requiring quotas or quantifiable results. We have added language allowing confidential or sensitive information to be contained in non-public documents. And we have limited the marketing plan requirements to System institutions in their exercise of title III lending authorities and to direct lender associations.

In addition, we clarify in this preamble other areas where commenters

were concerned about burden. For example, among other clarifications, we have explained what we mean by the term “diversity.” We have made clear that institutions are not required to: Hire persons who are not considered the best qualified for the position for which they are applying; extend credit to persons who are not eligible, creditworthy, or within the scope of financing rules; favor any type or group of agricultural producers in their credit underwriting; gather or record data on customer or employee characteristics not currently legally gathered or recorded; or implement strategies or actions inconsistent with existing lending and employment rules and laws or with safety and soundness standards.

A number of System commenters stated that they would be at legal risk if they were required to ask potential job applicants or potential customers about demographic information. Because the rule does not require institutions to collect this information, the rule does not create this legal risk.

A number of System commenters also questioned how the requirements of this rule fit in with other requirements, including AAP planning, YBS activities, the various equal employment laws, the Equal Credit Opportunity Act (ECOA), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).<sup>3</sup> As we now explain, this rule should not be interpreted to impose requirements that are redundant or inconsistent with any other laws.

System commenters expressed concern that this rule imposes requirements that are already included among AAP planning and YBS program requirements. As we explained in the preamble to the proposed rule,<sup>4</sup> there may be some overlap between the information that is contained in existing AAP plans and YBS programs and the information that is required to be in the human capital and marketing plans.

To eliminate this redundancy, as discussed above, we have revised § 618.8440(b)(7) and (b)(8) to provide that items required to be included in the human capital plan and marketing plan may be contained in other documents that are approved by the board and adopted annually, as long as those items are summarized in, and incorporated by reference into, the human capital plan and marketing plan, respectively. These other documents could include an AAP plan or YBS program documents.

System commenters also expressed concern that compliance with this regulation would require violation of

the equal employment laws and the ECOA, and they pointed out that the Dodd-Frank Act does not yet have implementing regulations authorizing activity they believe the proposed rule would require. These commenters were primarily focused on what they believed was a requirement to collect demographic data from job applicants/employees and credit applicants/borrowers.

As discussed throughout this preamble, the rule does not require institutions to collect any data on employee or customer characteristics. Therefore, the rule does not conflict with any prohibition on data gathering in the equal employment laws or the ECOA. Moreover, these laws actually require the collection of data in some situations. Consistent with these laws, an institution can choose to use the data collected as required to assess its employment of diverse employees, the diversity needs of its board of directors, and its lending to diverse borrowers.

In addition, as discussed in the preamble to the proposed rule, once the Consumer Financial Protection Bureau (CFPB) issues implementing regulations,<sup>5</sup> the Dodd-Frank Act will require financial institutions to ask all business applicants applying for credit whether they are women-owned, minority-owned, or small businesses. While applicants may choose to withhold this information, institutions can choose to use any information received to assess their lending to diverse borrowers.

### C. Meaning of “Diversity”

The proposed regulation itself did not define diversity. In the preamble to the proposed rule, we stated that diversity is best thought of as the inclusion of *all* individuals rather than as simply a list of demographic criteria, and we listed several characteristics that might indicate diversity.

We did not intend to limit diversity to these characteristics or to suggest that these characteristics are more important than any others. Instead, our intent was to demonstrate that diversity is all-inclusive and is broader than the characteristics protected by the various equal employment and fair lending laws.<sup>6</sup>

<sup>5</sup> The CFPB is an independent bureau in the Federal Reserve System that regulates the offering and provision of consumer financial products or services under the Federal consumer finance laws. See section 1011(a) of the Dodd-Frank Act.

<sup>6</sup> Title VII of the Civil Rights Act of 1964, as amended, prohibits employment discrimination because of race, color, religion, national origin, or sex; the Age Discrimination in Employment Act of 1967 prohibits employment discrimination because of age; the Americans with Disabilities Act of 1990,

Many System commenters questioned this definition. They wondered whether and how we expected them to determine the listed characteristics and whether we expected them to make employment or lending decisions on the basis of those characteristics. They stated that asking this information of potential employees or borrowers or making decisions on these bases is, in many cases, offensive or even illegal.

As stated above, our intent was to show that diversity is broad and all-inclusive, not to create a list of characteristics to be given special focus. Also, the rule does not require the gathering or recording of data on employee or borrower characteristics that are not currently legally gathered or recorded and does not require specific outcomes or the favoring of particular persons in employment or lending. What the rule does require institutions to do, in pertinent part, is to strive for diversity and inclusion within their workforce and management and to market their products and services to all eligible and creditworthy persons, with specific outreach toward diversity and inclusion.

Like the proposed rule, the final rule itself does not define diversity. As discussed above, for purposes of this rule, we consider diversity and inclusion in employment to mean seeking out and using the talents of people of different backgrounds, experiences, and perspectives to improve the workforce environment and productivity. We consider diversity and inclusion in lending, for purposes of this rule, to mean looking beyond the existing customer base to ensure that all eligible and creditworthy persons have access to System credit and related financial services.

Accordingly, each institution must ensure that it has plans to reach out to all potential employees and customers as is appropriate for its territory. Institutions are not required to gather data that is not legal to gather, favor persons in particular groups, or satisfy quotas in employment or lending.

as amended, prohibits employment discrimination because of disability; and the Genetic Information Nondiscrimination Act of 2008 prohibits employment discrimination because of genetic information. The ECOA prohibits discrimination in the extension of credit on the bases of race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract). The ECOA also prohibits discrimination because all or part of an applicant's income derives from a public assistance program or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act.

<sup>3</sup> Public Law 111–203.

<sup>4</sup> 76 FR 30282, May 25, 2011.

#### *D. Flexibility in Implementation*

A number of System commenters requested that FCA allow institutions to exercise flexibility and discretion in how they implement the requirements of the rule. Institutions differ in terms of size, employment needs, demographics in their territory, and nature of farming in their territory. Therefore, diversity will not look the same across the System.

A number of System commenters were also concerned that FCA and its examiners would impose requirements that are not found in the rule or would use FCA's suggestions in the preamble to the proposed rule regarding tools institutions could use to assist in complying with their planning requirements as a checklist for determining compliance.

Moreover, a number of commenters stated that some of FCA's suggestions are not relevant to the System or are too rigid. Commenters stated, for example, that data from the Census of Agriculture, which FCA had suggested as a possible source of information about potential customers, does not accurately represent the System's relevant markets because it includes data pertaining to ineligible persons, non-creditworthy persons, persons who would be disqualified based on scope of financing regulations, and persons who do not use debt to finance their operations.

As another example, several System commenters objected to some of FCA's specific suggestions for how to overcome barriers for advancing diversity and inclusion within the corporate culture, such as including diversity and inclusion in the mission statement.

FCA recognizes that System institutions vary widely in their size, needs, and demographics, among other areas of difference. A one-size-fits-all approach to compliance with this rule is not appropriate either for System institutions or for FCA.<sup>7</sup> The rule requires institutions to engage in business planning in the specified areas. Accordingly, FCA examiners will determine whether institutions have engaged in this planning and will evaluate institutions' good faith efforts in implementing the strategies and

actions identified in the plans. Nevertheless, the rule permits institutions to engage in the required business planning in any reasonable manner, and we will not examine for specific outcomes or results in employment or lending.

In addition, our suggestions in the preamble to the proposed rule regarding tools institutions can use to assist with their compliance are not requirements. We included them in our preamble to the proposed rule to provide ideas and to share actions that other institutions have taken. We encourage institutions to use the suggestions that are appropriate, to set aside the suggestions that are not, and to come up with their own approaches to fit their own characteristics.

Finally, as discussed throughout this preamble, it is important to keep in mind that this rule does not require specific goals or quantifiable results, and our compliance examination will be qualitative rather than quantitative. We suggested the use of the Census of Agriculture data not so institutions could compare their lending against that data but so they could know and would be able to describe the characteristics of their chartered territories by market segment, including the characteristics of demography, geography, and types of agriculture practiced, as the regulation requires. With this information, institutions can determine whether there may be potential eligible customers who may be better reached with a different type of marketing strategy. If institutions believe other reliable data would better provide this information, they may use that data instead.

#### *E. Local Food Systems*

In the preamble to our proposed rule, we noted that the pool of potential eligible and creditworthy FCS customers is becoming increasingly diverse. We observed that agriculture today consists of men and women, the old and the young, and a variety of racial and ethnic backgrounds. We urged institutions to look to all kinds of farming operations—from large farmers, to small farmers, to farmers who operate within local food systems—to find potential eligible and creditworthy borrowers who may not be part of the institution's customer base and who may be underserved.

We received a number of comments responding specifically to our reference to local food systems, from both System and non-System commenters. Commenters identified four major areas of concern.

First, many System commenters were concerned that the term "local food systems" was undefined. A number of non-System commenters suggested that we should adopt the definition of "local and regional food producers" from the 2008 Farm Bill. In the preamble to the proposed rule, we stated that local food systems 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.<sup>8</sup> In the context of this rule, however, it is unnecessary to specifically define "local food systems," because this rule does not require specific marketing targeted toward local food systems. Rather, the rule requires strategies and actions to market to all eligible and creditworthy persons, with specific outreach toward diversity and inclusion. Our reference to local food systems was to provide an example of a potentially underserved market segment where diversity in farming may be found. Reaching out to persons who operate in local food systems is one of many potential approaches to finding new eligible and creditworthy customers. Consistent with this effort, FCA's regulatory performance plan specifically includes a project to consider changes to our policy guidance for providing credit and related services to all eligible and creditworthy agricultural producers, including identifying any barriers to efficiently and cost-effectively providing credit for newer products or marketing systems such as local foods and organic agriculture.<sup>9</sup>

Second, many System commenters stated that FCA should not favor a particular type of agriculture and should not suggest that lending to a particular type of agricultural practice increases diversity. They commented that FCA should not distinguish between types of crops produced or the methods or location of production. As just discussed, the rule requires institutions to develop plans as to how they reach out to and serve all eligible and creditworthy persons in their territories. This means outreach and service to all market segments and to all persons within those segments, looking at characteristics that include demography, geography, and types of agriculture practiced. Our use of the term "local food systems" was meant to

<sup>7</sup> For example, we recognize that approximately 10 percent of associations have fewer than 20 employees and, therefore, are not required to engage in the AAP planning requirements of section 4.38 of the Act. While, as discussed above, an institution that is subject to section 4.38 may be able to use its AAP plan to satisfy the human capital plan requirement, institutions can also satisfy this requirement without relying on section 4.38-compliant plans.

<sup>8</sup> 76 FR 30281, May 25, 2011.

<sup>9</sup> FCA's Spring 2012 Regulatory Performance Plan, approved February 9, 2012 (available on FCA's Web site at [www.fca.gov/law/perf\\_plan.html](http://www.fca.gov/law/perf_plan.html)).

illustrate an example of a potentially underserved market segment where diversity in farming may be found. There may be diverse, eligible, and creditworthy persons operating within local food systems—as well as within other types of agricultural operations—who are not currently being served.

Third, many System commenters stated that many persons who are involved in local food systems may not be eligible for System credit, or that much of their credit needs may not be within FCA's scope of financing regulations, because they may not be full-time, bona fide agricultural producers. Farmers who produce agricultural products for sale directly to consumers or local intermediaries (restaurants, schools, hospitals, etc.) comply with the definition of bona fide farmer in § 613.3000(a)(1) by virtue of growing an agricultural product, and they need not be full-time producers to be considered bona fide.<sup>10</sup> System institutions are authorized to serve only persons who are eligible, and this rule does not require marketing plans to address service toward persons who are not eligible.

The scope of financing that a System institution can provide to a particular borrower is governed by § 613.3005. Under that provision, all bona fide farmers and ranchers may receive full credit, to the extent of creditworthiness, for agricultural needs. The degree of a borrower's involvement in agricultural production determines the amount of non-agricultural credit (also referred to as "other credit needs") that a System institution may extend to the borrower. FCA has previously addressed the issue of scope of financing in Examination Bulletin: FCA 2006–2<sup>11</sup> and Revised Bookletter BL–040 (interpreting "sound and constructive credit" for YBS farmers).<sup>12</sup> We encourage System institutions to review these documents for guidance in determining the scope of financing for all types of agricultural producers.

There may be loans that an institution cannot practically make because of

FCA's scope of lending regulations. Institutions should, however, evaluate their lending practices to ensure that there are no unnecessary barriers in place, such as lack of employee training or lack of appropriate loan products. As discussed above, FCA's regulatory performance plan specifically includes a project to consider changes to our policy guidance for providing credit and related services to all eligible and creditworthy agricultural producers, including identifying any barriers to efficiently and cost-effectively providing credit for newer products or marketing systems such as local foods.

Finally, many System commenters stated that certain potential customers, including some involved in local food systems, are not creditworthy and that loans to them could create safety and soundness concerns. FCA recognizes that, as with farmers practicing other types of agriculture, some farmers involved in the local food system may not be creditworthy. The rule does not impose any lending requirements, and institutions are not required to make loans that pose safety and soundness risks. Other farmers in the local food system may well be creditworthy based on their background and experience. Institutions should ensure that their credit standards are appropriate and do not impose unnecessary barriers to producers in the local food system.

Some farmers who operate within the local food system are also YBS farmers. The methods suggested in § 614.4165(c)(4), as further explained in BL–040, to ensure that credit and services offered to YBS farmers are provided in a safe and sound manner and within an institution's risk-bearing capacity could benefit YBS borrowers within the local food system.

We received hundreds of comments from non-System commenters supporting small- and mid-sized farmers and ranchers producing for local and regional food markets, farmers' markets, organic markets, and community-supported agriculture. These commenters stated that these farmers—many of whom are socially disadvantaged, are nontraditional producers, or are from non-farming backgrounds—promote healthy farming and eating and environmental responsibility. These commenters stated that these producers are crucial for both public health and national security. Traditional lending models may not fit these producers, however, and limited access to capital is a crucial barrier to their success.

These commenters suggested that FCA include a number of specific requirements in our marketing plan

regulation that would require institutions to do the following:

- Train potential borrowers on how to obtain funding;
- Develop and refer potential borrowers to programs to assist them with business planning;
- Develop infrastructure such as cooperatives, farmers' markets, and training programs;
- Increase their knowledge of sustainable agriculture and LRFS;
- Partner with governmental and non-governmental entities and investors to fund LRFS;
- Examine their policies to identify areas where rules may be unnecessarily shutting out potential borrowers;
- Analyze the characteristics of current borrowers to provide baseline data for assessments of achieving diversity and inclusion of LRFS and socially disadvantaged producers;
- Set minimum investment goals for LRFS;
- Make marketing goals and progress assessments public; and
- Add LRFS producers to their boards.

We are not imposing these specific requirements in our regulation. Consideration of requirements such as these is beyond the scope of this regulation project. System institutions may choose to implement these measures as appropriate for the types of agriculture in their territories. Moreover, as discussed above, we are committed to studying these ideas further and to considering future guidance for System institutions.

#### *F. Outreach Efforts or Quotas and Quantifiable Results*

Many System commenters urged FCA to clarify the final rule to ensure it promotes efforts toward outreach rather than requiring quotas or quantifiable results in employment and lending. On the other hand, many non-System commenters urged FCA to require institutions to collect and quantify baseline data and, among other things, to evaluate to what extent their borrower base reflects their marketplace and to set minimum investment goals for lending to certain groups. As discussed throughout this preamble, this final rule does not contemplate quotas or quantifiable results in either employment or lending. We agree with the System commenters that this is inappropriate because it is legally problematic and may be difficult both to achieve and to measure.<sup>13</sup>

<sup>10</sup> Section 613.3000(a)(1) of our regulations defines a bona fide farmer or rancher as "a person owning agricultural land or engaged in the production of agricultural products, including aquatic products under controlled conditions."

<sup>11</sup> "Lending Programs for Farmers' Other Credit Needs," dated October 2006. This document is available on FCA's Web site. From our home page at [www.fca.gov](http://www.fca.gov), click on the Exam Guidance tab; then click on Examination Bulletins.

<sup>12</sup> "Providing Sound and Constructive Credit to Young, Beginning, and Small Farmers, Ranchers, and Producers or Harvesters of Aquatic Products," dated August 10, 2007. This document is available on FCA's Web site. From our home page at [www.fca.gov](http://www.fca.gov), click on Bookletters from the Quick Links menu.

<sup>13</sup> We note, however, that section 4.38 of the Act requires all System institutions with more than 20 employees to establish and maintain an AAP plan

What the final rule does require, in pertinent part, is outreach to potential employees who may not have previously been aware of the opportunities or considered for reasons other than merit, and to potential customers who may not have previously been aware of the System's services or considered for reasons other than eligibility and creditworthiness. We are revising the language in the final rule to clarify what it does and does not require.

Proposed § 618.8440(b)(7)(i) would have required the human capital plan to include, in relevant part, "strategies and actions to achieve diversity and inclusion within the institution's workforce [and] management and an assessment of the progress the institution has made in accomplishing these strategies and actions. \* \* \*" A number of System institutions requested that we replace "achieve" with "strive for." They expressed concern that the word "achieve" implies quotas or quantifiable results. They stated that a requirement that they "strive for" diversity and inclusion is more appropriate, because it would require institutions to seek qualified, diverse candidates for employment through appropriate recruiting and communications driven by market conditions and current hiring needs but would not require them to achieve specific, quantifiable results in hiring.

We agree with this comment and make the requested change. The relevant provision (which we have renumbered as § 618.8440(b)(7)(iii)) requires human capital plans to include "strategies and actions to strive for diversity and inclusion within the institution's workforce and management."

A number of System commenters also expressed concern that the word "assessment" in proposed § 618.8440(b)(7)(i), which would have required the human capital plan to include "an assessment of the progress the institution has made in accomplishing these strategies and actions," also implied that the rule contemplated data-driven results. We did not mean data-driven results with our use of the word "assessment".

that applies the affirmative action standards otherwise applied to contractors of the Federal government. These standards, which are established by the U.S. Department of Labor (DOL), are always changing and may impose hiring goals. For example, in December 2011, the DOL proposed a rule that would require Government contractors to establish a 7-percent utilization goal for hiring employees with disabilities. See 76 FR 77056 (Dec. 7, 2011). Because the Act requires compliance with applicable affirmative action standards, FCA examines for compliance with these standards.

Nevertheless, to avoid confusion, the final rule does not use that word. Instead, § 618.8440(c) requires a report on the progress the institution has made in accomplishing the required strategies and actions.<sup>14</sup>

Section 618.8440(b)(8)(ii) of the proposed rule would have required the marketing plan to include, in relevant part, "strategies and actions to provide the institution's products and services to all eligible and creditworthy persons with specific attention toward diversity and inclusion within each market segment, and an assessment of the progress the institution has made in accomplishing these strategies and actions." A number of System commenters stated that this requirement could lead to quotas or quantifiable expectations on the lending side.

First, System commenters questioned the requirement to have strategies and actions to "provide" the institution's products and services to all eligible and creditworthy persons. They stated that requiring them to have strategies and actions to "provide" their products and services, combined with the requirement that they must assess their progress in accomplishing these strategies and actions, suggests that they must quantify their progress in providing their products and services. To clarify this requirement, we replace "provide" with "market," thus requiring institutions to have strategies and actions to market their products and services and, to ensure accountability, to report on their marketing progress.

Second, System commenters expressed concern with requiring "specific attention" toward diversity and inclusion. To reflect that this rule is intended to address outreach, these commenters suggested that we require "specific outreach" rather than "specific attention" toward diversity and inclusion. We agree with this comment and make this change in the final rule.

Finally, as on the human capital side, a number of System commenters expressed concern that the word "assessment" in proposed § 618.8440(b)(8)(ii), which would have required the marketing plan to include "an assessment of the progress the institution has made in accomplishing these strategies and actions," implied that the rule contemplated data-driven results. We did not mean data-driven results with our use of the word assessment. Nevertheless, to avoid

<sup>14</sup> As discussed in the section-by-section analysis, the final rule requires that the institution report to its board on its progress rather than requiring the human capital plan to include an assessment of its progress, as the proposed rule would have provided.

confusion, the final rule does not use that term. Instead, § 618.8440(c) requires a report on the progress the institution has made in accomplishing the required strategies and actions to ensure accountability.<sup>15</sup>

#### G. Governance

The proposed rule would have required 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 in accomplishing these strategies and actions. It would also have required the human capital plan to include a description of the institution's current workforce, management, and governance structure and an assessment of their strengths and weaknesses.

In the preamble to the proposed rule, we noted that FCA Revised Bookletter BL-009<sup>16</sup> states 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, and we encouraged all institutions to consider appointing directors for this purpose when feasible.<sup>17</sup> We also noted that § 611.325(d)(1) of FCA regulations, which implements a specific requirement of section 4.15 of the Act, 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." As an institution's borrower base becomes more diverse, we encouraged nominating committees to consider seeking out qualified and representative borrowers of diverse backgrounds.

Some System commenters objected to including governance requirements in their human capital planning. They stated that board diversity and inclusion is a different issue than diversity and inclusion within their workforce. They

<sup>15</sup> As discussed in the section-by-section analysis, the final rule requires that the institution report to its board on its progress rather than requiring the marketing plan to include an assessment of its progress, as the proposed rule would have provided.

<sup>16</sup> "Farm Credit Bank and Association Appointed Directors," dated December 15, 2006. This document is available on FCA's Web site. From our home page at [www.fca.gov](http://www.fca.gov), click on Bookletters under the Quick Links menu.

<sup>17</sup> 76 FR 30284, May 25, 2011.



stated that boards of directors are responsible for governance and therefore should “own” the issue, which should not be integrated into a human capital plan that focuses on the workforce and is developed by the institution’s leadership. These commenters urged FCA to remove the governance references from human capital planning and instead incorporate these references into existing § 618.8440(b)(2)(ii), as part of the existing requirement that the board’s business plan must include an assessment of the needs of the board, based on the annual self-evaluation of the board’s performance.

We agree with this comment and suggestion. Accordingly, we are removing all references to governance in the human capital plan requirements in new § 618.8440(b)(7), and we are revising existing § 618.8440(b)(2)(ii) to require that the board specifically must assess whether its needs include improved diversity, as well as the addition of particular skills. This revision clarifies the existing requirement that the board must assess its needs to specifically include diversity as one of its potential needs.

Some System commenters stated that the Act gives nominating committees the responsibility for determining the candidates for director elections and that it would be challenging to provide the nominating committee with information on potential candidates in an attempt to make the board more diverse. System commenters were also concerned that the rule would require institutions to improperly influence the nominating committee in violation of the existing requirement that management must remain impartial in governance matters.

If a board determines, based on its assessment, that it needs to increase its diversity, it may do so directly, without involving the nominating committee, by appointing diverse directors—either outside directors or other appointed (stockholder) directors. Moreover, FCA regulations permit directors or other institution personnel to provide the names of qualified, diverse persons for consideration by the nominating committee. FCA Revised Bookletter BL-043<sup>18</sup> contains substantial discussion of the extensive assistance institution boards, officers, employees, and agents may provide to nominating committees without violating FCA regulations. This assistance includes, but is not limited

to, providing lists of qualified persons from which nominating committees may identify potential candidates.<sup>19</sup> Assistance of this nature does not constitute improper interference with the work of the nominating committee.

Some System commenters stated that there is little diversity in their territory<sup>20</sup> or that stockholders have not elected diverse boards even when candidates were nominated who would have contributed to diversity. We understand that some institution boards may find it difficult to increase diversity among their elected board members. However, if a board determines that it needs additional diversity, and diverse members are not being elected, it should consider appointing qualified directors, either as outside directors or as other appointed (stockholder) directors.

Some System commenters stated that FCA should not suggest that boards should appoint additional directors, whether or not they are qualified, only to achieve board diversity. We are not suggesting this. We note that BL-009 states that institution boards may appoint directors for specific public policy purposes, such as facilitating diversity or acquiring needed skills. This regulation complements that Bookletter by requiring boards to assess whether their needs include additional skills or increased diversity.

A number of System commenters stated that FCA already has enough regulations in the area of governance, that the process is working well, and that any more regulation in this area would pose an undue burden. System commenters also stated that FCA has no authority over governance because the Act provides that board qualifications are set forth in institution bylaws and FCA has no authority, whether direct or indirect, to approve bylaws.

This rule does not specify board qualifications, nor does it impose board composition requirements. The existing rule required boards to assess their needs, and the new requirements specify that diversity is among the needs that must be assessed. Requiring boards to assess a need for diversity does not constitute approval of bylaws. And, since boards are already required to assess all of their needs, whether or not those needs are itemized, expressly identifying certain needs in the regulation does not pose an extra burden.

<sup>19</sup> Directors, officers, employees, and agents must avoid any activity that could be construed as influencing the nominating committee’s vote on its slate of candidates.

<sup>20</sup> We note that large numbers of women are present even in areas that may lack other characteristics of diversity.

A number of non-System commenters urged FCA to require System boards to include members of historically underserved farming communities, community-based organizations that serve socially disadvantaged or limited resource farmers, and local and regional farmers and producers. They stated that in order to bring about transformative change toward diversity and inclusion in the corporate culture of System institutions, boards must actively incorporate the unique perspective of these markets.

Consideration of this requirement is beyond the scope of this rulemaking. Institutions may choose to seek out such potential directors, as appropriate.

#### *H. Redundancy in Requirement To Assess Management Capabilities*

A number of System commenters stated that the preamble to the proposed rule specified that institutions must perform a SWOT analysis (strengths, weaknesses, opportunities, threats) as part of their human capital and marketing planning. They stated that this requirement was redundant because they believe that existing § 618.8440(b)(2), which requires the business plan to include an annual review of the internal and external factors likely to affect the institution, already requires a SWOT analysis.<sup>21</sup>

However, neither the preamble to the proposed rule nor the proposed rule itself required an overall analysis in either the human capital or marketing plans. The proposed rule, therefore, is not redundant in this respect, and we make no change in the final rule in that regard.<sup>22</sup>

We agree, however, that proposed § 618.8440(b)(7)(ii), which would have required the human capital plan to include a description of the institution’s workforce and management and an assessment of their strengths and weaknesses, was redundant; existing § 618.8440(b)(2)(i), which requires the business plan to include an annual review of the internal and external

<sup>21</sup> FCA regulations do not use the term “SWOT analysis.”

<sup>22</sup> In both § 618.8440(b)(7) and (b)(8), however, we revise the language in the final rule to provide that the items required in the human capital plan and the marketing plan may be contained in other board-approved documents that are adopted annually, provided the items are summarized in, and incorporated by reference into, the human capital plan and the marketing plan, respectively. Therefore, if an institution believes that an analysis it is conducting under the existing rule satisfies the requirements of the final rule, it does not need to conduct another, redundant analysis, as long as the analysis is approved by the board, adopted annually, and summarized in and incorporated into the human capital plan and marketing plan, as appropriate.

<sup>18</sup> “Farm Credit Bank and Association Nominating Committees,” issued March 8, 2007. This document is available on FCA’s Web site. From our home page at [www.fca.gov](http://www.fca.gov), click on Bookletters from the Quick Links menu.



factors likely to affect the institution, already includes an assessment of management capabilities.

We are finalizing the proposed human capital plan requirement, which we are renumbering as § 618.8440(b)(7)(i), without any changes in the management assessment requirement.<sup>23</sup> To eliminate the redundancy, however, in the final rule we revise the existing business plan requirement at § 618.8440(b)(2)(i). The existing provision requires the business plan to include an assessment of management capabilities, while the revised provision requires the business plan to incorporate the description and assessment of workforce and management strengths and weaknesses required by § 618.8440(b)(7)(i). The existing business plan requirement as revised, therefore, no longer requires an assessment of management capabilities; instead, it requires incorporation of the description and assessment of workforce and management strengths and weaknesses required by the human capital plan requirement.

#### *I. Confidentiality*

A number of System commenters stated they should not be required to include sensitive and confidential information pertaining to human capital and marketing planning in their business plans, because business plans are not privileged and may be disseminated to a broader audience. These commenters requested that the regulation require that business plans must incorporate a high-level summary of this information. Many non-System commenters, on the other hand, suggested that FCA should require institutions to make their marketing goals and progress reports public.

The objectives of this rule are, in pertinent part, to ensure that institution boards consider diversity and inclusion in their human capital and marketing planning. These requirements are intended to provide information for boards to consider candidly as they engage in planning, not for public disclosure. Accordingly, both § 618.8440(b)(7), governing human capital planning, and § 618.8440(b)(8), governing marketing planning, provide that the items that are to be included in the plans may be contained in other board-approved documents that are adopted annually, provided the items are summarized in, and incorporated by reference into, the plans. This will enable boards to address sensitive and confidential information in more

confidential documents while still ensuring that summaries are included in business plans.

#### *J. Marketing Plan Requirements for Banks and Service Corporations*

Several System commenters stated that requiring marketing outreach is problematic for Farm Credit Banks (FCBs), which do not engage in direct lending operations but instead provide loan funds to the direct lender associations. Moreover, service corporations chartered under section 4.25 of the Act typically also do not engage directly with retail customers. We agree with these comments and revise § 618.8440(b)(8) to apply to System institutions in their exercise of title III lending authorities<sup>24</sup> as well as to direct lender associations.

Although FCBs and service corporations are not subject to the marketing plan requirements of § 618.8440(b)(8), they should ensure that they do not do anything to impede the objectives of this regulation nor the ability of subject System institutions to comply with the regulation.

#### *K. Compliance Date for Requirements*

Several System commenters requested that FCA not require compliance with these requirements in the middle of the planning year. We agree with this request. Accordingly, we will require compliance beginning with the 2013 business plan.<sup>25</sup>

### **VII. Section-by-Section Analysis**

#### *A. Section 618.8440(a)*

For clarity and ease of reference, we are adding a heading, “Business Plan Requirement,” to this paragraph. Also for clarity, we are changing “shall” to “must.”

#### *B. Section 618.8440(b)*

For clarity and ease of reference, we are adding a heading, “Content of Business Plan,” to this paragraph.

##### **1. Section 618.8440(b)(2)**

Existing § 618.8440(b)(2) provides that the business plan must include an annual review of the internal and external factors likely to affect the institution during the planning period; this provision is unchanged in the revised rule.

<sup>24</sup> Currently, there is one agricultural credit bank, which has the authority of an FCB and also the title III authority of a bank for cooperatives; in addition to providing loan funds to direct lender associations, it makes loans to agricultural, aquatic, and public utility cooperatives.

<sup>25</sup> Under § 618.8440(a), each institution board must adopt a business plan no later than 30 days after the commencement of each calendar year.

As discussed above in our response to comments, we revise § 618.8440(b)(2)(i) to eliminate the redundancy created by the new human capital plan provision. Existing § 618.8440(b)(2)(i) provides that the required review must include an assessment of management capabilities. The new human capital plan provision (discussed below) requires a description of the institution’s workforce and management and an assessment of their strengths and weaknesses. We revise § 618.8440(b)(2)(i) to provide that the review must incorporate the description and assessment of workforce and management strengths and weaknesses required in the human capital plan.

Also, as discussed above in our response to comments, we revise § 618.8440(b)(2)(ii) to explicitly require that the assessment of board needs included in the business plan must specifically include skills and diversity. Existing § 618.8440(b)(2)(ii) provides that the required review must include an assessment of the needs of the board, based on the annual self-evaluation of the board’s performance. This revision clarifies that the board’s assessment must specifically include diversity and skills as potential needs.

We are making several minor grammatical changes to this provision that are necessary because of the revisions we have discussed.

##### **2. Section 618.8440(b)(6)**

We are correcting an erroneous citation in this section.

##### **3. Section 618.8440(b)(7)**

New § 618.8440(b)(7) requires each institution to include a human capital plan, which must include specified items, in its business plan. As explained above, the specified items may be contained in other board-approved documents that are adopted annually, provided the items are summarized in, and incorporated by reference into, the human capital plan. Accordingly, if an institution has a separate human capital plan, AAP plan, or other document that contains the items that are required to be included in the human capital plan component of the business plan, the institution can use that other document to satisfy the business plan requirement, as long as the other document is approved by the board annually, as the business plan itself is, and the items are summarized in, and incorporated by reference into, the human capital plan component of the business plan. If the other document does not include these items, however, or if the board does not approve the other document, then the board will have to include the required

<sup>23</sup> We are making an unrelated change to this provision, which we discuss elsewhere in this preamble.

items in the human capital plan component of the business plan.

New § 618.8440(b)(7)(i) requires the human capital plan to include a description of the institution's workforce and management and an assessment of their strengths and weaknesses. New § 618.8440(b)(7)(ii) requires the human capital plan to include a description of the institution's workforce and management succession programs. New § 618.8440(b)(7)(iii) requires the human capital plan to include strategies and actions to strive for diversity and inclusion within the institution's workforce and management. In consideration of comments that we received, these provisions contain several changes from what was proposed. We discuss the reasons for these changes above, in our response to comments.

#### 4. Section 618.8440(b)(8)

New § 618.8440(b)(8) requires each institution in its exercise of title III lending authorities<sup>26</sup> and direct lender association to include a marketing plan, which must include specified items, in its business plan. The requirement does not apply to FCBs, which do not engage in direct lending operations but instead provide loan funds to the direct lender associations, or to service corporations chartered under section 4.25 of the Act, which typically also do not engage directly with retail customers. However, FCBs and service corporations should ensure that they do not do anything to impede the objectives of this regulation nor the ability of subject System institutions to comply with this regulation.

As explained above, the specified items that must be included in the marketing plan may be contained in other board-approved documents that are adopted annually, provided the items are summarized in, and incorporated by reference into, the marketing plan. Accordingly, if an institution has a separate marketing plan, YBS plan, or other document that contains the items that are required to be included in the marketing plan component of the business plan, the institution can use that other document to satisfy the business plan requirement, as long as the other document is approved by the board annually, as the business plan itself is, and the items are summarized in, and incorporated by reference into, the marketing plan component of the business plan. If the

other document does not include these items, however, or if the board does not approve the other document, then the board will have to include the required items in the marketing plan component of the business plan.

The marketing plan must strategically address how the institution will 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 must include, at a minimum, the following:

- A description of the institution's chartered territory by market segment, including the characteristics of demography, geography, and types of agriculture practiced; and
- Strategies and actions to market the institution's products and services to all eligible persons, with specific outreach toward diversity and inclusion within each market segment.

To be able to describe its chartered territory, and to understand whom it should be striving to reach, an institution must know the 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, characteristics such as demography, geography, and types of agriculture practiced. Market segmentation allows a business to better satisfy the needs of its potential customers.

A vast amount of demographic information, down to the county level, is available on the Web sites of the Census of Agriculture,<sup>27</sup> the U.S. Census Bureau,<sup>28</sup> and the U.S. Department of Agriculture's Economic Research Service.<sup>29</sup> As discussed above, because this rule does not require specific outcomes or quantifiable results, an institution should not compare its lending against this demographic data. Rather, the institution should use this data to gain knowledge of the characteristics of its chartered territory. With this knowledge, the institution can determine whether there may be potential eligible borrowers it can reach out to through better marketing and outreach methods. If an institution believes other reliable data would better provide this information, it may use that data instead.

In consideration of comments we received on these provisions, the revised rule contains several changes from what was proposed. We discuss

the reasons for these changes above in our response to comments.

We are also making several minor, nonsubstantive changes to this provision for clarity.

#### C. Section 618.8440(c)

Section 618.8440(c) is titled "Board Reporting Requirements." This provision requires each institution to report annually to its board of directors on the progress the institution has made in accomplishing the strategies and actions in the human capital plan and, as applicable, the marketing plan.

This provision was not in the proposed rule. Instead, the proposed rule would have required the human capital and marketing plans to include an assessment of the progress the institution had made in accomplishing the strategies and actions in the plans. We made this change for several reasons. First, as discussed above in our response to comments, a number of System commenters were concerned that the word "assessment" implied data-driven results. We did not mean data-driven results with our use of the term assessment; therefore, to avoid confusion, we do not use that term here. Second, we believe it is more appropriate for the institution to provide progress reports to the board rather than for the board to include progress reports in its human capital and marketing plans. Although it is not stated explicitly in the rule, we expect that boards will use the information in the progress reports they receive to establish accountability and to formulate the strategies and actions contained in their human capital and marketing plans for the following year.

### VIII. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

#### List of Subjects in 12 CFR Part 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

<sup>26</sup> Currently, there is one agricultural credit bank which, in pertinent part, exercises title III authority by making loans to agricultural, aquatic, and public utility cooperatives.

<sup>27</sup> [www.agcensus.usda.gov](http://www.agcensus.usda.gov).

<sup>28</sup> [www.census.gov](http://www.census.gov).

<sup>29</sup> [www.ersusda.gov/data/ruralatlas](http://www.ersusda.gov/data/ruralatlas).

of the Code of Federal Regulations is 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. Section 618.8440 is revised to read as follows:

#### § 618.8440 Planning.

(a) *Business plan requirement.* No later than 30 days after the commencement of each calendar year, the board of directors of each Farm Credit System institution must adopt an operational and strategic business plan for at least the succeeding 3 years.

(b) *Content of business plan.* The plan must include, at a minimum, the following:

(1) A mission statement.

(2) An annual review of the internal and external factors likely to affect the institution during the planning period. The review must:

(i) Incorporate the description and assessment of workforce and management strengths and weaknesses required by paragraph (b)(7)(i) of this section;

(ii) Include an assessment of the needs of the board, including skills and diversity, based on the annual self-evaluation of the board's performance; and

(iii) Include strategies for correcting identified weaknesses.

(3) Quantifiable goals and objectives.

(4) Pro forma financial statements for each year of the plan.

(5) A detailed operating budget for the first year of the plan.

(6) The capital adequacy plan adopted pursuant to § 615.5200(b) of this chapter.

(7) A human capital plan that includes, at a minimum, the items specified in this paragraph (b)(7). These items may be contained in other board-approved documents that are adopted annually, provided the items are summarized in, and incorporated by reference into, the human capital plan.

(i) A description of the institution's workforce and management and an assessment of their strengths and weaknesses;

(ii) A description of the institution's workforce and management succession programs; and

(iii) Strategies and actions to strive for diversity and inclusion within the institution's workforce and management.

(8) For each Farm Credit System institution in its exercise of title III lending authorities and direct lender association, 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 items specified in this paragraph (b)(8). These items may be contained in other board-approved documents that are adopted annually, provided the items are summarized in, and incorporated by reference into, the marketing plan.

(i) A description of the institution's chartered territory by market segment, including the characteristics of demography, geography, and types of agriculture practiced; and

(ii) Strategies and actions to market the institution's products and services to all eligible and creditworthy persons, with specific outreach toward diversity and inclusion within each market segment.

(c) *Board reporting requirements.*

(1) Each institution must report annually to its board of directors on the progress the institution has made in accomplishing the strategies and actions required by paragraph (b)(7)(iii) of this section.

(2) Each institution subject to paragraph (b)(8) of this section must report annually to its board of directors on the progress the institution has made in accomplishing the strategies and actions required by paragraph (b)(8)(ii) of this section.

Dated: April 19, 2012.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2012-10356 Filed 4-30-12; 8:45 am]

**BILLING CODE 6705-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 110

[USCG-2011-0231]

**RIN 1625-AA01**

### Anchorage Regulations; Wells, ME

**AGENCY:** Coast Guard, DHS.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** On January 6, 2012, we established three special anchorage areas in Wells Harbor, Wells, Maine, through a published final rule. The Marine Chart Division of the National Oceanographic and Atmospheric Administration (NOAA) advised the Coast Guard that the coordinates in the final rule for the three special anchorage areas were out of sequence and formed an hourglass shaped anchorage. This direct final rule corrects the sequence of the coordinates so that the anchorage area forms a box-like shaped anchorage.

**DATES:** This rule is effective July 30, 2012, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via <http://www.regulations.gov> on or before July 2, 2012 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by July 2, 2012, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2011-0231 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. John J. Mauro, Waterways Management Branch Chief, First Coast Guard District; telephone 617-223-8355, email [John.J.Mauro@uscg.mil](mailto:John.J.Mauro@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**