

FCA-PS-79 [BM-14-FEB-08-02] (73 FR 9804, 02/22/08); [NV 09-16, 08/07/09] (74 FR 56195, 10/30/09) 08/07/2009

Consideration and Referral of Supervisory Strategies and Enforcement Actions

Effective Date: August 7, 2009

Effect on Previous Actions: Rescinds and supersedes the previous PS-79.

Source of Authority: Sections 5.19, 5.25-5.35 of the Farm Credit Act of 1971, as amended.

THE FCA BOARD HEREBY ADOPTS THE FOLLOWING POLICY STATEMENT:

The Farm Credit Administration (FCA or Agency) Board provides for the regulation and examination of Farm Credit System (System or FCS) institutions, which includes the Federal Agricultural Mortgage Corporation (Farmer Mac), in accordance with the Farm Credit Act of 1971, as amended (the “Act”). This policy addresses conditions that warrant referrals to the Agency’s Regulatory Enforcement Committee (REC) to consider appropriate supervisory strategies and recommend to the FCA Board the use of the enforcement authorities conferred on the Agency under Part C, Title V of the Act or other statutes. Enforcement actions include formal agreements, orders to cease and desist, temporary orders to cease and desist, civil money penalties, suspensions or removals of directors or officers, and conditions imposed in writing to address unsafe or unsound practices or violations of law, rule or regulation (Enforcement Document). Taking these actions, in an appropriate and timely manner, is critical to maintaining shareholder, investor, and public confidence in the financial strength and future viability of the System.

This policy provides only internal FCA guidance. It is not intended to create any rights, substantive or procedural, enforceable at law or in any administrative proceeding.

Composition of the REC

The Chairman of the FCA Board will designate the Chief Operating Officer and the office directors of the Office of Examination, Office of General Counsel, and Office of Regulatory Policy, or the directors of successor offices, as voting members of the REC. A representative from the Farm Credit System Insurance Corporation will be invited to participate in REC activities as a non-voting member. The Chairman of the FCA Board will also designate one of the voting REC members as Chairman of the REC.

Due to the statutory independence of the Office of Secondary Market Oversight (OSMO), there will be different REC membership when considering issues related to Farmer Mac.

Referrals to the REC

Recommended supervisory strategies or enforcement actions concerning an FCS institution or person will be referred to the REC when any of the conditions exist, as specified below, or when a specified condition does not exist, but consideration of an enforcement action or review by the REC is appropriate. The REC will review the proposed actions and draft enforcement documents and assess the recommendations for

pursuing any such actions. The REC may revise the recommendations and will document its concurrence or nonconcurrence with the supervisory strategy or enforcement action.

Conditions Warranting Referral to the REC

Any one of the following conditions requires a referral to the REC for its consideration of supervisory strategies or enforcement actions.

1. A “4” or “5” composite FIRS rating is assigned to an FCS institution;
2. The institution or person is deemed unable or unwilling to address a material: (a) unsafe or unsound condition or practice; or (b) violation or ongoing violation of law or regulation;
3. The institution or person is about to engage in a material unsafe or unsound practice or is about to commit a willful or material violation of law or regulation that exposes the institution to significant risk;
4. Conditions meet the statutory criteria for a suspension or removal;
5. Conditions meet the statutory criteria for assessing a civil money penalty and the factors to be considered in determining the amount of a civil money penalty justify the imposition of the penalty;
6. Conditions meet the statutory criteria to place an FCS institution in conservatorship or receivership;
7. An institution or person fails to comply with an Enforcement Document or is unwilling or unable to address a violation of a condition imposed in writing; or
8. Conditions justify termination or modification of an existing Enforcement Document.

As appropriate, referrals for the REC’s consideration also may be made for conditions not specified above.

Notification of the REC

The REC will be notified when any institution is assigned a “3” composite FIRS rating and informed of the Agency’s supervisory strategies.

Consultation with the REC

For institutions under a formal Enforcement Document, or assigned a composite FIRS rating of “4” or “5”, requests for prior approvals, or other actions, will be referred to the REC for consultation.

Referral to the FCA Board

The REC will refer to the FCA Board for its consideration all recommendations concurred with by the REC for the placement of an Enforcement Document on a FCS institution or person. In the unlikely instance, when an institution receives a composite “4” or “5” FIRS rating and a formal Enforcement Document is not recommended to the FCA Board, the REC will promptly document and report the Agency’s supervisory strategy to the FCA Board.

Reporting to the FCA Board

The REC Chairman will report at least quarterly to the FCA Board if matters are referred to or reviewed by the REC, but FCA Board action is not subsequently requested.

Actions by the REC

The REC will develop procedures to address the responsibilities outlined herein.

Due to OSMO's statutory independence, the Director of OSMO will develop procedures for actions affecting Farmer Mac.

DATED THIS 7th DAY OF AUGUST, 2009
BY ORDER OF THE BOARD

Roland Smith
Secretary,
Farm Credit Administration Board.