

March 10, 1998

Marsha Pyle Martin, Chairman
and Chief Executive Officer
Farm Credit Administration
McLean, Virginia

Dear Ms. Martin:

We have completed our audit of the Farm Credit Administration's (FCA) regulation development processes for the purpose of identifying ways in which those processes could be improved to make them more efficient or effective. To that end, we documented the FCA's current regulation development practices; benchmarked the regulation development practices of other financial regulators, particularly in the use of innovative rulemaking techniques; and interviewed FCA staff involved in the process to obtain their views about how well the current practices work and their suggestions for how they might be improved.

The audit was conducted in accordance with Governmental Auditing Standards issued by the Comptroller General for audits of Federal organizations, programs, activities, and functions. An entrance conference was held on March 5, 1997. A draft of this report was provided to management on February 6, 1998. Corrections have been made, where appropriate, based on management's response. (See Appendix 4)

The process and organization of FCA regulation development have evolved over the past two years as the Agency leadership has acted to streamline and better define areas of responsibility for developing regulations. They have also improved communication between the staff members involved in these activities, particularly between those individuals involved in the review and approval of draft regulations. Recent revisions to policy and procedures are directed at early identification of issues and managing the editing process. (For more information on the evolution of the regulation development division, see Appendix 1.)

FCA's Current Regulation Development Structure and Practice

Primary responsibility for developing FCA regulations is assigned to the Regulation and Policy Division (RPD) of the Office of Policy and Analysis (OPA). Policy analysts in RPD typically serve as project managers for regulation development projects and always have representation from the Office of General Counsel (OGC). Other Agency staff members may be added to the project to provide additional subject matter expertise.

A Regulatory Executive Group (REG) receives products and provides guidance and decisions on issues raised by a regulation development team (RDT). The RDT also presents analyses and recommendations for public policy positions to the REG that are ultimately considered by the FCA Board.

FCA's Structure and Practices Benchmarked Against Other Financial Regulators

We benchmarked the regulation development structures and practices of three other Federal financial regulators: the National Credit Union Administration (NCUA), the Federal Reserve Board, and the Federal Deposit Insurance Corporation. We found that:

1. Electronic technology is increasingly being used to improve the regulation development process. FCA and all three other Federal financial regulators have a home page and welcome public comment on proposed and final regulations on the Internet. However, neither the FCA, nor the other three agencies place public comments on their home page. (See Appendix 2 for National Organic Program Proposed Rule Home Page - the U.S. Department of Agriculture's attempt to collect comments on web page.) All use electronic media to improve the revision and editing of draft regulations.
2. One of the other Federal financial regulators has a policy to accommodate the customer by routinely using plain language in regulations to promote a clearer understanding and alleviate confusion. They often use a question and answer format in preambles and to introduce sections of regulations. (See Appendix 3 for an example of NCUA's plain language regulation.) FCA's RPD and OGC are in the process of jointly hiring a consultant to teach a class on writing regulations at FCA.
3. The FCA is unique in having a stand-alone regulatory development division. Staffing for regulation development in the other three Federal financial regulators is decided ad hoc for each developmental project. Staff with expertise in areas important to the development of regulations, such as the Administrative Procedures Act, Federal Register, Regulatory Burden, Paperwork Reductions Act or other administrative requirements are typically found in the Office of General Counsel or the Executive Secretary's office of those agencies. These offices take the lead in production of regulations in the other agencies with input from the division most versed in the subject area.
4. Even though agency boards of directors are ultimately responsible for the promulgation of regulations, each of the agencies experienced a varying degree of interest and involvement in the developmental stages of rulemaking, depending on the subject and the individual board member. Further, the methods of review of proposed regulations usually changed with each new agency chairperson.
5. FCA is the only agency to have used negotiated rulemaking, fast track and town meeting techniques in developing a regulation.

6. The other Federal financial regulators have outreach programs to customers. They consist of monthly breakfasts with customers or periodic seminars where visual aids are used to update customers on an innovation in the area of consumer protection or a change in status due to legislation. During these meetings there is time allowed for questions and answers to clarify the meaning or interpretation of the regulation or policy at issue. The other regulators also publish periodic newsletters to inform regulated institutions and consumers of newsworthy items including the initiation of a regulation project and the status of ongoing projects.
7. FCA is the only agency routinely using any type of time tracking or cost analysis for regulation's development activity.
8. FCA appears to be the most advanced in developing specific performance measures for regulation development functions. Since November 1997, the public comment page of the FCA's web page has included six performance measures survey questions for public response.
9. The three Federal financial regulators we benchmarked publish the General Counsel's Opinions as well as staff opinions in the Federal Register and on their web site. Moreover, directives are more numerous than regulations in one agency. Often the regulators take a tiered approach in establishing guidance to recognize the diversity within the regulated corporate network.

Input from FCA Staff

We interviewed nine staff members involved in FCA's regulation development process from the RPD and OGC. Most of the members believe that the quality of final products is very good, and that guidance and decisions from the REG are both prompt and responsive to need; however, some expressed concern about deadlines and increasing reporting and administrative requirements. There was also a noted tension between RPD and OGC staff on the issue of who was responsible for making policy determinations. Some believed this to be a healthy tension; others believed it to be a power struggle.

Nearly all staff involved in regulation development expressed the desire for earlier and more frequent Board involvement in the process, although they understood that not all regulations need or command the same Board interest. There was also some staff who thought the Board should be made aware of all options considered by staff rather than just the one recommended to the Board.

The RPD has its own database, accessible to those involved in the specific regulation under development. This database contains e-mails between RDT members, legal memoranda, action plans and other information pertaining to a specific regulation under development. This database has been in operation since February 1996. In December of 1997 and January 1998, the FCA Board Members and their Executive Assistants were briefed on the use of the database and subsequently provided access to it.

REG meeting minutes are kept in the Meeting Minutes database, available to all FCA employees. At the time of the writing of this report, only one set of minutes from 1997 was available on the first database screen, however, twelve sets, mostly 1996 minutes, were archived in the Open Archive Database. The Board members and their Executive Assistants may access the Regulation Development database and the Meeting Minutes Board database. Additionally, members are free to request a briefing or information exchange at any time during regulation development.

An employee from RPD offered a suggestion to obtain more user input on the usefulness and clarity of existing FCA regulations as they are being read or used on line. After every provision or part of a regulation, there could be an opportunity for anyone who had just used the electronic regulatory provision to interactively comment. A questionnaire could be established on-line to capture the user's assessment of their experience in using a specific regulation. The completed questionnaire could be e-mailed to FCA and would be available to use in prioritizing any revisions to the regulation or to give indication of the degree of burden experienced, or the necessity, or clarity of the regulation. The suggestion has been advanced to OPA management and is under consideration.

Summary

FCA's regulation development activities compare favorably with those of the other Federal financial regulators we used as benchmarks. Agency staff participating in the development of regulations provided favorable feedback about FCA's internal processes and their role in that process.

The Agency Strategic Plan includes initiatives directed at further improvements in regulation development activities. The Board may wish to consider whether the following matters identified during this audit would complement those initiatives to streamline the rulemaking process and produce rules that are more "user-friendly."

1. Would an enhanced outreach program provide user information that could assist in making FCA's regulations more "user friendly?" Borrowers' rights is an area unique to FCA which may be suitable for further communication with customers and consumers. (See page 3, number 6.)
2. Does the FCA Board want to formally endorse plain language drafting techniques? This approach is advanced in the National Performance Review Regulatory Reinvention Initiative as a method to decrease confusion, inadvertent errors, reduce the need to seek clarification through phone calls or correspondence, and reduce staff time devoted to gaining understanding of regulations by FCA, Farm Credit System or other users? The RPD and OGC are in the process of selecting a vendor to provide training to improve the writing of regulations at FCA. (See page 2, number 2, and Appendix 3.)

3. Should technological access be extended on the Agency's homepage to: a) permit customers to download FCA regulations; b) make public comments to a proposed regulation available for review by other members of the public for a more interactive rule making process (see page 2, number 1 and Appendix 2); and c) elicit interactive comments from users concerning the usefulness of a regulation (see page 4, first paragraph)? Would it be more useful to the Board members to have the REG meeting minutes linked directly to the Regulation Development database?

Respectfully,

Eldon W. Stoehr
Inspector General

Appendices

- 1 The Evolution of FCA's Organization and Practices for Developing Regulations
- 2 U.S. Department of Agriculture's Agricultural Marketing Service Proposed Rule to Establish a National Organic Program --- Expression of Intention to Have All Public Comments Published on the Web Page.
- 3 Example -- NCUA Regulation Drafted in Plain Language
- 4 Management's Response