An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: February 17, 2004.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 04–3935 Filed 2–23–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7626–3]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92–463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy, technology, and management issues. NACEPT consists of a representative cross-section of EPA's partners and principal constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing. The Council is a proactive, strategic panel of experts that identifies emerging challenges facing EPA and responds to specific charges requested by the Administrator and the program office managers. The purpose of the meeting is to develop the NACEPT Council's agenda for FY04 to support the Administrator's priorities. In addition, NACEPT will report on the work of its subcommittees.

DATES: NACEPT will hold a two-day public meeting on Thursday, March 11, from 8:30 a.m. to 5 p.m. and Friday, March 12, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Grant Hyatt Washington, 1000 H Street, NW., Washington, DC. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Sonia Altieri, Designated Federal Officer, *altieri.sonia@epa.gov*, 202–233–0061, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Council should be sent to Sonia Altieri, Designated Federal Officer using the contact information below by March 5, 2004. The public is welcome to attend all portions of the meeting.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Sonia Altieri at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: February 10, 2004.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. 04–3933 Filed 2–23–04; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

RIN 3052–AC13

Loan Policies and Operations; Loan Syndication Transactions

AGENCY: Farm Credit Administration.

ACTION: Final notice.

SUMMARY: The Farm Credit Administration (FCA or agency) provides, in this notice, the guidance that the Farm Credit System (FCS or System) requested about the regulatory treatment of syndicated loans to eligible borrowers. This notice also reaffirms FCA's longstanding interpretation that syndicated loans to eligible borrowers come within System banks' and associations' lending powers, not their loan participation authorities.

FOR FURTHER INFORMATION CONTACT: Dennis K. Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or

Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit

Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Brief Overview

System banks and associations engage in loan syndication transactions for eligible borrowers under their direct lending authorities. Therefore, syndications to eligible borrowers are subject to all statutory and regulatory requirements that apply to direct loans. Eligible borrowers must purchase and hold the voting stock of FCS lenders that are parties to the syndication. Borrower rights and territorial consent requirements apply when lenders operating under title I or II of the Farm Credit Act of 1971, as amended, (Act) take part in syndications made to eligible borrowers. All System lenders that engage in loan syndication transactions must maintain a first-lien position on borrower stock, and all FCS associations operating under title I of the Act must hold a first lien on real estate pledged as collateral. Farm Credit banks operating under title I of the Act cannot enter directly into loan syndications after they have transferred their direct lending authority to their affiliated associations. Finally, no System bank or association has authority to purchase assignments in loan syndications from non-System lenders.

II. Background

A. Distinctions Between Participations and Syndications

Many different types of arrangements enable lenders to work together in multi-lender transactions. Participations and syndications are two separate and distinct examples of multi-lender transactions. The essential distinguishing factor between the two is the legal relationships among the parties.

Loan participations involve two separate legal relationships. The first relationship is between the borrower and loan originator (lead lender), and the second relationship is between the lead lender and the participating lenders. In a loan participation, only the lead lender signs a loan agreement with, and receives a promissory note from, the borrower. Participating lenders must look only to the lead lender for satisfaction of their claims because they have no contractual relationship with the borrower.

In syndications, the borrower signs a loan agreement with multiple creditors, each of whom has a direct contractual relationship with the borrower. Usually, each creditor in a syndicated loan transaction receives its own promissory note from the borrower. Loan agreements usually allow the original loan syndicators to sell both assignments and participations in their portion of the credit to other lenders. Thereafter, a purchaser of an assignment has a direct contractual relationship with the borrower.

B. The FCA's Historical Position on Participations and Syndications

The FCA has consistently viewed syndications as loans under the System's direct lending authority, not as participations. In 1991, the preamble to a reproposed rule on loan participations and other interests in loans stated:

> The reproposed regulations do not address loan syndications, whereby a borrower has a direct contractual relationship with more than one lender but the loan negotiations with the borrower are coordinated under the auspices of a lead bank(s). *Such loans can be made through the exercise of the institution's direct lending authority provided * * * other statutory and regulatory requirements * * * are met.*

(Emphasis added). See 56 FR 2452 (Jan. 23, 1991).

Two more recent rulemakings reaffirmed that a System institution's participation interest in a loan made by another lender does not result in a direct contractual relationship with the borrower. The rulemakings also recognized three factors that demonstrate that a participation cannot be interpreted as a direct loan. In a participation, (1) There is no contractual relationship between the borrower and participating lenders, (2) only the lead lender extends credit directly to the borrower, and (3) the lead lender is the only lender of record on all loan documents. The FCA relied in part on these principles in 2000 when it repealed several regulations that required out-of-territory consent for loan participations that FCS lenders buy from non-System lenders,[1] and in 2002, when it authorized FCS banks and associations to buy 100-percent participations from non-System lenders.[2]

C. The System's Petition and the FCA's Request for Input From the Public

Syndicated loans are emerging as a more common method of financing large agricultural operations. As a result, the System has asked the FCA to change its approach to syndications so FCS banks and associations would have greater flexibility to engage in such transactions. A May 16, 2002 letter from the Farm Credit Council (FCC) to the Chairman of the FCA stated that the agency's position places the System at a competitive disadvantage with commercial lenders for syndicated credits because (1) Associations must comply with borrower rights requirements and obtain consent for out-of-territory loans, (2) the agricultural credit bank (ACB) and associations must sell voting stock to borrowers, and (3) all FCS institutions must maintain the first-lien position on voting stock and, in certain cases, long-term mortgage real estate pledged as collateral. The FCC also stated that as long as these requirements apply, commercial banks that organize and comprise a majority of lenders taking part in syndications would probably exclude System institutions from most transactions. Borrower rights, borrower stock, and territorial consent are not standard practices in loan syndication transactions because they only apply to the FCS. As a result, the FCC asserted that these requirements are obstacles that block the System from assuming a meaningful role in syndications to eligible borrowers.

The FCC attached a position paper and legal analysis to its letter, which advocated the System's view that loan syndications are the functional equivalent of loan participations because a System institution (1) Acquires only a small fraction of the overall credit to the borrower, and (2) cannot unilaterally make major credit decisions about the loan.

As a result of the System's request, the FCA Board decided to solicit comments from the public about the regulatory treatment of syndications. On January 17, 2003, the FCA published a notice (*See* 68 FR 2540) in the **Federal Register** that asked the public to answer the following questions:

1. What is the proper regulatory treatment of loan syndications?

2. Assuming syndication transactions are within the System's loan-making authority, should the FCA consider regulatory changes that allow (a) Borrowers to waive borrower rights in syndication transactions, and (b) associations to take part in syndications to eligible borrowers who are located in the chartered territories of other associations without consent?

3. If the FCA would choose to recommend statutory changes to Congress regarding the System's authority to engage in various types of multi-lender transactions with non-System lenders, what specifically should the FCA include in its recommendation?

[1] *See* 65 FR 24101 (Apr. 25, 2000).

[2] *See* 67 FR 1282 (Jan. 10, 2002).

The initial comment period expired on February 18, 2003. At the request of the FCC, the FCA reopened the comment period on February 25, 2003 for 60 additional days.[3] The FCA subsequently extended the comment period twice, each time for an additional 60 days, as members of the public requested.[4] The comment period closed on August 19, 2003.

D. Comments Received

The FCA received 152 comment letters from System and non-System lenders and other interested parties. Fifty-six (56) letters came from System banks and associations that asked the FCA to change its interpretation and, in the future, treat syndications to eligible borrowers as loan participations. Additionally, 10 commercial lenders supported continued System involvement in loan syndication transactions. The FCA received 86 comment letters from commercial banks, their trade associations, and members of the general public that favor retaining the current interpretation. These commenters opposed any regulatory changes. Both System and non-System commenters opposed the FCA asking Congress for new legislation on syndications.

The commenters who favor changing the FCA's current interpretation advised the FCA that:

1. The trend in the markets is away from traditional participations and toward syndications;

2. Syndications resemble participations because each party only has a fractional interest in the entire credit and, in contrast to direct loans, no party can unilaterally make major credit decisions;

3. Borrower rights, borrower stock, first-lien position, and territorial consent requirements deter commercial lenders from inviting System institutions to take part in loan syndications, and

4. Because the FCA has broad discretion in how it interprets the Act, and is entitled to judicial deference, the FCA should extend the definition of ''participation'' in the similar entity provisions of the Act to syndications for eligible borrowers.

The commenters who favor retaining FCA's current interpretation asked the FCA to consider that:

1. The law on this issue is settled, and the markets distinguish syndications from participations and, therefore, the FCA's current interpretation is correct;

2. Syndications are credits to large borrowers, whereas the System should focus on young, beginning, and small farmers and ranchers and other borrowers that are more closely involved in production agriculture;

3. Congress gave borrower rights to farmers who borrow from the System, and the FCA should protect those rights, and

4. A new interpretation that would exempt System associations from territorial consent revives the national charter initiative and encourages the associations to ''cherry pick'' large credits.

III. Review of Loan Syndications for Eligible Borrowers

After reviewing input from the public and conducting a thorough legal review of the Act, its legislative history, and external sources, the FCA reaffirms that syndications and assignments of interests in syndicated loans do not fall within the statutory authority of FCS banks and associations to participate in loans made by non-System lenders to eligible borrowers. Under the Act, syndicated loans to eligible borrowers are part of the System's direct lending authority. For this reason, regulations that implement the Act and other guidance from the FCA will continue to require System banks and associations to (1) Treat syndications to eligible borrowers as direct loans, and (2) comply with all statutory and regulatory requirements that apply to direct loans.

A. The Rules of Statutory Construction

In interpreting the provisions of the Act that govern the System's direct lending and participation authorities, the FCA is guided by the rules of statutory construction that Federal courts use when they review an agency's interpretation of the statute it administers. A reviewing court examines the language and design of the *whole* statute to determine whether or not Congress clearly expressed its intent about the question at hand. If Congress' intent is clear, the inquiry ends, and the unambiguously expressed intent of Congress is enforced. If the applicable provisions of the statute are silent or ambiguous, the agency's interpretation is entitled to judicial deference as long as it is not arbitrary, capricious, or manifestly contrary to the statute. The agency's reasonable interpretation of the statute is entitled to judicial deference even if the reviewing court would not have necessarily adopted the agency's position had it decided the issue. *See Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–43 (1984).

B. The Text and Structure of the Act

In determining whether or not a statute is ambiguous, its provisions ''must be read in their context and with a view to their place in the overall statutory scheme.'' [5] In other words, all the parts of a statute must fit into a ''harmonious whole,'' [6] and one provision cannot be interpreted in a way that negates another provision of the same statute. Furthermore, the words of a statute must be interpreted according to their ''ordinary, contemporary, common meaning,'' [7] unless Congress clearly expressed a different intent.

An examination of the text, structure, and history of the Act indicates that Congress was not silent or ambiguous about this issue. After applying these judicial rules of statutory construction to the Act, the FCA reaffirms that syndicated loans to eligible borrowers are part of the System's direct lending authority and do not fall within the System's participation authority.

1. Definition of Participation and Syndication

As the rules of statutory construction require, the FCA examines the ''ordinary, contemporary, common meaning'' of the terms in question. ''Participate'' and ''participation'' is clearly different from the meaning of ''syndications.'' Moreover, defining ''participate'' or ''participation'' to include syndications would contradict the commonly understood meaning of these terms in the financial, business, and legal communities. For example, a banking law journal described the differences between participations and syndications as follows:

> Multiple lender transactions generally fall into two categories: loan participations and loan syndications. The first category, loan participations, involved transactions where a lead or originating lender sells a part of or all of a loan to one or more purchasers. Participation, thus, can be defined as a third party's acquisition of a specified percentage of a prearranged loan.
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> * * * * *
>
> The second type of multi-lender transaction, loan syndications, involve two or more lenders who make a loan(s) to a borrower under a common loan agreement. Each lender is a syndicate member. Unlike participations, the borrower has direct relationships with each of the lenders. Thus,

[3] *See* 68 FR 8764 (Feb. 25, 2003).

[4] *See* 68 FR 19538 (Apr. 21, 2003); 68 FR 37824 (Jun. 25, 2003).

[5] *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 133 (2000) (citing *Davis* v. *Mich. Dept. of Treas.,* 489 U.S. 803, 809 (1989)).

[6] *Id.* (citing *FTC* v. *Mandel Bros, Inc.,* 359 U.S. 386, 389 (1959)).

[7] *Pioneer Investment Service Co.* v. *Brunswick Associates Ltd. Partnership,* 507 U.S. 380, 388 (1993).

each syndicate member is in direct privity of contract with the borrower.[8]

Case law [9] and guidance from other Federal banking regulators [10] also distinguish between syndications and participations. A passage in *Bank of the West* v. *The Valley National Bank of Arizona,*[11] which cited Circular 181 of the Office of the Comptroller of the Currency, states:

> A loan participation, as distinguished from a multibank loan transaction (syndicated loan), is an arrangement in which a bank makes a loan to a borrower and then sells all or a portion of the loan to a purchasing bank. All documentation of the loan is drafted in the name of the selling bank.

In re Okura & Co stated that a loan participation ''involves two independent, bilateral relationships: the first between the borrower and the lead bank and the second between the lead bank and the participants.'' [12] The same passage notes, ''As a general rule, the participants do not have privity of contract with underlying borrower * * *. In a syndication agreement, the banks jointly lend money.'' [13]

A System bank, citing a law review article,[14] stated participations and syndications are treated the same under securities laws. However, Federal securities statutes and regulations of the Securities and Exchange Commission do not, as the commenter implies, define ''syndications'' to mean ''participations.'' The point of the article is not that syndications and participations are the same, but that neither are generally considered securities. Furthermore, the same section of text cited by the commenter as supporting its view, actually supports the opposite view, namely that syndications are a form of direct lending. The text describes the attributes of a syndication as follows, ''[e]ach bank is a party to the syndicated loan agreement, is in privity of contract with the borrower, and receives its own note and security interest in the collateral.'' [15] In summary, the commonly accepted definition and legal effect of a syndication transaction clearly bring it within the System's loan-making authority and not its participation authority.

2. Similar Entity Authority

Several System commenters asked the FCA to apply the definition of ''participate'' and ''participation'' in the similar entity provisions of the Act to syndications and assignments for eligible borrowers. Many of these commenters stated that section 3.1(11)(B)(iii) of the Act demonstrates Congress' intent to treat syndications and participations identically for all multi-lender transactions that System banks and associations engage in. Some System commenters found it inconceivable that Congress intended to exempt syndications for ineligible similar entities from borrower rights, borrower stock, territorial consent, and first-lien requirements, while imposing these same obligations on syndications for eligible borrowers.

The FCA responds that the plain language of section 3.1(11)(B)(iii) of the Act explicitly applies this definition to similar entities, not extensions of credit to eligible borrowers. Sections 3.1(11)(B) and 4.18A of the Act authorize FCS lenders to ''participate'' in loans to similar entities, which are not eligible for System loans, but are functionally similar to eligible borrowers. Sections 3.1(11)(b)(iii) and 4.18A(a)(1) of the Act, which were added by the Farm Credit System Agricultural Export and Risk Management Act (1994 Act),[16] expressly define ''participate'' and ''participation'' for similar entity transactions to include syndications and assignments.[17] In contrast, sections 1.5(12)(C), 2.2(13) and 3.1(11)(A) of the Act, which authorize FCS banks and associations to participate in loans to eligible borrowers, do not define ''participations'' to include syndications and assignments.[18] As explained above, the rules of statutory construction require that the various provisions of the Act be ''read in their context and with a view to their place in the overall statutory scheme'' so they fit into a ''harmonious whole.'' Examination of the structure of the Act demonstrates that Congress established two different statutory schemes for participations to (1) Eligible borrowers, and (2) similar entities. Congress did not amend the provisions of sections 1.5, 2.2, and 3.1 of the Act, which govern loan participations for eligible borrowers, in 1994 when it added the new definition of ''participate'' and ''participation'' for similar entities to section 3.1(11)(B)(iv) of the Act. Therefore, it is clear that the 1994 Act did not authorize System banks and associations to engage in syndication transactions for eligible borrowers under their loan participation authorities.

C. Legislative History

The Farm Credit Act of 1971 granted production credit associations (PCAs) and banks for cooperatives authority to participate in loans with non-System lenders in 1971,[19] while the Farm Credit Act Amendments of 1980 [20] (1980 Act) gave System mortgage lenders similar authority. The legislative history to the 1980 Act confirms that Congress believed that a participation interest does not entail a contractual relationship between a borrower and a participating lender.

Prior to 1980, it was not clear whether a PCA was required to issue stock to a borrower when the PCA participated in a loan that a non-System lender made. The legislative history to the 1980 Act stated ''[t]he requirement that farmers or aquatic borrowers purchase stock in the association served to impede or complicate PCA-other lender participations. *It caused the association to become a visible party in transactions in which the commercial lender was the*

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[8] *N.C. Banking Institute* 169, 172 (April 1999). *See also*, Office of the Comptroller of the Currency Economic and Policy Analysis Working Paper, ''Recent Trends in Bank Loan Syndications Evidence for 1995 to 1999'' (December 2000) and ''Banks and Loan Sales,'' 35 *Journal of Monetary Economics* 389, 394 (1995).

[9] *In re Okura & Co.*, 249 B.R. 596, 608 (Bankr. S.D.N.Y., 2000); *Bank of the West* v. *The Valley Nat'l Bank of Arizona,* 41 F. 3d 471, 473 (9th Cir, 1994); *Banco Espanol de Credito* v. *Security Pacific National Bank,* 763 F. Supp. 36, 43 (S.D.N.Y., 1991) aff'd 73 F.2d 51 (2nd Cir. 1992), cert. denied 509 U.S. 903 (1993); *Hibernia Nat. Bank* v. *Federal Deposit Ins. Corp.*, 733 F.2d 1403, 1407 (10th Cir. 1984); *McVay* v. *Western Plains Corp.*, 823 F.2d 1395 (10th Cir. 1987).

[10] Office of the Comptroller of the Currency Banking Circular, OCC–BC–181 (Aug. 2, 1984).

[11] *Supra* at 41 F. 3d 471, 473 (9th Cir, 1994).

[12] *Supra* at 249 B.R. 596, 608 (Bankr. S.D.N.Y., 2000).

[13] *Id.* Citations omitted.

[14] *See* ''The Status of Note Participations Under the Federal Securities Acts,'' 8 Harv. J.L & Pub. Pol'y 465, 468–69 & n. 18 (1985).

[15] *Id.*

[16] *See* Pub. L. 103–376, Section 2, 108 Stat. 3797 (Oct. 19, 1994).

[17] Section 3.1(11)(b)(iii) of the Act states, ''as used in this subparagraph, the term 'participate' or 'participation' refers to multilender transactions, including syndications, assignments, loan participations, subparticipations or other forms of the purchase, sale or transfer or interests in loans, other extensions of credit, or other technical and financial assistance.'' Section 4.18A(a)(1) incorporates this definition by reference into the statutory provision that authorized banks and associations operating under titles I and II of the Act to ''participate'' in similar-entity transactions.

[18] Certain statutory restrictions that only apply to similar entity authority may explain why Congress chose a more flexible definition of ''participation'' and ''participate'' for similar entity transactions. First, the total amount of participations any FCS lender has outstanding to a single similar entity cannot, in most cases, exceed 10 percent of its total capital. Second, the participation interest(s) that one or more FCS lender holds in the same similar entity transaction cannot equal or exceed 50 percent of the principal amount of the loan. Third, the total amount of outstanding similar entity participations held by an FCS lender cannot equal or exceed 15 percent of its total outstanding assets at the end of the preceding fiscal year.

[19] *See* Pub. L. 92–181, 85 Stat. 583 (Dec. 10, 1971).

[20] *See* Pub. L. 24–184, 94 Stat. 3437 (Dec. 24, 1980).

lead institution.''[21] (Emphasis added). In order to resolve any confusion and to remove the PCA as a ''visible party,'' the 1980 Act allowed PCAs to satisfy the stock requirement by issuing stock to the non-System lender instead of the borrower. If a participation transaction entailed a direct contractual relationship between a PCA and a borrower, the PCA would have been a ''visible party,'' whether or not it issued stock to the borrower. However, Congress chose to resolve this problem by changing the stock requirement. Therefore, it is clear that Congress did not believe that a participation transaction resulted in a direct contractual relationship between a PCA and a borrower.

After 1980, Congress did not substantively revise the provisions of the Act that govern the System's authorities to participate in loans to eligible borrowers but, as noted earlier, it added a new statutory definition of ''participate'' and ''participation'' for similar entity transactions in 1994. A System commenter cited two passages in the legislative history to the 1994 Act to support its view that syndications to eligible borrowers are within the System's loan participation authority.

In the first passage, a Senator stated that the new definition of ''participations'' for similar entity authority would ''[c]larify the System's current authority to participate in loans * * * permitting the System to take part in syndications * * *.''[22] According to the commenter, this statement indicates that the Senator believed that the System already had authority to engage in syndications to eligible borrowers. However, this interpretation would be inconsistent with the actual text of the Act and the 1994 amendments thereto.[23] The 1994 amendments did not change the System's existing participation authority. Rather, it clarified the existing similar entity authority for title III lending and added similar entity authority for titles I and II.[24]

The second passage that the commenter relies on is an analysis of the 1994 legislation that the FCA prepared and submitted to the House Agriculture Committee, which was subsequently reprinted in the *Congressional Record.* The FCA's analysis stated the proposed statutory definition of ''participations'' for similar entities ''* * * is more expansive than the current regulatory definition * * *'' and ''does not require an undivided fractional interest in the principal amount of the loans (as FCA regulations do) and hence does not require pro rata risk sharing.''[25] The commenter's reliance on this passage is misplaced. The FCA's analysis discussed a regulatory, but not a statutory limit on loan participations for eligible borrowers. Former § 614.4325(a)(4), defined a ''participation'' to mean a fractional undivided interest in a loan. Because the proposed statutory definition was ''more expansive'' than the existing regulatory definition, the FCA noted that the Act would not require an undivided fractional interest for similar entity transactions. In 2002, the FCA revised § 614.4325(a)(4) so FCS banks and associations could purchase participations that equaled 100 percent of the principal amount of a loan to an eligible borrower. However, this change is not relevant to the present issue. Regardless of whether syndications are divided or undivided interests, they still are direct loans and, therefore, come within the System's direct lending authority.

IV. Rules that Apply to Syndications for Eligible Borrowers

The foregoing analysis of the Act, its legislative history, and applicable case law, affirm that syndications for eligible borrowers come within the System's direct lending authority, not within its loan participation authority. As a result, FCS banks and associations that are direct lenders may take part in a syndicated loan to an eligible borrower as long as they comply with the applicable provisions of the Act and FCA regulations that govern lending to eligible borrowers. FCS banks that are not direct lenders cannot take part directly in syndicated loans to eligible borrowers, and no System lender may purchase assignments in syndicated loans to eligible borrowers from non-System lenders.

A. System Banks

System banks that have transferred their long-term mortgage lending authority under section 7.6 of the Act to their associations can no longer make loans directly to farmers, ranchers, and other eligible borrowers. Therefore, these banks cannot directly take part in syndicated loans to eligible borrowers. These banks may, however, purchase a participation interest in a long-term mortgage syndicated loan directly from a non-System lender. Additionally, these banks may buy (long-or short-term) participations and other interests in syndicated loans directly from other System banks or associations.

B. Assignments

Assignments in syndications are interests in loans. Sections 1.5(16), 2.2(11), and 3.1(13)(B) of the Act do not authorize FCS banks and associations to buy interests in loans from non-System lenders. However, System banks and associations may buy from and sell to each other assignments in loans.

C. Borrower Rights

Borrower rights attach to all agricultural or aquatic loans made under title I or II of the Act.[26] Therefore, System associations that take part in syndicated loans to eligible farmers, ranchers, and aquatic producers and harvesters must adhere to borrower rights requirements.

Our earlier notice (*See* 68 FR 2540, January 17, 2003) asked the public whether the FCA should consider regulatory changes that allow a borrower to waive borrower rights in syndications. Many System commenters replied that borrower rights are an impediment that will discourage commercial lenders from inviting FCS lenders into syndicated loan transactions. Some of these commenters indicated that many, but not all, non-System lenders may be more inclined to invite FCS institutions into syndicated transactions if borrowers could waive borrower rights. Commercial bank commenters opposed any regulatory change that would allow borrowers to waive these rights.

The FCA believes that borrower rights should only be waived in limited

[21] *See* H.R. 96–1287, 96th Cong. 2d. Sess., (Sept. 4, 1980), p. 25.

[22] July 19, 1994 *Cong. Rec.* at S9252 (Statement of Sen. Lugar); Oct. 5, 1994 *Cong. Rec.* at 14236.

[23] United States Supreme Court cases do not give much credence to ''post-enactment'' statements by a bill's sponsor or a member of the committee that reports out a bill. In *Chrysler* v. *Brown,* 441 U.S. 281, 331 (1979), the Supreme Court stated, ''The remarks of a single legislator, even the sponsor, are not controlling in analyzing legislative history.'' In *Central Bank of Denver N.A.* v. *First Interstate Bank of Denver,* 511 U.S. 164, 185 (1994), the Supreme Court opinion stated, ''we have observed on more than one occasion that the interpretation given by one Congress (or a committee or member thereof) to an earlier statute is of little assistance in discerning the meaning of that statute.'' *See also United States* v. *United Mine Workers,* 330 U.S. 258, 281–82 (1947).

[24] Section 502 of the Farm Credit Banks and Associations Safety and Soundness Act of 1992 granted title III banks new authority to ''participate'' in similar entity loans with non-System lenders. *See* Pub. L. 102–552, § 502, 106 Stat. 4102, 4130 (Oct. 28, 1992). Two years later, section 5 of the 1994 Act granted similar entity authority to title I and II lenders. *See* Pub. L. 103–376, § 5, 108 Stat. 3497, 3498 (Oct. 19, 1994). Section 2 of the 1994 Act added the definition of ''participation'' for similar entities to section 3.1(11)(B) of the Act. *Id.* § 2 at 3497.

[25] Sept. 29, 1994 *Cong. Rec.* at H10325.

[26] Section 4.14A(a)(6) exempts title III banks from borrower rights requirements.

circumstances. In the future, the FCA may consider whether to initiate a rulemaking that would allow waivers of borrower rights in syndications for certain sophisticated borrowers.

D. Stock and Membership Requirements

Section 4.3A of the Act requires all eligible farmers, ranchers, aquatic producers and harvesters, and cooperatives, to buy voting stock in the FCS institution that lends to them. This voting stock enables these borrowers to own, control, and participate in the affairs of their System lenders. Under the Act, a minimum stock purchase of $1,000 or 2 percent of the principal amount of the loan, whichever is less, is required. For the reasons explained above, eligible borrowers in syndicated loans must buy voting stock in FCS lenders that take part in these transactions.

E. Territorial Concurrence Requirements

An FCA regulation, § 614.4070, prohibits a System institution that operates under title I or II of the Act from lending directly to any borrower who is located in the chartered territory of another FCS lender without its consent. The earlier notice (*See* 68 FR 2540, January 17, 2003) asked whether the FCA should consider revising this regulation so that out-of-territory syndications to eligible borrowers would no longer require consent from other FCS lenders. All commercial bank commenters who replied to this question opposed repeal of the territorial consent requirement for syndications. These commenters expressed concerns that repealing the territorial consent requirements for syndications would dilute local control of System associations and allow them to operate nationally. The FCA received only a few responses to this question from System commenters. These commenters expressed concern that territorial concurrence for out-of-territory syndications would sharply curtail System involvement in this market. Only one System commenter thought that the FCA should consider revising § 614.4070 if syndications are classified as direct loans. Two other FCS commenters deemed changes to the regulation as unnecessary because System lenders could resolve the territorial consent issues among themselves.

After considering the views of these commenters, the FCA does not plan, at this time, to initiate a rulemaking that would repeal the territorial consent requirements for syndications. FCS associations can resolve this issue through cross-territory consent agreements.

F. Lien Position Requirements

Sections 1.14, 2.6, and 3.10(c) of the Act require each Farm Credit bank and association to hold a first-lien position on stock, participation certificates, and other equity that they issue for the payment of any liability owed by the shareholder-member. Separately, section 1.10(a)(2) of the Act requires that all System institutions operating under title I secure all long-term mortgages with a first lien on interests in real estate. For these reasons, FCS banks and associations must maintain priority lien positions on membership stock and participation certificates, and (when applicable) on real estate that cannot be subrogated to any non-System lender.

V. Other Concerns of the Commenters

A System commenter suggested that the FCA create a special regulatory category for syndications and other multi-lender transactions if the agency determined that syndications for eligible borrowers are not within the System's loan participations authorities. Under the commenter's proposal, multi-lender transactions involving a direct contractual relationship between the borrower and all the creditors would be exempt from borrower stock, borrower rights, territorial concurrence, and first-lien requirements if (1) The borrower was a customer of a non-System lender, (2) FCS institutions held a pro rata interest in the credit, and (3) System lenders could not unilaterally make major credit decisions on the loan. The FCA has no basis under the Act to exempt syndications, assignments, and other multilender transactions (where System lenders enter into a direct contractual relationship with an eligible borrower) from the statutory and regulatory requirements that apply to loans. For this reason, the FCA declines the commenter's request.

Most commercial banks expressed concern that syndications to large, integrated operators would cause System lenders to shift their energies away from young, beginning, and small farmers, ranchers and other borrowers that are more closely involved in production agriculture. However, FCS lenders have legal authority to take part in syndications, as explained above. Accordingly, System lenders may enter into syndications that extend credit to eligible borrowers that have large, integrated operations as long as they comply with all statutory and regulatory requirements that apply to direct loans. Section 1.1(b) of the Act states that the System's public policy mission is to ''* * * be responsive to the credit needs of all types of agricultural producers having a basis for credit. * * *'' Thus, the System may serve all creditworthy agricultural and aquatic producers.

VI. Compliance with this Guidance

System institutions that take part in syndicated loans to eligible borrowers must comply with all applicable provisions of the Act and regulations. From a safety and soundness perspective, each FCS lender must understand the risks associated with syndications, and the policies of its board must establish methods for measuring and managing these risks. The FCA also expects each System lender that takes part in syndications to achieve clearly defined risk management and diversification objectives. The Office of Examination will continue to examine loan syndications to ensure safety and soundness and compliance with the Act and regulations.

VII. Legislative Initiative

The January 17, 2003 notice also sought input from the public about whether the FCA should seek legislative changes regarding the System's authority to engage in various types of multi-lender transactions with non-System lenders. The notice asked what specific statutory changes the FCA should seek if it chose to recommend new legislation to Congress.

All System and non-System commenters opposed any legislative initiative by the FCA on this issue. At this time, the FCA does not plan to propose new legislation to Congress about syndications and other multi-lender transactions. However, given the increasing importance of syndications in agricultural credit markets, the FCA may reconsider its position and pursue legislation that would address this matter in the future.

Dated: February 18, 2004.

James M. Morris,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 04–3888 Filed 2–23–04; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

February 10, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing