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code of federal regulations

Banks and Banking

12

PART 600 TO END

Revised as of January 1, 1997

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JANUARY 1, 1997

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Table of Contents

	Page
Explanation	v
Title 12:	
Chapter VI—Farm Credit Administration	3
Chapter VII—National Credit Union Administration	311
Chapter VIII—Federal Financing Bank	571
Chapter IX—Federal Housing Finance Board	577
Chapter XI—Federal Financial Institutions Examination Council	693
Chapter XIV—Farm Credit System Insurance Corporation	719
Chapter XV—Thrift Depositor Protection Oversight Board	749
Chapter XVII—Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development	809
Chapter XVIII—Community Development Financial Institutions Fund, Department of the Treasury	819
Finding Aids:	
Table of CFR Titles and Chapters	857
Alphabetical List of Agencies Appearing in the CFR	871
Redesignation Table	881
List of CFR Sections Affected—Transferred Regulations Formerly Appearing in Title 12 CFR, Chapter V	883
List of CFR Sections Affected	885

Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 12 CFR 600.1 *refers to title 12, part 600, section 1.*

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Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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RICHARD L. CLAYPOOLE,
Director,
Office of the Federal Register.

January 1, 1997.

THIS TITLE

Title 12—BANKS AND BANKING is composed of six volumes. The parts in these volumes are arranged in the following order: parts 1–199, 200–219, 220–299, 300–499, 500–599, and part 600–end. The first volume containing parts 1–199 is comprised of chapter I—Comptroller of the Currency, Department of the Treasury. The second and third volumes containing parts 200–299 are comprised of chapter II—Federal Reserve System. The fourth volume containing parts 300–499 is comprised of chapter III—Federal Deposit Insurance Corporation and chapter IV—Export-Import Bank of the United States. The fifth volume containing parts 500–599 is comprised of chapter V—Office of Thrift Supervision, Department of the Treasury. The sixth volume containing part 600–end is comprised of chapter VI—Farm Credit Administration, chapter VII—National Credit Union Administration, chapter VIII—Federal Financing Bank, chapter IX—Federal Housing Finance Board, chapter XI—Federal Financial Institutions Examination Council, chapter XIV—Farm Credit System Insurance Corporation, chapter XV—Thrift Depositor Protection Oversight Board, chapter XVII—Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development and chapter XVIII—Community Development Financial Institutions Fund, Department of the Treasury. The contents of these volumes represent all of the current regulations codified under this title of the CFR as of January 1, 1997.

Redesignation tables appear in the volumes containing parts 1–199, parts 300–499, parts 500–599, and part 600–end.

For this volume, Ann Elise Maso was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

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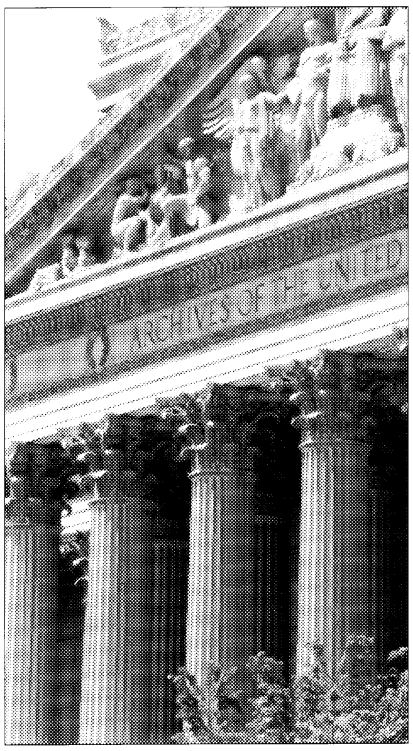

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Title 12—Banks and Banking

(This book contains part 600 to end)

	Part
CHAPTER VI—Farm Credit Administration	600
CHAPTER VII—National Credit Union Administration	700
CHAPTER VIII—Federal Financing Bank	810
CHAPTER IX—Federal Housing Finance Board	900
CHAPTER XI—Federal Financial Institutions Examination Council	1101
CHAPTER XIV—Farm Credit System Insurance Corporation	1400
CHAPTER XV—Thrift Depositor Protection Oversight Board	1505
CHAPTER XVII—Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development	1700
CHAPTER XVIII—Community Development Financial Institutions Fund, Department of the Treasury	1805

CHAPTER VI—FARM CREDIT ADMINISTRATION

SUBCHAPTER A—ADMINISTRATIVE PROVISIONS

Part		*Page*
600	Organization and functions	5
601	Employee responsibilities and conduct	9
602	Releasing information	9
603	Privacy Act regulations	22
604	Farm Credit Administration Board meetings	25
605	Information	29
606	Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the Farm Credit Administration	31
607	Assessment and apportionment of administrative expenses	37
608	Collection of claims owed the United States	41

SUBCHAPTER B—FARM CREDIT SYSTEM

611	Organization	55
612	Standards of conduct	104
613	Eligibility and scope of financing	111
614	Loan policies and operations	122
615	Funding and fiscal affairs, loan policies and operations, and funding operations	184
616	[Reserved]	
617	Investigations	220
618	General provisions	222
619	Definitions	235
620	Disclosure to shareholders	238
621	Accounting and reporting requirements	255
622	Rules of practice and procedure	262
623	Practice before the Farm Credit Administration	277
624	Regulatory accounting practices	280
625	Application for award of fees and other expenses under the Equal Access to Justice Act	282
627	Title V conservators and receivers	287

Part		*Page*
630	Disclosure to investors in systemwide and consolidated bank debt obligations of the Farm Credit System	295
650	Federal Agricultural Mortgage Corporation	309

SUBCHAPTER A—ADMINISTRATIVE PROVISIONS

PART 600—ORGANIZATION AND FUNCTIONS

Subpart A—Farm Credit Administration

Sec.
600.1 The Farm Credit Act.
600.2 Farm Credit Administration.
600.3 Farm Credit Administration Board.
600.4 Chairman of the Farm Credit Administration Board.
600.5 Organization of the Farm Credit Administration.

Subpart B—Rules and Procedures for Service Upon the Farm Credit Administration

600.10 Service of Process.

AUTHORITY: Secs. 5.7, 5.8, 5.9, 5.10, 5.11, 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2241, 2242, 2243, 2244, 2245, 2252, 2279aa–11).

SOURCE: 53 FR 16693, May 11, 1988, unless otherwise noted.

Subpart A—Farm Credit Administration

§ 600.1 The Farm Credit Act.

The Farm Credit Act of 1971, Pub. L. 92–181 recodified and replaced the prior laws under which the Farm Credit Administration and the institutions of the Farm Credit System were organized and operated. The prior laws, which were repealed and superseded by the Act, are identified in section 5.40(a) of the Act. Subsequent amendments to the Act and enactment dates are as follows: Pub. L. 94–184, December 31, 1975; Pub. L. 95–443, October 10, 1978; Pub. L. 96–592, December 24, 1980; Pub. L. 99–190, December 19, 1985; Pub. L. 99–198, December 23, 1985; Pub. L. 99–205, December 23, 1985; Pub. L. 99–509, October 21, 1986; Pub. L. 100–233, January 6, 1988; Pub. L. 100–399, August 17, 1988; Pub. L. 100–460, October 1, 1988; Pub. L. 101–73, August 9, 1989; Pub. L. 101–220, December 12, 1989; Pub. L. 101–624, November 28, 1990; Pub. L. 102–237, December 13, 1991; Pub. L. 102–552, October 28, 1992. The law is codified at 12 U.S.C. 2000, *et. seq.*

[53 FR 16693, May 11, 1988, as amended at 56 FR 2672, Jan. 24, 1991; 59 FR 21641, Apr. 26, 1994]

§ 600.2 Farm Credit Administration.

The Farm Credit Administration is an independent, non-appropriated fund agency in the executive branch of the Federal Government. It is composed of the Farm Credit Administration Board and such other personnel as are employed in carrying out the functions, powers, and duties vested in the Farm Credit Administration. The mailing address of the central offices of the Farm Credit Administration is McLean, Virginia 22102–5090. The hours of business in the central offices are 8:30 a.m.–5:00 p.m. (eastern time), Monday through Friday, excluding Federal holidays.

§ 600.3 Farm Credit Administration Board.

(a) *Organization.* The Farm Credit Administration Board (Board) is a full-time, three-member board entrusted with the responsibility to manage the Farm Credit Administration. The Board consists of three members appointed by the President with the advice and consent of the Senate. The Board may not contain more than two members of the same political party. One member is designated by the President as Chairman of the Board for the duration of such member's term. Each member of the Board shall serve a single 6-year term and cannot be reappointed except in the case of such members who are initially appointed for less than a 6-year term on initial formation of the Board or any member who is appointed to fill an unexpired term of less than 3 years. A member of the Board shall continue to serve subsequent to the expiration of that member's term until the point in time at which an eligible successor has taken his or her oath of office. A person appointed to the Board shall subscribe to the oath of office within 15 days after

having received notice of appointment. Each Board member is assisted by a staff.

(b) *Functions and responsibilities.* The Board manages, administers, and establishes policies for the Farm Credit Administration. Specifically, the Board prescribes the rules and regulations necessary for the implementation of the Farm Credit Act of 1971, as amended, and provides for the examination of Farm Credit System institutions and for the performance of all the powers and duties vested in the Farm Credit Administration.

§ 600.4 Chairman of the Farm Credit Administration Board.

(a) The Chairman of the Board is the Chief Executive Officer of the Farm Credit Administration. The Chairman is responsible for directing the implementation of the policies and regulations adopted by the Board and, after consultation with the Board, the execution of the administrative functions and duties of the Farm Credit Administration. In carrying out policies as directed by the Board, the Chairman acts as the spokesperson for the Board and represents the Board and the Farm Credit Administration in their official relations within the Federal Government. Under policies adopted by the Board, the Chairman consults with the Secretary of Treasury, Board of Governors of the Federal Reserve System, and the Secretary of Agriculture on specific matters.

(b) The Chairman has the authority to appoint such personnel as may be necessary to carry out the functions of the Farm Credit Administration, including the appointment of a Secretary to the Board and noncareer Office Directors. The Board has the authority to approve the appointment by the Chairman of a Chief Operating Officer and career Office Directors. Each Board member has the authority to appoint personnel employed regularly and full-time in his or her immediate office. The Chairman may not delegate powers specifically reserved to the Chairman by the Act without the approval of the Board. In carrying out authorities and responsibilities, the Chairman is governed by general policies adopted by the Board and by such regulatory decisions, findings, and determinations as the Board may by law be authorized to make.

(c) The Chairman as Chief Executive Officer is responsible for overseeing the agency's equal employment opportunity programs. An Equal Employment Opportunity Manager reports directly to the Chairman as Chief Executive Officer.

(d) The Chairman, as head of the agency, has general supervisory authority over the Inspector General. The Inspector General has the authority to select, appoint, and employ such officers and employees as may be necessary to carry out the functions, powers, and duties of the Office of Inspector General. The Inspector General is also authorized to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and private persons, and to obtain the temporary or intermittent services of experts or consultants or an organization of any such professionals. In exercising these authorities, the Inspector General is subject to applicable statutory and regulatory constraints, as well as agency and governmentwide administrative and budgetary limitations.

[53 FR 16693, May 11, 1988, as amended at 59 FR 21641, Apr. 26, 1994]

§ 600.5 Organization of the Farm Credit Administration.

(a) *Chief Operating Officer.* The Chief Operating Officer (COO) reports to and is subject to the direction of the Chief Executive Officer (CEO) concerning administrative matters and to the Board regarding general planning and policy matters, budgetary issues, rulemaking issues, and other matters for which the Board is responsible. Within this context, the COO has responsibility for planning, organizing, directing, coordinating, and controlling agency operations.

(b) *Office Directors.* Each Office of the Farm Credit Administration is headed by a Director. The Director of the Office of Congressional and Public Affairs reports to the CEO. The Director of the Office of Secondary Market Oversight reports to the CEO on administrative matters and to the Board concerning general policy and rulemaking issues.

The Directors of the Offices of Examination, Policy Development and Risk Control, and Resources Management report to the COO. The General Counsel reports to the COO on administrative matters and to the Board on matters of agency policy. Each Office Director may, with the approval of the CEO or COO, as appropriate, establish and fix the responsibilities of the divisions and such other units as the Director deems necessary for the efficient functioning of the Office.

(c) *Inspector General.* The Inspector General reports directly to the Chairman.

(d) *Offices and functions*—(1) *Office of Examination.* The Office of Examination plans and conducts examinations of System institutions and other institutions as required by law; prepares and issues reports of examination summarizing examination findings; recommends corrective action as appropriate; and oversees compliance with the borrower rights provisions of the Act and agency regulations. The Office of Examination recommends formal administrative action to correct deficiencies when System institutions are found to be operating in an unsafe or unsound manner or are in violation of law or regulation. The Office Director prepares examination schedules for approval by the Board and advises the Board on matters affecting policy, regulation, and legislation relating to examination activities. The Director, Office of Examination, is the Chief Examiner of the Farm Credit Administration.

(2) *Office of Policy Development and Risk Control.* The Office of Policy Development and Risk Control (OPDRC) develops policies and regulations for the FCA Board's consideration and promotes risk management policies and practices by the Farm Credit System. The OPDRC has primary responsibility for developing regulatory proposals and public policy statements that effectively implement applicable statutes and promote the safety and soundness of the System. Other major functions include evaluating requests for regulatory and charter approvals and managing the FCA's corporate activities; ensuring that risks associated with chartering activities are properly disclosed to System shareholders and the FCA Board; managing the FCA's formal enforcement activities and providing economic and financial analyses that identify risk and contribute to the effective management of such risks. The OPDRC also facilitates the FCA's strategic planning function.

(3) *Office of Resources Management.* The Office of Resources Management provides agency administrative management for the agency budget, accounting, human resources, training, procurement, electronic data processing, document processing, property, supply, facilities, records and other administrative services. The Chairman and the Board members have delegated to the Chief of the Human Resources Division the authority to serve as appointing officer, including the authority to classify or place positions in the appropriate pay plan and pay ranges.

(4) *Office of General Counsel.* The Office of General Counsel provides legal advice and services to the Board, the Chairman, and the agency staff. The Office interprets the Farm Credit Act of 1971, as amended, and other applicable laws; participates in the preparation of agency rules and regulations; and represents the agency in litigation, in enforcement proceedings brought by the agency, and in proceedings before other administrative bodies. The Office of General Counsel also has the responsibility to ensure that the agency meets all statutory and regulatory ethics requirements. The Director, Office of General Counsel, is the General Counsel of the Farm Credit Administration.

(5) *Office of Congressional and Public Affairs.* The Office of Congressional and Public Affairs coordinates and disseminates all communication by the agency with the Congress and plans and implements all public communications. The Office is the first source of information to the Farm Credit System and borrowers concerning the Farm Credit Administration and provides other representational services for the Board and the agency to the public.

(6) *Office of Inspector General.* The Office of Inspector General is an independent office established by the Inspector General Act Amendments of 1988 to:

(i) Conduct and supervise audits and investigations relating to the programs and operations of the Farm Credit Administration;

(ii) Provide leadership and coordination and recommend policies for activities designed to promote economy, efficiency, and effectiveness in the administration of the Farm Credit Administration's programs and operations;

(iii) Prevent and detect fraud and abuse in the Farm Credit Administration's programs and operations; and

(iv) Provide a means to keep the Chairman and Congress fully and currently informed about problems and deficiencies relating to the Farm Credit Administration's programs and operations and the necessity for, and progress of, corrective actions.

(7) *Office of Secondary Market Oversight.* The Office of Secondary Market Oversight, a separate office within the Farm Credit Administration pursuant to section 8.11 of the Act, provides for:

(i) The examination of the Federal Agricultural Mortgage Corporation and its affiliates; and

(ii) The general supervision of the safe and sound performance of the powers, functions, and duties vested in the Federal Agricultural Mortgage Corporation and its affiliates.

(e) *Additional Information.* Current information on the organization of the Farm Credit Administration may be obtained from the Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virginia 22102–5090.

[53 FR 16693, May 11, 1988, as amended at 59 FR 21641, Apr. 26, 1994; 61 FR 67185, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67185, Dec. 20, 1996, in § 600.5 the fourth sentence of paragraph (b) was amended by removing the words ''Special Supervision and Corporate Affairs'' and adding in their place the words ''Policy Development and Risk Control'', by removing the words ''coordinates the agency's preparation of rules and regulations;'' in the first sentence of (d)(1), and revising (d)(2), effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

§ 600.5 Organization of the Farm Credit Administration.

* * * * *

(d) * * *

(2) *Office of Special Supervision and Corporate Affairs.* The Office of Special Supervision and Corporate Affairs (OSSCA) makes recommendations to the Board regarding corporate restructuring activities, charter changes among System institutions, related activities required by law or regulation, the initiation of enforcement actions against System institutions as provided in part C of title V of the Act, and the termination of enforcement actions. The OSSCA prepares, delivers, and oversees compliance with enforcement documents. It monitors, analyzes, and forecasts the economic, financial, and policy environment in which System institutions operate, including the risk to which those institutions are exposed; provides analytical expertise for policy matters, strategic planning, and regulation development; and oversees receiverships that were appointed prior to January 6, 1993.

* * * * *

Subpart B—Rules and Procedures for Service Upon the Farm Credit Administration

§ 600.10 Service of Process.

(a) Except as otherwise provided in the Farm Credit Administration regulations, the Federal Rules of Civil Procedure or by order of a court with jurisdiction over the Farm Credit Administration, any legal process upon the Farm Credit Administration shall be duly issued and served upon the Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

(b) Service of process upon the Secretary to the Farm Credit Administration Board may be effected by personally delivering a copy of the documents to the Secretary or by sending a copy of the documents to the Secretary by registered or certified mail.

(c) The Secretary shall promptly forward a copy of all documents to the General Counsel and to any Farm Credit Administration personnel named in the caption of the documents.

[54 FR 50736, Dec. 11, 1989, as amended at 59 FR 21642, Apr. 26, 1994]

PART 601—EMPLOYEE RESPONSIBILITIES AND CONDUCT

AUTHORITY: 5 U.S.C. 7301; 12 U.S.C. 2243, 2252.

§ 601.100 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Board members, officers, and other employees of the Farm Credit Administration are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the Farm Credit Administration regulation at 5 CFR part 4101, which supplements the Executive Branch-wide Standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[60 FR 30782, June 12, 1995]

PART 602—RELEASING INFORMATION

Subpart A—Information and Records Generally

Sec.
602.200 General rule.
602.205 Farm Credit Administration examination reports.
602.215 Data regarding borrowers and loan applicants.
602.220 Waiver of restrictions.

Subpart B—Availability of Records of the Farm Credit Administration

602.250 Official records of the Farm Credit Administration.
602.251 Current index.
602.255 Identification of records requested.
602.260 Request for records.
602.261 Response to requests for records.
602.262 Business information.

Subpart C—Fees for Provision of Information

602.265 Definitions.
602.266 Categories of requesters—fees.
602.267 Fees to be charged.
602.268 Waiver or reduction of fees.
602.269 Advance payments—notice.
602.270 Interest.
602.271 Charges for unsuccessful searches or reviews.
602.272 Aggregating requests.

Subpart D—Testimony and Production of Documents in Legal Proceedings in Which the Farm Credit Administration Is Not a Named Party

602.280 General purposes.
602.281 Definitions.
602.282 General policy.
602.283 Request for testimony or production of documents.
602.284 Scope of permissible testimony.
602.285 Manner in which testimony is given.
602.286 Manner in which documents will be produced.
602.287 Fees.
602.288 Responses to demands served on FCA employees.
602.289 Responses to demands served on non-FCA employees or entities.

AUTHORITY: Secs. 5.9, 5.17; 12 U.S.C. 2243, 2252; 5 U.S.C. 552, E.O. 12600, 52 FR 23781, 3 CFR 1987, p. 235.

Subpart A—Information and Records Generally

§ 602.200 General rule.

Except as necessary in performing official duties or as authorized by §§ 602.205 through 602.288 of this part, no one employed by the Farm Credit Administration shall disclose information of a type not ordinarily contained in published reports or press releases regarding the Farm Credit Administration or any banks or associations of the Farm Credit System or its borrowers or members. Information prepared for newspapers, publishing and broadcasting companies, and all new or revised publications shall be cleared with the Office of Congressional and Public Affairs.

[51 FR 41938, Nov. 20, 1986]

§ 602.205 Farm Credit Administration examination reports.

Reports of examinations of Farm Credit System institutions made by the Farm Credit Administration may be disclosed only with the consent of the Chairman of the Farm Credit Administration Board. Consent is given for disclosing reports of regular examinations to the Farm Credit System institution involved or interested, but disclosure of reports of special examinations shall be only by action or consent of the Chairman in each instance.

Consent is also given for disclosing reports of regular examinations to authorized representatives of the Farm Credit Administration and, when requested for confidential use in official investigations of matters touched upon therein, to agents of the Federal Bureau of Investigation, Department of Justice; the Assistant Postmaster General, Inspection Service, U.S. Postal Service; the Secret Service; the Internal Revenue Service; Office of the Inspector General, Department of Agriculture; and the General Accounting Office.

[51 FR 41938, Nov. 20, 1986]

§ 602.215 Data regarding borrowers and loan applicants.

Because the relationship between borrowers and the institutions in the cooperative Farm Credit System is confidential, Farm Credit Administration personnel shall hold in strict confidence all information regarding character, credit standing, and property of borrowers and applicants for loans. They shall not exhibit or quote the following documents: Loan applications; letters and statements relative to the character, credit standing, and property of borrowers and applicants; recommendations of loan committees; and reports of inspectors, fieldmen, investigators, and appraisers, except as authorized by § 618.8320 of this chapter. This section is subject to the following further exceptions:

(a) Farm Credit Administration examiners and other accredited representatives of the Farm Credit Administration shall have free access to all information, records, and files.

(b) Accredited representatives of the offices named in § 602.205 of this part at their request, be given information pertinent to their official investigations of individual cases, and may examine such portions of the records and files as contain the information.

(c) Information concerning borrowers may be given for the confidential use of any Farm Credit System institution, or any Government agency, in contemplation of the extension of agricultural credit or the collection of loans.

(d) Credit information concerning any borrower may be given when such borrower consents thereto in writing.

(e) In litigation between a borrower (or that borrower's successor in interest) and the United States or a bank or association, any competent evidence may be introduced with respect to any relevant statements made orally or in writing by or to the borrower or that borrower's successor.

[37 FR 11413, June 7, 1972, as amended at 51 FR 41938, Nov. 20, 1986]

§ 602.220 Waiver of restrictions.

If it appears that justice would be served by releasing information in circumstances forbidden by § 602.215 of this part, the restrictions of that section may be waived as to a particular case by the Chairman of the Farm Credit Administration Board. A recommendation for such waiver may be submitted by any institution concerned. Any such recommendation from an association shall be submitted through the appropriate Farm Credit Bank, with the request that it be considered and forwarded to the Farm Credit Administration, if deemed advisable. Each such recommendation shall be supported by a statement of facts and approved by counsel for the forwarding bank. The recommendation should be addressed to the General Counsel, Farm Credit Administration.

[51 FR 41938, Nov. 20, 1986, as amended at 56 FR 2673, Jan. 24, 1991]

Subpart B—Availability of Records of the Farm Credit Administration

§ 602.250 Official records of the Farm Credit Administration.

(a) The Farm Credit Administration shall, upon any request for records which reasonably describes them and is made in accordance with the provisions of this subpart, make the records available as promptly as practicable to any person, except exempt records, which include the following:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of

the Farm Credit Administration, including matters which are for the guidance of agency personnel;

(3) Records which are specifically exempted from disclosure by statute;

(4) Commercial or financial information obtained from any person or organization and privileged or confidential;

(5) Inter-Agency or intra-Agency memorandums or letters which would not be available by law to a private party in litigation in which the United States, as real party interest on behalf of the Farm Credit Administration, is a party, or from any Farm Credit System institution, including banks, associations, service organizations, the Funding Corporation, the Farm Credit System Assistance Board, or the Farm Credit System Financial Assistance Corporation, to a private party in litigation with such institution if such memorandums or letters are records of such institution;

(6) Personnel and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Records of or related to examination, operation, reports of condition and performance, or reports of or related to Farm Credit institutions that are regulated and examined by the Farm Credit Administration that are prepared by, on behalf of, or for its use; except that reports to shareholders filed with the Farm Credit Administration pursuant to part 620 of this chapter and those items in reports of condition and performance filed with the Farm Credit Administration pursuant to part 621 of this chapter that are of essentially the same character as items disclosed in reports to shareholders filed with the Farm Credit Administration pursuant to part 620 of this chapter, shall be available to the public on request for a reasonable fee.

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this section.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

[40 FR 7339, Feb. 19, 1975, as amended at 51 FR 8656, Mar. 13, 1986; 56 FR 2673, Jan. 24, 1991; 56 FR 28476, June 21, 1991]

§ 602.251 Current index.

The Farm Credit Administration will make available for public inspection and copying a current index to provide identifying information as to any matter required by 5 U.S.C. 552(a)(2)(C) to be made available or published in the FEDERAL REGISTER. Because of the infrequent requests in the past for material required to be indexed, it is determined that the publication of the index in the FEDERAL REGISTER is unnecessary and impractical. However, the Farm Credit Administration will provide a copy of such index to a member of the public upon request therefor at a

cost not in excess of the direct cost of duplication.

[40 FR 7339, Feb. 19, 1975]

§ 602.255 Identification of records requested.

A member of the public who requests records from the Farm Credit Administration shall provide a reasonable description of the records sought including, where possible, specific information as to dates, titles, and subject matter, so that such records may be located without undue search or inquiry. If a record is not identified by a reasonable description, the request therefor may be denied.

[40 FR 7339, Feb. 19, 1975]

§ 602.260 Request for records.

Requests for records shall be in writing, in an envelope clearly marked ''FOIA Request,'' and addressed to the Freedom of Information Officer, Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virginia 22102–5090. A request improperly addressed will be deemed not to have been received for purposes of the 10-day time period set forth in § 602.261(a) of this part until it is received, or would have been received with the exercise of due diligence by agency personnel, in the Office of Congressional and Public Affairs. Records requested in conformance with this subpart and which are not exempt records may be received in person or by mail as specified in the request. Records to be received in person will be available for inspection or copying during business hours on a regular business day in the public reference facility in the offices of the Farm Credit Administration, McLean, Virginia 22102–5090.

[51 FR 41938, Nov. 20, 1986, as amended at 56 FR 28476, June 21, 1991]

§ 602.261 Response to requests for records.

(a) Within 10 days (excluding Saturdays, Sundays, and legal public holidays), or any extension thereof as provided in paragraph (d) of this section, of the receipt of a request in the Office of Congressional and Public Affairs, the Freedom of Information Officer shall determine whether to comply with or to deny such request and place a notice thereof in writing in the mails addressed to the requester.

(b) Within 30 days of the receipt of a notice denying, in whole or in part, a request for records, the requester may appeal the denial. The appeal shall be in writing addressed to the Director, Office of Resources Management, Farm Credit Administration, and both the letter and envelope shall be clearly marked ''FOIA Appeal.'' An appeal improperly addressed shall be deemed not to have been received for purposes of the 20-day time period set forth in paragraph (c) of this section until it is received, or would have been received with the exercise of due diligence by agency personnel, in the Office of the Director, Office of Resources Management.

(c) Within 20 days (excluding Saturdays, Sundays, and legal public holidays), or any extension thereof as provided in paragraph (d) of this section, of the receipt of an appeal in the Office of the Director, Office of Resources Management, the Director shall act upon the appeal and place a notice of the determination thereof in writing in the mails addressed to the requester. If the determination on the appeal upholds in whole or in part the denial of the request for records, or, if a determination on the appeal has not been mailed at the end of the 20-day period or the last extension thereof, the requester is deemed to have exhausted that person's administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When a determination cannot be mailed within the applicable time limit, the appeal will nevertheless be processed. In such case, upon the expiration of the time limit, the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be mailed, and of that person's right to seek judicial review. The requester may be asked to forego judicial review until determination of the appeal.

(d) In unusual circumstances as specified in this paragraph the 10-day time limit prescribed in paragraph (a) of this section or the 20-day time limit

prescribed in paragraph (c) of this section, or both, may be extended by the Freedom of Information Officer or the Director, Office of Resources Management, as the case may be, provided that the total of all extensions shall not exceed 10 days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be made by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be mailed. As used in this paragraph, ''unusual circumstances'' means, but only to the extent necessary to the proper processing of the request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

[40 FR 7339, Feb. 19, 1975, as amended at 51 FR 41939, Nov. 20, 1986; 56 FR 28476, June 21, 1991]

§ 602.262 Business information.

(a) Business information provided to the Farm Credit Administration by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. The requirements of this section shall not apply if:

(1) The Farm Credit Administration determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(b) For the purpose of this section, the following definitions shall apply.

(1) *Business information* means trade secrets or other commercial or financial information.

(2) *Business submitter* means any person or entity which provides business information to the government.

(3) *Freedom of Information Officer* means the Freedom of Information Officer, Office of Congressional and Public Affairs.

(4) *Requester* means the person or entity making the Freedom of Information Act request.

(c)(1) The Freedom of Information Officer shall, to the extent permitted by law, provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (d) of this section. Such notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(2) Whenever the Freedom of Information Officer provides a business submitter with the notice set forth in paragraph (c)(1) of this section, the Freedom of Information Officer shall notify the requester that the request includes information that may arguably be exempt from disclosure under 5 U.S.C. 552(b)(4) and that the person or entity who submitted the information to the Farm Credit Administration has been given the opportunity to comment on the proposed disclosure of information.

(d)(1) For business information submitted to the Farm Credit Administration prior to January 1, 1988, the Farm Credit Administration shall provide a business submitter with notice of a request whenever:

(i) The information is less than 10 years old and the information has been designated by the submitter as confidential commercial information; or

(ii) The Farm Credit Administration has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter; or

(iii) The information is less than 10 years old and is subject to a prior express commitment of confidentiality given by the Farm Credit Administration to the business submitter.

(2) For business information submitted to the Farm Credit Administration on or after January 1, 1988, the Farm Credit Administration shall provide a business submitter with notice of a request whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) The Farm Credit Administration has reason to believe that the disclosure of the information may result in commercial or financial injury to the business submitter.

(3) Notice of a request for business information falling within paragraph (d)(2)(i) of this section shall be required for a period of not more than 10 years after the date of submission unless the business submitter requests and provides acceptable justification for a specific notice period of greater duration.

(4) Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter that the information in question is in fact a trade secret or commercial or financial information that is privileged or confidential.

(e) Through the notice described in paragraph (c) of this section, the Farm Credit Administration shall, to the extent permitted by law, afford a business submitter a reasonable period within which it can provide the Farm Credit Administration with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of the exemption provided by 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f)(1) The Farm Credit Administration shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the Farm Credit Administration decides to disclose business information over the objection of a business submitter, the Freedom of Information Officer shall forward to the business submitter a written notice which shall include:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) The notice of intent to disclose required by this paragraph shall be sent, to the extent permitted by law, within a reasonable number of days prior to the specified date upon which disclosure is intended.

(3) The Freedom of Information Officer shall send a copy of such disclosure notice to the requester at the same time the notice is sent to the business submitter.

(g) Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (d) of this section, the Farm Credit Administration shall promptly notify the business submitter of such action.

[56 FR 28476, June 21, 1991]

Subpart C—Fees for Provision of Information

SOURCE: 56 FR 28477, June 21, 1991, unless otherwise noted.

§ 602.265 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) The term *commercial use request* means a request for information that is from or on behalf of an individual or entity seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or on whose behalf the request is being made. To determine whether a request is properly classified as a commercial use request, the Farm Credit Administration shall determine the purpose for which the documents requested will be used. If the Farm Credit Administration has reasonable cause to doubt the purpose, specified in the request, for which a requester will use

the records sought, or where the purpose is not clear from the request itself, the Farm Credit Administration shall seek additional clarification before assigning the request to a specified category.

(b) The term *direct costs* means those expenditures the Farm Credit Administration actually incurs in searching for and reproducing documents to respond to a request for information. In the case of a commercial use request, the term also means those expenditures the Farm Credit Administration actually incurs in reviewing documents to respond to the request. The direct cost shall include the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating reproduction equipment. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) The term *educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education that operates a program or programs of scholarly research.

(d) The term *non-commercial scientific institution* refers to an institution that is not operated on a commercial, trade or profit basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(e) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunication services), such alternative media would be included in this category. ''Freelance'' journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by the organization. A publication contract would be the clearest proof that a journalist is working for a news organization, but the Farm Credit Administration may look to a requester's past publication record to determine whether a journalist is working for a news organization.

(f) The terms *reproduce* and *reproduction* mean the process of making a copy of a document necessary to respond to a request for information. Such copies take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(g) The term *review* means the process of examining documents located in response to a request for information to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure (e.g., doing all that is necessary to prepare the documents for release). The term *review* does not include the time spent resolving general legal or policy issues regarding the application of exemptions. The Farm Credit Administration shall only charge fees for reviewing documents in response to a commercial use request.

(h) The term *search* includes all time spent looking for material that is responsive to a request for information, including page-by-page or line-by-line identification of material within documents. Searching for material shall be done in the most efficient and least expensive manner so as to minimize the costs of the Farm Credit Administration and the requester. For example, a line-by-line search for responsive material should not be performed when

merely reproducing an entire document would be the less expensive and the faster method of complying with a request for information. Searches may be done manually or by computer using existing programming. A ''search'' for material that is responsive to a request should be distinguished from a ''review'' of material to determine whether the material is exempt from disclosure.

§ 602.266 Categories of requesters—fees.

There are four categories of requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(a) The Farm Credit Administration shall charge fees for records requested by or on behalf of educational institutions and non-commercial scientific institutions in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a non-commercial scientific institution).

(b) The Farm Credit Administration shall charge fees for records requested by representatives of the news media in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, the requester must qualify as a representative of the news media and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(c) The Farm Credit Administration shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and reproducing the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents. In accordance with § 602.271, commercial use requesters may be charged the costs of searching for and reviewing records even if there is ultimately no disclosure of records.

(d) The Farm Credit Administration shall charge fees for records requested by persons or entities that are not classified in any of the categories listed in paragraphs (a), (b) or (c) of this section in an amount that equals the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding the first 2 hours of search time and the cost of reproducing the first 100 pages of records. In accordance with § 602.271 requesters in this category may be charged the cost of searching for records even if there is ultimately no disclosure of records, excluding the first 2 hours of search time.

(e) For purposes of the exceptions contained in this section on assessment of fees, the word *pages* refers to paper copies of ''8½ ×11'' or ''11 × 14.'' Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or a computer disk containing the equivalent of 100 pages of computer printout meet the terms of the exception.

(f) For purposes of paragraph (d) of this section, the term *search time* has as its basis, manual search. To apply this term to searches made by computer, the Farm Credit Administration will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary of the person performing the search, i.e., the operator, the Farm Credit Administration will begin assessing charges for computer search.

§ 602.267 Fees to be charged.

(a) Generally, the fees charged for requests for records shall cover the full allowable direct costs of searching for, reproducing and reviewing documents that are responsive to a request for information.

(b) Manual searches for records will be charged at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the search.

(c) Computer searches for records will be charged at the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records and the operator/programmer salary apportionable to the search. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to the Farm Credit Administration for the type and amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as of right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart.

(d) Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time the Farm Credit Administration analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(e) Records will be reproduced at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, the requester shall be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of producing the document(s) shall be charged.

(f) The Farm Credit Administration will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Farm Credit Administration.

(h) A receipt for fees paid will be given upon request.

§ 602.268 Waiver or reduction of fees.

(a) The Farm Credit Administration may grant a waiver or reduction of fees if the Farm Credit Administration determines that the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and the disclosure of the information is not primarily in the commercial interest of the requester.

(b) The Farm Credit Administration will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. The elements to be considered in determining the ''cost of collecting a fee'' are the administrative costs of receiving and recording a requester's remittance, and processing the fee.

§ 602.269 Advance payments—notice.

(a) Where it is anticipated that the fees chargeable will amount to more that $25.00 and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof that can be readily estimated.

(b) If the anticipated fees exceed $250.00 and if the requester has a history of promptly paying fees charged in connection with information requests,

the Farm Credit Administration may obtain satisfactory assurances that the requester will fully pay the fees anticipated.

(c) If the anticipated fees exceed $250.00 and if the requester has no history of paying fees charged in connection with information requests, the Farm Credit Administration may require an advance payment of fees in an amount up to the full amount anticipated.

(d) If the requester has previously failed to pay a fee charged within 30 days of the date of a billing for fees charged in connection with information requests, the Farm Credit Administration may require the requester to pay the fees owed, plus interest, or demonstrate that the full amount owed has been paid, and require the requester to make an advance payment of the full amount of the fees anticipated before processing a new request or a pending request from that requester.

(e) The notice of the amount of an anticipated fee or a request for an advance deposit shall include an offer to the requester to confer with identified Farm Credit Administration personnel to attempt to reformulate the request in a manner which will meet the needs of the requester at a lower cost.

§ 602.270 Interest.

The Farm Credit Administration may begin charging interest on unpaid fees, starting on the 31st day following the day on which the bill for such fees was sent. Interest will not accrue if payment of the fees has been received by the Farm Credit Administration, even if said payment has not been processed. Interest will accrue at the rate prescribed in section 3717 of title 31, United States Code, and will accrue from the day on which the bill for such fees was sent.

§ 602.271 Charges for unsuccessful searches or reviews.

The Farm Credit Administration may assess charges for time spent searching for records on behalf of requesters in the categories provided for in § 602.266 (c) and (d), even if there are no records that are responsive to the request or there is ultimately no disclosure of records. The Farm Credit Administration may assess charges for time spent reviewing records for requesters in the category provided for in § 602.266(c) even if the records located are determined to be exempt from disclosure.

§ 602.272 Aggregating requests.

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Farm Credit Administration reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Farm Credit Administration may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

Subpart D—Testimony and Production of Documents in Legal Proceedings in Which the Farm Credit Administration Is Not a Named Party

§ 602.280 General purposes.

The purposes of these rules are to maintain the confidentiality of official documents and information of the Farm Credit Administration, conserve the time of Farm Credit Administration employees for their official duties, maintain the impartial position of the Farm Credit Administration in litigation in which the Farm Credit Administration is not a named party, and enable the Chairman to determine when to authorize testimony and to produce documents in legal proceedings in which the Farm Credit Administration is not a named party. This subpart sets forth the procedures to be followed with respect to testimony concerning official matters and production of official documents of the Farm Credit Administration in legal proceedings in which the Farm Credit Administration is not a named party. This subpart in

no way affects the rights and procedures governing public access to official documents pursuant to the freedom of information act or the privacy act. See part 602, subpart B, and part 603 of this chapter.

[51 FR 41939, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.281 Definitions.

For the purpose of this subpart:

(a) *Chairman* means the Chairman of the Farm Credit Administration Board or his or her designee.

(b) *Court* means any entity conducting a legal proceeding.

(c) *Demand* means any order, subpoena, or other legal process for testimony or documents.

(d) *Document* means any record or paper, including but not limited to a report, credit review, audit, examination, letter, telegram, memorandum, study, calendar and diary entry, log, graph, pamphlet, note, chart, tabulation, analysis, statistical or information accumulation, any kind of record of meetings and conversations, film impression, magnetic tape, or any electronic media, disk, film, or mechanical reproduction that is generated, obtained, or adopted by the FCA in connection with the conduct of its official business.

(e) *Employee* means any officer, former officer, employee or former employee of the FCA, any member of the Farm Credit Administration Board or former member of the Farm Credit Administration Board or the Federal Farm Credit Board, any receiver or conservator appointed by the FCA, or any agent or independent contractor acting on behalf of the FCA, even though the appointment or contract has terminated.

(f) *FCA* means the Farm Credit Administration.

(g) *FCA Counsel* means the General Counsel or his or her designee, a Department of Justice attorney, or counsel authorized by the FCA to act on behalf of the FCA or an employee.

(h) *General Counsel* means the General Counsel of the FCA or his or her designee.

(i) *Legal proceeding* means any administrative, civil, or criminal proceeding, including a discovery proceeding therein, before a court of law, administrative board or commission, hearing officer, or other body in which the FCA is not a named party or in which the FCA has not instituted the administrative investigation or administrative hearing.

(j) *Official* means concerning the authorized business of the FCA.

(k) *Person* means any individual, or any agency, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein but does not include the FCA or any FCA employee.

[50 FR 7331, Feb. 22, 1985, as amended at 51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.282 General policy.

It is the policy of the FCA that official documents will not be voluntarily produced and the FCA employees will not voluntarily appear as witnesses in any legal proceeding. Under appropriate circumstances, the Chairman may grant exceptions in writing to this policy when the Chairman determines that the disclosure of official documents or testimony would be in the best interest of the FCA or in the public interest.

[51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.283 Request for testimony or production of documents.

(a) No FCA employee shall give testimony concerning official matters nor produce any official documents in any legal proceeding without the prior written authorization of the Chairman.

(b) If testimony by an FCA employee concerning official matters or the production of official documents is desired, the requesting party or his or her counsel shall submit a letter to the Chairman setting forth the title of the case, the forum, the requesting party's interest in the case, a summary of the issues in the litigation, the reasons for the request, and a showing that the desired testimony, documents, or information are not reasonably available from any other source. If an appearance or testimony is requested, the letter shall also set forth the intended use

of the testimony, a general summary of the scope of the testimony requested, and a showing that no document could be provided and used in lieu of the testimony or other appearance requested.

(c) The General Counsel is authorized to consult with the requesting party or his or her counsel to: (1) Refine and limit the request so that compliance is less burdensome, or (2) obtain information necessary to make the determination described in § 602.282 of this part. Failure of the requesting party or his or her counsel to cooperate in good faith with the General Counsel to enable the Chairman to make an informed determination under this subpart may serve as the basis for a determination not to comply with the request.

[51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.284 Scope of permissible testimony.

(a) The scope of permissible testimony by an FCA employee is limited to that set forth in the written authorization granted that employee by the Chairman.

(b) FCA employees are not authorized to give opinion testimony. The FCA, as the regulatory agency charged with the responsibility of examining, supervising, and regulating the banks and associations and other institutions organized or chartered under the Farm Credit Act of 1971, as amended, relies on the ability of its employees to gather full and complete information in order to carry out its statutory responsibilities. The use of FCA employees to give opinion testimony would hamper the FCA's ability to carry out its statutory responsibilities and would cause a serious administrative burden on the FCA's staff.

[51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.285 Manner in which testimony is given.

(a) Authorized testimony of FCA employees will be made available only through depositions or written interrogatories. FCA employees are not authorized to appear and testify in court or to give interviews prior to a deposition or otherwise.

(b) Where, in response to a request, the Chairman determines that circumstances warrant authorizing testimony by an FCA employee, the requesting party shall cause a subpoena to be served on the employee in accordance with applicable Federal or State rules of procedure, with a copy of the subpoena sent by registered mail to the General Counsel.

(c) Normally, authorized depositions will be taken at the FCA office to which the employee is assigned, and at a time arranged with the employee that is reasonably fixed to avoid substantial interference with the performance of the employee's duties.

(d) Upon completion of the deposition of an FCA employee, a copy of the transcript of the testimony shall be furnished at the expense of the party requesting the deposition to the General Counsel for the FCA's files.

[50 FR 7331, Feb. 22, 1985, as amended at 51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.286 Manner in which documents will be produced.

(a) An FCA employee's authorization to produce official documents is limited to the authority granted that employee by the Chairman.

(b) Prior to the release of any official documents authorized by the Chairman to be released, the requesting party shall obtain a protective order satisfactory in form to the FCA from the court before which the action is pending to preserve the confidentiality of the documents subsequently produced.

(c) Certified or authenticated copies of official FCA documents authorized by the Chairman to be released under this subpart will be provided upon request.

[51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.287 Fees.

Unless waived or reduced, the following fees shall be charged for documents produced by the FCA in connection with requests subject to this subpart:

(a) *Searches for documents.* $1.50 for each one-quarter hour (or fraction thereof) per employee for time spent by clerical personnel in excess of the first quarter hour and $3.15 for each one-

quarter hour (or fraction thereof) per employee for time spent by professional or managerial personnel in excess of the first quarter hour in locating, examining, preparing or copying the documents, and for transportation of personnel and documents necessary to the search.

(b) *Copying of documents.* Ten cents per copy of each page made by photocopy or similar process. Normally, only one copy will be provided. Additional copies will be provided only upon a showing of demonstrated need.

(c) *Certification or authentication of documents.* $3.00 per certification or authentication.

(d) *Computer searches.* Services of personnel in the nature of a computer search shall be charged for at rates prescribed in paragraph (a) of this section. A charge shall be made for the computer time involved, based upon the prevailing level of costs to the FCA and upon the particular types of computer and associated equipment and the amount of time that such equipment is utilized. A charge shall also be made for any substantial amount of special supplies or materials used to contain, present, or make available the output of computers, based upon prevailing levels of costs to the FCA and upon the type and amount of such supplies or materials that are used.

(e) *Other costs.* When other services and materials not specifically identified in this section are requested and provided, their actual cost to the FCA shall be charged.

(f) *Payment of fees.* A bill will be forwarded to the requesting party upon completion of the production. Payment shall be made by check or money order payable to the FCA.

[50 FR 7331, Feb. 22, 1985. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.288 Responses to demands served on FCA employees.

(a) Any FCA employee who is served with a demand in a legal proceeding shall immediately notify the General Counsel of such service, of the testimony or documents described in the demand and of all relevant facts.

(b) When authorization to testify or to produce documents has not been granted by the Chairman, FCA counsel shall provide the party issuing the demand or the court with a copy of the regulations contained in this subpart and shall inform the party issuing the demand or the court that the employee upon whom the demand has been made is prohibited from testifying or producing documents without the prior approval of the Chairman.

(c) If the court rules that the demand must be complied with irrespective of instructions from the Chairman not to produce the documents or disclose the information sought, the FCA employee upon whom the demand has been made shall respectfully decline to comply with the demand.

(d) A determination under this subpart to comply or not to comply with any demand shall not constitute an assertion or waiver of privilege, lack of relevance, technical deficiencies or any other ground for noncompliance. The FCA reserves the right to oppose any demand on any legal ground independent of its determination under this subpart.

[50 FR 7331, Feb. 22, 1985, as amended at 51 FR 41940, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

§ 602.289 Responses to demands served on non-FCA employees or entities.

(a) FCA reports of examinations or such other reports generated or adopted by the FCA, or any documents related thereto are the property of the FCA and are not to be disclosed to any person without the FCA's consent.

(b) If any person who has possession of an FCA report of examination or such other report generated or adopted by the FCA, or any documents related thereto is served with a demand in a legal proceeding directing that person to produce such FCA documents or to testify with respect thereto, such person shall immediately notify the FCA General Counsel of such service, of the testimony and described documents in the demand, and of all relevant facts. Such person shall also object to the production of such documents or information contained therein on the basis that the documents are the property of the FCA and cannot be released without FCA's consent and that their production must be sought from the FCA following the procedures set forth in

§ 602.283 (b) and (c) and § 602.286(b) of this part.

[51 FR 41941, Nov. 20, 1986. Redesignated at 56 FR 28477, June 21, 1991]

PART 603—PRIVACY ACT REGULATIONS

Sec.

603.300 Purpose and scope.
603.305 Definitions.
603.310 Procedures for requests pertaining to individual records in a record system.
603.315 Times, places, and requirements for identification of individuals making requests.
603.320 Disclosure of requested information to individuals.
603.325 Special procedures for medical records.
603.330 Request for amendment to record.
603.335 Agency review of request for amendment of record.
603.340 Appeal of an initial adverse determination of a request to amend a record.
603.345 Fees for providing copies of records.
603.350 Criminal penalties.
603.355 Exemptions.

AUTHORITY: Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252); 5 U.S.C. app. 3, 5 U.S.C. 552a (j)(2) and (k)(2).

SOURCE: 40 FR 40454, Sept. 2, 1975, unless otherwise noted.

§ 603.300 Purpose and scope.

(a) This part is published by the Farm Credit Administration pursuant to the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a) which requires each Federal agency to promulgate rules to establish procedures for notification and disclosure to an individual of agency records pertaining to that person, and for review of such records.

(b) The records covered by this part include:

(1) Personnel and employment records maintained by the Farm Credit Administration which are not covered by §§ 293.101 through 293.108 of the regulations of the Office of Personnel Management (5 CFR 293.101 through 293.108), and

(2) Other records contained in record systems maintained by the Farm Credit Administration.

[40 FR 40454, Sept. 2, 1975, as amended at 51 FR 41941, Nov. 20, 1986]

§ 603.305 Definitions.

For the purposes of this part:

(a) *Agency* means the Farm Credit Administration.

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) *Maintain* includes maintain, collect, use, or disseminate;

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency including, but not limited to, that person's education, financial transactions, medical history, and criminal or employment history, and that contains that person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph;

(e) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected;

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8;

(g) *System of records* means a group of any records under the control of any agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

[51 FR 41941, Nov. 20, 1986]

§ 603.310 Procedures for requests pertaining to individual records in a record system.

(a) Any present or former employee of the Farm Credit Administration seeking access to that person's official civil service records maintained by the Farm Credit Administration shall submit a request in such manner as is prescribed by the Office of Personnel Management.

(b) Individuals shall submit their requests in writing to the Privacy Act Officer, Office of General Counsel, Farm Credit Administration, McLean,

Virginia 22102–5090, when seeking to obtain from the Farm Credit Administration:

(1) Notification of whether the agency maintains a record pertaining to that person in a system of records;

(2) Notification of whether the agency has disclosed a record for which an accounting of disclosure is required to be maintained and made available to that person;

(3) A copy of a record pertaining to that person or the accounting of its disclosure;

(4) The review of a record pertaining to that person or the accounting of its disclosure. The request shall state the full name and address of the individual, and identify the system or systems of records believed to contain the information or record sought.

[51 FR 41941, Nov. 20, 1986, as amended at 61 FR 67185, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67185, Dec. 20, 1996, in § 603.310, paragraph (b) was amended by removing the words ''Congressional and Public Affairs'', and adding in their place the words ''General Counsel'', effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§ 603.315 Times, places, and requirements for identification of individuals making requests.

The individual making written requests for information or records ordinarily will not be required to verify that person's identity. The signature upon such requests shall be deemed to be a certification by the requester that he or she is the individual to whom the record pertains, or the parent of a minor, or the duly appointed legal guardian of the individual to whom the record pertains. The Privacy Act Officer, however, may require such additional verification of identity in any instance in which the Privacy Act Officer deems it advisable.

[51 FR 41941, Nov. 20, 1986]

§ 603.320 Disclosure of requested information to individuals.

(a) The Privacy Act Officer shall, within a reasonable period of time after the date of receipt of a request for information of records:

(1) Determine whether or not such request shall be granted,

(2) Notify the requester of the determination and, if the request is denied, of the reasons therefor, and

(3) Notify the requester that fees for reproducing copies of records may be charged as provided in § 603.345 of this part.

(b) If access to a record is denied because the information therein has been compiled by the Farm Credit Administration in reasonable anticipation of a civil or criminal action proceeding, the Privacy Act Officer shall notify the requester of that person's right to judicial appeal under 5 U.S.C. 552a(g).

(c)(1) If access to a record is granted, the requester shall notify the Officer whether the requested record is to be copied and mailed to the requester or whether the record is to be made available for personal inspection.

(2) A requester who is an individual may be accompanied by an individual selected by the requester when the record is disclosed, in which case the requester may be required to furnish a written statement authorizing the discussion of the record in the presence of the accompanying person.

(d) If the record is to be made available for personal inspection, the requester shall arrange with the Privacy Act Officer a mutually agreeable time in the offices of the Farm Credit Administration for inspection of the record.

[40 FR 40454, Sept. 2, 1975, as amended at 51 FR 41941, Nov. 20, 1986]

§ 603.325 Special procedures for medical records.

Medical records in the custody of the Farm Credit Administration which are not subject to Office of Personnel Management regulations shall be disclosed either to the individual to whom they pertain or that person's authorized or legal representative or to a licensed physician named by the individual.

[51 FR 41942, Nov. 20, 1986]

§ 603.330 Request for amendment to record.

(a) If, after disclosure of the requested information, an individual believes that the record is not accurate,

relevant, timely, or complete, that person may request in writing that the record be amended. Such a request shall be submitted to the Privacy Act Officer and shall contain identification of the system of records and the record or information therein, a brief description of the material requested to be changed, the requested change or changes, and the reason for such change or changes.

(b) The Privacy Act Officer shall acknowledge receipt of the request within 10 days (excluding Saturdays, Sundays, and legal holidays) and, if a determination has not been made, advise the individual when that person may expect to be advised of action taken on the request. The acknowledgment may contain a request for additional information needed to make a determination.

[51 FR 41942, Nov. 20, 1986]

§ 603.335 Agency review of request for amendment of record.

Upon receipt of a request for amendment of a record, the Privacy Act Officer shall:

(a) Correct any portion of a record which the individual making the request believes is not accurate, relevant, timely, or complete and thereafter inform the individual in writing of such correction, or

(b) Inform the individual in writing of refusal to amend the record and of the reasons therefor, and advise that the individual may appeal such determination as provided in § 603.340 of this part.

[40 FR 40454, Sept. 2, 1975, as amended at 51 FR 41942, Nov. 20, 1986]

§ 603.340 Appeal of an initial adverse determination of a request to amend a record.

(a) Not more than 10 days (excluding Saturdays, Sundays, and legal holidays) after receipt by an individual of an adverse determination on the individual's request to amend a record or otherwise, the individual may appeal to the Director, Office of Resources Management.

(b) The appeal shall be by letter, mailed or delivered to the Director, Office of Resources Management, Farm Credit Administration, McLean, Virginia 22102–5090. The letter shall identify the records involved in the same manner they were identified to the Privacy Act Officer, shall specify the dates of the request and adverse determination, and shall indicate the expressed basis for that determination. Also, the letter shall state briefly and succinctly the reasons why the adverse determination should be reversed.

(c) The review shall be completed and a final determination made by the Director not later than 30 days (excluding Saturdays, Sundays, and legal holidays) from receipt of the request for such review, unless the Director extends such 30-day period for good cause. If the 30-day period is extended, the individual shall be notified of the reasons therefor.

(d) If the Director refuses to amend the record in accordance with the request, the individual shall be notified of the right to file a concise statement setting forth that person's disagreement with the final determination and that person's right under 5 U.S.C. 552a(g)(1)(A) to a judicial review of the final determination.

(e) If an amendment of a record as requested upon review is refused, there shall be included in the disputed portion of the record a copy of the concise statement filed by the individual together with a concise statement of the reasons for not amending the record as requested. Such statements will be included when disclosure of the disputed record is made to persons and agencies as authorized under 5 U.S.C. 552a.

[40 FR 40454, Sept. 2, 1975, as amended at 51 FR 41942, Nov. 20, 1986; 56 FR 2673, Jan. 24, 1991]

§ 603.345 Fees for providing copies of records.

Fees for providing copies of records shall be charged in accordance with §§ 602.267 and 602.269 of this chapter.

[40 FR 40454, Sept. 2, 1975, as amended at 56 FR 28479, June 21, 1991]

§ 603.350 Criminal penalties.

Section 552a (*l*) (3) of the Privacy Act (5 U.S.C. 552a (i) (3)) makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning any individual from an agency under

false pretenses. Sections 552a (i) (1) and (2) of the Act (5 U.S.C. 552a (i) (1), (2)) provide penalties for violation by agency employees of the Act or regulations established thereunder.

§ 603.355 Exemptions.

(a) *Specific.* Pursuant to 5 U.S.C. 552a(k)(2), the investigatory material compiled for law enforcement purposes in the following systems of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I) and (f) of 5 U.S.C. 552a and from the provisions of this part:

Farm Credit Bank loans—FCA.
Production Credit Association loans—FCA.
Agricultural Credit Association loans—FCA.
Federal Land Credit Association loans—FCA.
Agricultural Credit Bank loans—FCA.
Office of Inspector General Investigative Files—FCA.

(b) *General.* (1) In addition, pursuant to 5 U.S.C. 552a (j)(2), investigatory materials compiled for criminal law enforcement in the system of records described in (b)(2) are exempt from all subsections of 5 U.S.C. 552a, except (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i). Exemptions from the particular subsections are justified for the following reasons:

(i) From subsection (c)(3) because making available to a record subject the accounting of disclosures from records concerning him/her would reveal investigative interest on the part of the OIG. This would enable record subjects to impede the investigation by, for example, destroying evidence, intimidating potential witnesses, or fleeing the area to avoid inquiries or apprehension by law enforcement personnel.

(ii) From subsection (c)(4) because this system is exempt from the access provisions of subsection (d) pursuant to subsection (j)(2) of the Privacy Act.

(iii) From subsection (d) because the records contained in this system relate to official Federal investigations. Individual access to those records might compromise ongoing investigations, reveal confidential informants or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Amendment of the records would interfere with ongoing criminal law enforcement proceedings and impose an impossible administrative burden by requiring criminal investigations to be continuously reinvestigated.

(iv) From subsections (e) (1) and (5) because in the course of law enforcement investigations, information may occasionally be obtained or introduced the accuracy of which is unclear or which is not strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of criminal activity. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(v) From subsection (e)(2) because in a law enforcement investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be informed of the existence of the investigation and would therefore be able to avoid detection, apprehension, or legal obligations or duties.

(vi) From subsection (e)(3) because to comply with the requirements of this subsection during the course of an investigation could impede the information gathering process, thus hampering the investigation.

(vii) From subsections (e)(4) (G), and (H), and (I), (e)(8), (f), (g) and (h) because this system is exempt from the access provisions of subsection (d) pursuant to subsection (j) of the Privacy Act.

(2) Office of Inspector General Investigative Files—FCA.

[56 FR 2673, Jan. 24, 1991, as amended at 57 FR 32421, July 22, 1992]

PART 604—FARM CREDIT ADMINISTRATION BOARD MEETINGS

Sec.
604.400 Definitions.
604.405 Notice of public observation.
604.410 Scope of application.
604.415 Open meetings.
604.420 Exemptive provisions.

604.425 Announcement of meetings.
604.430 Closure of meetings.
604.435 Record of closed meetings or closed portion of a meeting.
604.440 Requests for information.

AUTHORITY: Secs. 5.9, 5.17 of the Farm Credit Act; 12 U.S.C. 2243, 2252.

§ 604.400 Definitions.

For purposes of this part:

(a) *Agency* means the Farm Credit Administration.

(b) *Board* means the Farm Credit Administration Board.

(c) *Exempt meeting* and *exempt portion of a meeting* mean, respectively, a meeting or that part of a meeting designated as provided in § 604.430 of this part as closed to the public by reason of one or more of the exemptive provisions listed in § 604.420 of this part.

(d) *Meeting* means the deliberations of at least two (quorum) members of the Board where such deliberations determine or result in joint conduct or disposition of official Farm Credit Administration business.

(e) *Member* means any one of the members of the Board.

(f) *Open meeting* means a meeting or portion of a meeting which is not an exempt meeting or an exempt portion of a meeting.

(g) *Public observation* means the right of any member of the public to attend and observe, but not participate or interfere in any way in, an open meeting of the Board, within the limits of reasonable and comfortable accommodations made available for such purpose by the Farm Credit Administration.

[51 FR 41942, Nov. 20, 1986]

§ 604.405 Notice of public observation.

(a) A member of the public is not required to give advance notice to the Farm Credit Administration of an intention to exercise the right of public observation of an open meeting of the Board. However, in order to permit the Farm Credit Administration to determine the amount of space and number of seats which must be made available to accommodate individuals who desire to exercise the right of public observation, such individuals are requested to give notice to the Farm Credit Administration at least two business days before the start of the open meeting of the intention to exercise such right.

(b) Notice of intention to exercise the right of public observation may be given in writing, in person, or by telephone to the official designated in § 604.440 of this part.

(c) Individuals who have not given advance notice of intention to exercise the right of public observation will not be permitted to attend and observe the open meeting of the Board if the available space and seating are necessary to accommodate individuals who gave advance notice of such intention to the Farm Credit Administration.

[42 FR 12161, Mar. 3, 1977. Redesignated and amended at 51 FR 41942, Nov. 20, 1986]

§ 604.410 Scope of application.

The provisions of this part apply to meetings of the Board, and do not apply to conferences or other gatherings of employees of the Farm Credit Administration who meet or join with others, except at meetings of the Board, to deliberate official agency business.

[51 FR 41942, Nov. 20, 1986]

§ 604.415 Open meetings.

Every meeting and portion of a meeting of the Board shall be open to public observation unless the Board determines that such meeting or portion of a meeting will involve the discussion of matters which are within one or more of the exemptive provisions listed in § 604.420 of this part, and that the public interest is not served by the discussion of such matters in an open meeting.

[51 FR 41943, Nov. 20, 1986]

§ 604.420 Exemptive provisions.

Except in a case where the Board determines that the public interest requires otherwise, a meeting or portion of a meeting may be closed to public observation where the Board determines that the meeting or portion of the meeting is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of the Farm Credit Administration;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular types of matters to be withheld;

(d) Disclose trade secrets and privileged or confidential commercial or financial information obtained from a person;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigator records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, supervision, operating, or condition reports prepared by, on behalf of, or for the use of the Farm Credit Administration;

(i) Disclose information the premature disclosure of which would:

(1) Significantly endanger the stability of any Farm Credit System institution, including banks, associations, service organizations, the Funding Corporation, the Farm Credit System Assistance Board, or the Farm Credit System Financial Assistance Corporation; or

(2) Be likely to significantly frustrate implementation of a proposed action of the Farm Credit Administration: *Provided*, said Administration has not already disclosed to the public the content or nature of its proposed action, or is not required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(j) Specifically concern participation by the Farm Credit Administration in a civil action or proceeding otherwise involving a determination on the record before an opportunity for a hearing.

[51 FR 41943, Nov. 20, 1986, as amended at 56 FR 2673, Jan. 24, 1991]

§ 604.425 Announcement of meetings.

(a) The Board meets in the offices of the Farm Credit Administration, McLean, Virginia 22102–5090, on the second Thursday of each month.

(b) At any duly called meeting held previous to any meeting scheduled as provided in paragraph (a) of this section, the Board may fix a different time and place for a subsequent meeting.

(c) At the earliest practicable time, which is estimated to be not later than 8 days before the beginning of a meeting of the Board, the Farm Credit Administration shall make available for public inspection by posting notice on its public notice board in its offices, or pursuant to telephonic or written requests, the time, place, and subject matter of the meeting except to the extent that such information is exempt from disclosure under the provisions of § 604.420 of this part.

[42 FR 12161, Mar. 3, 1977. Redesignated and amended at 51 FR 41943, Nov. 20, 1986; 56 FR 9611, Mar. 7, 1991]

§ 604.430 Closure of meetings.

(a) A majority of the meetings or portions of a majority of the meetings

of the board are exempt by reason of § 604.420 (d), (h), (i)(1), or (j) of this part. An exempt meeting or an exempt portion of a meeting shall be closed to the public when at least two members of the Board vote by a recorded vote of the Board at the beginning of the exempt meeting or exempt portion of a meeting to close such meeting or such exempt portion, and the General Counsel, Farm Credit Administration, publicly certifies that, in his or her opinion, the meeting or portion of the meeting may be closed to the public stating each relevant exemptive provision listed in § 604.420 of this part.

(b) A copy of the vote of the Board to close a meeting or an exempt portion thereof reflecting the vote of each member on the question, and a copy of the certification of General Counsel, shall be made available for public inspection in the offices of the Farm Credit Administration, or pursuant to telephonic or written requests.

(c) A copy of the certification of the General Counsel, together with a statement from the presiding officer of the meeting setting forth the time and place of an exempt meeting or an exempt portion of a meeting which was closed and the persons present, shall be retained by the Farm Credit Administration for a period of at least 2 years after the date of such closed meeting or closed portion of a meeting.

[42 FR 12161, Mar. 3, 1977. Redesignated and amended at 51 FR 41943, Nov. 20, 1986]

§ 604.435 Record of closed meetings or closed portion of a meeting.

(a) The Farm Credit Administration shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each closed meeting or closed portion of a meeting, except that in the case of a meeting or portion of a meeting closed to the public pursuant to § 604.420 (d), (h), (i)(1), or (j) of this part, the Farm Credit Administration shall maintain either such transcript, recording, or a set of minutes.

(b) Any minutes so maintained shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote. All documents considered in connection with any action shall be identified in the minutes.

(c) The Farm Credit Administration shall promptly make available to the public, in its offices, the transcript, electronic recording, or minutes, of the discussion of any item on the agenda of a closed meeting, or closed portion of a meeting, except for such item or items of discussion which the Farm Credit Administration determines to contain information which may be withheld under § 604.420 of this part. Copies of such transcript or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(d) The Farm Credit Administration shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each closed meeting or closed portion of a meeting for a period of 2 years after the date of such closed meeting or closed portion of a meeting.

(e) All actions required or permitted by this section to be undertaken by the Farm Credit Administration shall be by or under the authority of the Director, Office of Resources Management.

[42 FR 12161, Mar. 3, 1977. Redesignated and amended at 51 FR 41943, Nov. 20, 1986; 56 FR 2673, Jan. 24, 1991]

§ 604.440 Requests for information.

Requests to the Farm Credit Administration for information about the time, place, and subject matter of a meeting, whether it or any portion thereof is closed to the public, and any requests for copies of the transcript or minutes, or of a transcript of an electronic recording of a closed meeting, or closed portion of a meeting, to the extent not exempt from disclosure by the provisions of § 604.420 of this part, shall be addressed to the Secretary to the Board, Farm Credit Administration, McLean, Virginia 22102–5090.

[51 FR 41944, Nov. 20, 1986, as amended at 59 FR 21642, Apr. 26, 1994]

PART 605—INFORMATION

Sec.
605.500 Policy.
605.501 Information Security Officer.
605.502 Program and procedures.

AUTHORITY: Secs. 5.9, 5.12, 5.17 of the Farm Credit Act; 12 U.S.C. 2243, 2246, 2252.

§ 605.500 Policy.

It is the policy of the Farm Credit Administration to act in matters relating to national security information in accordance with Executive Order 12356 and directives issued thereunder by the Information Security Oversight Office (ISOO).

[49 FR 9859, Mar. 16, 1984]

§ 605.501 Information Security Officer.

(a) The Information Security Officer of the Farm Credit Administration shall be responsible for implementation and oversight of the information security program and procedures adopted by the Agency pursuant to the Executive order. This officer shall be the recipient of questions, suggestions, and complaints regarding all elements of this program and shall be solely responsible for changes to it and for the assurance that it is at all times consistent with the Executive order and ISOO directive.

(b) The Information Security Officer shall be the Farm Credit Administration's official contact for requests for declassification of materials submitted under the Executive order, regardless of the point of origin of such requests, and shall assure that such requests for records in the Farm Credit Administration's possession that were originated by another agency shall be forwarded to the originating agency. The Farm Credit Administration shall include a copy of the records requested together with its recommendation for action. Upon receipt, the originating agency shall process the request in accordance with 32 CFR 2001.32(a)(2)(i). Upon request, the originating agency shall communicate its declassification determination to the Farm Credit Administration. The Farm Credit Administration shall inform the requester of the determination within 1 year from the date of receipt, except in unusual circumstances. If an appeal is made on a denial of a mandatory declassification review request, the originating agency's appellate authority shall normally make a determination within 30 working days following the receipt of an appeal. If additional time is required to make a determination, the originating appellate authority shall notify the requester of the additional time needed and provide the requester with the reason for extension. The originating agency's appellate authority shall notify the requester in writing of the final determination and of the reasons for any denial. Such officer shall also assure that requests for declassification submitted under the Freedom of Information Act are handled in accordance with that Act.

[49 FR 9859, Mar. 16, 1984]

§ 605.502 Program and procedures.

(a) The Farm Credit Administration has no authority for the original classification of information for national security purposes. Only those agencies described in the Executive order may so classify information.

(b) *Derivative classification.* ''Derivative Classification'' means a determination that information is in substance the same information that is currently classified under a designated level of classification. Derivative application of classification markings shall be the responsibility of the Information Security Officer who shall assure that the use of this authority is in accordance with ISOO directives.

(c) *Mandatory review.* All requests for review under the mandatory review provisions of the Executive order shall be handled by the Information Security Officer or his/her designee. Under no circumstances shall such official refuse to confirm the existence or nonexistence of a document requested under the Executive order or the Freedom of Information Act unless the fact of its existence or nonexistence would itself be classified under the Executive order.

(d) *Handling of classified documents.* All documents bearing the terms ''Top Secret,'' ''Secret,'' and ''Confidential'' shall be delivered to the Information Security Officer or his/her designee immediately upon receipt. All potential recipients of such documents shall be

advised of the names of such designees. In the event that the Information Security Officer or his/her designee is not available to receive such documents, they shall be sent to the FCA mailroom and stored in the combination safe located in the Agency Services Branch and secured unopened until the Information Security Officer is available. Under no cirumstances shall classified materials that cannot be delivered be stored other than in the designated safe. All materials not immediately deliverable or able to be secured in the designated safe shall be returned to the sender, under appropriate cover, for redelivery to the FCA at the next earliest opportunity.

(e) *Reproduction.* Reproduction of classified materials shall take place only in accordance with section 4.1(b) of the Executive order and any limitations imposed by the originator. Should copies be made, they shall be subject to the same controls as the original document. Records showing the number and distribution of copies shall be maintained by the Information Security Officer or his/her designee, and the log stored with the original documents. These measures shall not restrict reproduction for the purposes of Mandatory Review.

(f) *Storage.* In accordance with 32 CFR 2001.43, all classified documents shall be stored in combination safes located at the primary headquarters and/or a Field Office, Office of Examination, Farm Credit Administration. The combinations shall be changed as required by directives issued by ISOO. The combinations shall be known only to the Information Security Officer and his/her designees who have appropriate security clearances.

(g) *Employee education.* All employees who have been granted a security clearance and who have occasion to handle classified materials shall be advised of handling, reproduction, and storage procedures and shall be required to review the Executive order and appropriate ISOO directives.

(h) *Agency terminology.* No official of the Farm Credit Administration shall use the terms ''Top Secret'', ''Secret'', or ''Confidential'' except in relation to materials classified for national security purposes. As a Federal regulatory agency, the Farm Credit Administration maintains certain internal documents that relate to its examination and supervision of the institutions of the Farm Credit System. Such documents are limited in use and distribution. Material that is of a sensitive nature to the Farm Credit Administration may be designated ''Executive Document.''

(i) *Nondisclosure agreement.* In accordance with 32 CFR 2003.20, the Farm Credit Administration requires that any person whose position requires access to classified information must execute a nondisclosure agreement on Standard Form 189—Classified Information Nondisclosure Agreement. Persons not executing such nondisclosure agreements are subject to sanctions of Executive Order 12356. It is the policy of the Farm Credit Administration that any employee authorized access to classified information holds a personal responsibility for safeguarding against unlawful disclosures, and such employees are prohibited from disclosure without consent of the FCA Information Security Officer. Any such unauthorized disclosure will be reported to the Information Security Oversight Office, the Department of Justice, the Department of State, the Federal Emergency Management Agency, and to any other Federal agency for which the Farm Credit Administration has access to classified information, as such reportings are subject to interpretation as required by statute and Executive order. Any employee who knowingly disclosed classified information or who refuses to cooperate with an investigation may be subject to mandatory administrative sanctions, including as a minimum, denial of further access to classified information. Further sanctions could include demotion or dismissal depending on the circumstances of a particular case.

(j) *Freedom of Information request.* All inquiries regarding requests for classified information under the Freedom of Information Act (5 U.S.C. 552), including those from the news media, shall be referred to the FCA FOI Officer, Office of Congressional and Public Affairs, Farm Credit Administration, and shall

be handled in accordance with provisions of that statute and applicable regulations.

[49 FR 9859, Mar. 16, 1984, as amended at 52 FR 18200, May 14, 1987; 59 FR 21643, Apr. 26, 1994]

PART 606—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FARM CREDIT ADMINISTRATION

Sec.

606.601 Purpose.
606.602 Application.
606.603 Definitions.
606.604—606.609 [Reserved]
606.610 Self-evaluation.
606.611 Notice.
606.612—606.629 [Reserved]
606.630 General prohibitions against discrimination.
606.631—606.639 [Reserved]
606.640 Employment.
606.641—606.648 [Reserved]
606.649 Program accessibility: Discrimination prohibited.
606.650 Program accessibility: Existing facilities.
606.651 Program accessibility: New construction and alterations.
606.652—606.659 [Reserved]
606.660 Communications.
606.661—606.669 [Reserved]
606.670 Compliance procedures.
606.671—606.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 19889, June 1, 1988, unless otherwise noted.

§ 606.601 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 606.602 Application.

(a) This part applies to all programs or activities conducted by the agency. For example, members of the public may participate in the following ''programs and activities'' of the FCA:

(1) Attending open meetings of the Farm Credit Board.

(2) Making inquiries or filing complaints.

(3) Using the FCA library in McLean, Virginia.

(4) Seeking employment with FCA.

(5) Attending any meeting, conference, seminar, or other program open to the public.

This list is illustrative only and failure to include an activity does not necessarily mean that it is not covered by this regulation.

(b) This regulation does not apply to the institutions that are regulated or examined by the FCA. However, this regulation governs the conduct of FCA personnel, in their interaction with employees of such institutions and employees of other Federal agencies, while discharging their official FCA duties.

§ 606.603 Definitions.

For purposes of this part, the term:

(a) *Agency* means the Farm Credit Administration.

(b) *Assistant Attorney General* means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(c) *Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDDs), interpreters, note-takers, written materials, and other similar services and devices.

(d) *Complete complaint* means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on

his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(e) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(f) *Individual with handicaps* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one more major life activities.

(4) *Is regarded as having an impairment* means:

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (f)(1) of this definition but is treated by the agency as having such an impairment.

(g) *Qualified individual with handicaps* means an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity conducted by the agency. With respect to employment, a qualified individual with handicaps is one who meets the definition of *qualified handicapped person* set forth in 29 CFR 1613.702(f), which is made applicable to this part by § 606.640 of this rule.

(h) *Section 504* means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810).

§§ 606.604—606.609 [Reserved]

§ 606.610 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

(1) A list of the interested persons who commented, with copies of comments received;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

§ 606.611 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 606.612—606.629 [Reserved]

§ 606.630 General prohibitions against discrimination.

(a) No qualified individual with handicaps, on the basis of handicap, shall be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual or other arrangements, on the basis of handicap:

(i) Deny a qualified individual with handicaps the oportunity to participate in or benefit from the activity, aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 606.631—606.639 [Reserved]

§ 606.640 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in the agency.

§§ 606.641—606.648 [Reserved]

§ 606.649 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 606.650, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 606.650 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not:

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. In preparing the report, the agency shall make reasonable efforts to ensure that the person(s) to be accommodated has an opportunity to provide relevant information. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made

within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section, and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups who commented on the plan.

§ 606.651 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151 through 4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 606.652—606.659 [Reserved]

§ 606.660 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in and enjoy the benefits of a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDDs) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with this section

would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. In preparing the report, the agency shall make reasonable efforts to ensure that the person(s) to be accommodated has an opportunity to provide relevant information. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 606.661—606.669 [Reserved]

§ 606.670 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director, Office of Resources Management, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing:

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by this paragraph. The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Equal Employment Opportunity Manager, or his/her designee, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[53 FR 19889, June 1, 1988, as amended at 56 FR 2674, Jan. 24, 1991]

§§606.671—606.999 [Reserved]

PART 607—ASSESSMENT AND APPORTIONMENT OF ADMINISTRATIVE EXPENSES

Sec.
607.1 Purpose and scope.
607.2 Definitions.
607.3 Assessment of banks, associations, and designated other System entities.
607.4 Assessment of other System entities.
607.5 Notice of assessment.
607.6 Payment of assessment.
607.7 Late-payment charges on assessments.
607.8 Reimbursements for services to non-System entities.
607.9 Reimbursable billings.
607.10 Adjustments for overpayment or underpayment of assessments.
607.11 Report of assessments and expenses.

AUTHORITY: Secs. 5.15, 5.17 of the Farm Credit Act; 12 U.S.C. 2250, 2252, 3025.

SOURCE: 58 FR 10942, Feb. 23, 1993, unless otherwise noted.

§607.1 Purpose and scope.

The regulations in part 607 implement the provisions of section 5.15 of the Farm Credit Act of 1971, 12 U.S.C. 2001 *et seq.* (Act) relating to Farm Credit Administration (FCA) assessments. The regulations prescribe the procedures for the equitable apportionment of FCA annual administrative expenses and necessary reserves among Farm Credit System (System) institutions. Pursuant to section 5.15(a) of the Act, the regulations also provide for the separate assessment of the FCA's costs of supervising and examining the Federal Agricultural Mortgage Corporation (FAMC). The regulations further provide for the reimbursement of expenses incurred in performing statutorily required examinations of non-System entities.

§607.2 Definitions.

For the purpose of this part, the following definitions shall apply:

(a) *Assessment* means the annual amount to be paid by each System institution to the Farm Credit Administration in accordance with section 5.15 of the Act.

(b) *Average risk-adjusted asset base* means the average of the risk-adjusted asset base (as determined in accordance with §615.5210(f) of this chapter) of banks, associations, and designated other System entities, calculated as follows:

(1) For banks, associations, and designated other System entities with four quarters of risk-adjusted assets as of June 30 of each year, the sum of the average daily risk-adjusted assets as of the last day of the quarter as reported on each quarterly Call Report Schedule RC–G to the FCA for the most recent four quarters immediately preceding each September 15, divided by four;

(2) Except as provided in paragraphs (b)(3) and (b)(4) of this section, for banks, associations, and designated other System entities with less than four quarters of risk-adjusted assets as of June 30 of each year, the sum of the average daily risk-adjusted assets as of the last day of the quarter reported on each quarterly Call Report Schedule RC–G to the FCA for the quarters in which it was in existence immediately preceding September 15, divided by the number of quarters for which the Call Report Schedule RC–G was received;

(3) For banks, associations, and designated other System entities that were formed through mergers, consolidations, or transfers of direct lending authority, and have less than four quarters of risk-adjusted assets as of June 30, the sum of the average daily risk-adjusted assets as of the last day of the quarter for the most recent four quarters immediately preceding September 15 as reported on each quarterly Call Report Schedule RC–G filed by the newly chartered institution and the institutions that were merged or consolidated or that received direct lending authority, divided by four;

(4) For banks, associations, and designated other System entities chartered during the period July 1 through September 30 of each year that were not formed by the merger or consolidation of existing System institutions or the transfer of direct lending authority from another System institution, the total of the average daily risk-adjusted assets as of the last day of the quarter as reported on Call Report Schedule RC–G for the quarter ending September 30.

(c) *Composite CAMEL rating* means the composite numerical assessment of

the financial condition of an institution assigned to the institution by the FCA based on its most recent examination of the institution. ''CAMEL'' is an acronym for capital, asset quality, management, earnings, and liquidity. The CAMEL factors are generally considered to be important indicators of an institution's financial health. Institutions are rated on each of the factors during an examination. CAMEL ratings range from 1–5, with a lower number indicating better financial condition than a higher number.

(d) *Delinquent amount* means an amount owed to the FCA that has not been paid by the date specified in the FCA's Notice of Assessment or billing.

(e) *Designated other System entities* means other System entities designated by the FCA in § 607.3(c) to be assessed on the same basis as banks and associations under § 607.3.

(f) *Direct expenses* means the expenses of the FCA attributable to the performance of examinations.

(g) *Indirect expenses* means all FCA expenses that are not attributable to the performance of examinations.

(h) *Non-System entities* means the National Consumer Cooperative Bank, the National Cooperative Bank Development Corporation, and any other entity that is required to be examined, supervised, or otherwise regulated by the FCA that is not a System institution.

(i) *Notice of Assessment* means a written notice to each System institution showing the total amount assessed and owing, the fiscal year covered by the assessment, the amounts of installment payments, and the due dates for such payments. For banks, associations, and designated other System entities, the Notice of Assessment shall also include an individualized assessment table showing the assessment under § 607.3(b)(2), where applicable.

(j) *Other System entities* means any service corporation chartered under section 4.25 of the Act, the Farm Credit System Financial Assistance Corporation, FAMC, the Federal Farm Credit Banks Funding Corporation, the Farm Credit Finance Corporation of Puerto Rico, and any other entity statutorily designated as a System institution that is not a bank or association.

(k) *System institutions* means banks, associations, and other System entities.

[58 FR 10942, Feb. 23, 1993, as amended at 59 FR 37403, July 22, 1994]

§ 607.3 Assessment of banks, associations, and designated other System entities.

(a) Banks, associations, and other System entities designated in paragraph (c) of this section will be assessed annually pursuant to this section for funds to cover a portion of the FCA's administrative expenses and for such funds as may be required to maintain a necessary reserve. The total amount of the annual assessment of banks, associations, and designated other System entities shall be based on the FCA budget for each fiscal year plus such amount as may be required to maintain a necessary reserve, excluding amounts to be assessed against other System entities and reimbursements received from non-System entities.

(b) The assessment shall be apportioned among the banks, associations, and designated other System entities as follows:

(1) Thirty (30) percent of the assessment under this section shall be apportioned to each bank, association, and designated other System entity on the basis of each institution's pro rata share of the total average risk-adjusted asset base.

(2) Seventy (70) percent of the assessment under this section shall be apportioned to each bank, association, and designated other System entity based upon the amounts of the institution's average risk-adjusted assets that fall within the graduated risk-adjusted asset tiers contained in the following table. An institution's total assessment under this paragraph is the sum of the amounts assessed for risk-adjusted assets falling into each applicable tier, subject to adjustment for its CAMEL rating as required in paragraphs (b)(2)(i) and (b)(2)(ii) of this section. The same assessment rate (designated as X_1 or a declining percentage of X_1 in the following table) will be applied to each dollar value of risk-adjusted assets falling within each tier, increased where applicable, by the

amounts prescribed in paragraphs (b)(2)(i) and (b)(2)(ii) of this section. The actual assessment rate under this paragraph shall be determined annually based on relative average risk-adjusted asset bases, the CAMEL ratings of individual institutions, and the FCA budget as adjusted pursuant to paragraph (a) of this section, but the relationship between the rates applied to each tier shall remain constant as set forth in the following table.

Average risk-adjusted asset size range (in millions)		Assessment rate
Over	To	
$0	$25	X_1
25	50	$.85X_1$
50	100	$.75X_1$
100	500	$.60X_1$
500	1,000	$.50X_1$
1,000	7,000	$.35X_1$
7,000	10,000	$.20X_1$
10,000		$.10X_1$

Example: XYZ association has a CAMEL rating of 2 and average risk-adjusted assets of $500.4 million. The value of X_1 has been determined to be .000917, based on an FCA budget of $40.29 million.

X_1=.000917 therefore		
$25,000,000×.0917%	=	$22,925
$.85X_1$=.000780 therefore		
$25,000,000×.0780%	=	19,500
$.75X_1$=.000688 therefore		
$50,000,000×.0688%	=	34,400
$.60X_1$=.000550 therefore		
$400,000,000×.0550%	=	220,000
$.50X_1$=.000458 therefore		
$400,000×.0458%	=	183
Total Assessment under § 607.3(b)(2)	=	297,008

(i) If the FCA assigns a bank, association, or designated other System entity a composite CAMEL rating of 3 following its most recent examination of the institution prior to the date of assessment, the assessment provided for in paragraph (b)(2) of this section shall be increased by 20 percent.

(ii) If the FCA assigns a bank, association, or designated other System entity a composite CAMEL rating of 4 or 5 following its most recent examination of the institution prior to the date of assessment, the assessment provided for in paragraph (b)(2) of this section shall be increased by 40 percent.

(iii) Banks, associations, and designated other System entities that were formed through mergers or consolidations and have not been examined before their initial assessment under this section shall be deemed to have a composite CAMEL rating equivalent to the best composite CAMEL rating assigned to the merged or consolidated institutions in the FCA's most recent examination of the individual institutions prior to the date of merger or consolidation. Newly chartered institutions not formed through mergers or consolidations that have not been examined before their initial assessment under this section shall be deemed to have a composite CAMEL rating of 2.

(3) Each bank, association, and designated other System entity shall pay a minimum assessment of $20,000 regardless of the result of the application of the assessment formula established by paragraphs (b)(1) and (b)(2) of this section. If such a minimum assessment is apportioned to an institution, that institution's average risk-adjusted asset base shall be deducted from the total average risk-adjusted asset base, and $20,000 shall be deducted from the total assessment amount for purposes of determining the assessments of banks, associations, and designated other System entities paying more than the $20,000 minimum assessment.

(c) Other System entities designated to be assessed in accordance with this section are:

The Farm Credit Services Leasing Corporation.

(d) Assessments may be adjusted periodically to reflect:

(1) Changes in the FCA budget and necessary reserve; and

(2) Any overpayment or underpayment by a bank, association, or designated other System entity in the prior fiscal year.

§ 607.4 Assessment of other System entities.

(a)(1) Unless otherwise designated to be assessed under § 607.3, and with the exception of FAMC as provided in paragraph (b) of this section, other System entities will be assessed for estimated

direct expenses plus an allocated portion of FCA indirect expenses and such amount as may be required to maintain a necessary reserve. The estimate for direct expenses shall take into account the direct expenses incurred in the most recent examination of the entity preceding each September 15 and expected increases or decreases in examination work for the next fiscal year. A proportional amount of FCA indirect expenses will be allocated to each entity based on the estimated direct expenses related to the particular entity as a percentage of the total budgeted direct expenses of the agency (excluding direct expenses under paragraph (b) of this section) for the fiscal year covered by the assessment.

(2) Assessments of other System entities under paragraph (a)(1) of this section may be adjusted periodically to reflect:

(i) Changes in the FCA budget and necessary reserve; and

(ii) Any overpayment or underpayment by such other System entity in the prior fiscal year.

(b) *Assessment of Federal Agricultural Mortgage Corporation.* The FCA shall assess FAMC for the estimated cost of FCA's regulation, supervision, and examination of FAMC, including reasonably related administrative and overhead expenses. FAMC's assessment may be adjusted periodically to reflect changes in the FCA budget and to reconcile differences between FAMC's assessment and FCA's actual expenditures for regulation of FAMC in the prior fiscal year.

§ 607.5 Notice of assessment.

(a) Except as provided in paragraph (b) of this section, prior to September 15 of each year, the FCA shall determine the amount of assessment to be collected from each System institution for the next fiscal year under §§ 607.3 and 607.4 and shall provide each System institution with a Notice of Assessment. The total amount assessed each System institution in the Notice of Assessment shall be an obligation of each institution on October 1 of each fiscal year. The total amount assessed each System institution shall be payable not less often than quarterly in equal installments during each fiscal year, subject to adjustment pursuant to §§ 607.3(d), 607.4(a)(2), 607.4(b), and 607.10.

(b) For banks, associations and designated other System entities chartered during the period July 1 through September 30 of each year, the FCA shall, prior to December 15, determine the amount of assessment to be collected from each such institution for the remainder of the fiscal year and provide the institution with a Notice of Assessment. The total amount of the assessment becomes an obligation of the institution on January 1 and shall be payable in equal installments, subject to adjustment pursuant to §§ 607.3(d) and 607.10, not less often than quarterly for the remainder of the fiscal year. The first installment shall be due on January 1. This paragraph shall not apply to banks, associations, and designated other System entities formed by merger, consolidation, or transfer of direct lending authority.

(c) In the event of the proposed cancellation of the charter of a System institution, the unpaid installments of the total amount of the institution's assessment shall be provided for prior to the cancellation of the charter.

§ 607.6 Payment of assessment.

(a) System institutions shall pay the amounts due as scheduled in the FCA Notice of Assessment. Payment shall be made by electronic funds transfer (EFT) for credit to the FCA's account in the Department of the Treasury, by check to the FCA for deposit, or by such other means as the FCA may authorize.

(b) Payments made by EFT that are not received by the close of business on the due date shall be considered delinquent in accordance with § 607.7.

(c) Payments made by check that are not received by the FCA before the close of business on the third workday preceding the due date shall be considered delinquent in accordance with § 607.7.

§ 607.7 Late-payment charges on assessments.

(a) If any portion of a scheduled installment of a System institution's total assessment or the reimbursement billed to a non-System entity is not

paid by the due date, the overdue amount shall be considered delinquent.

(b) Delinquent amounts shall be charged late-payment interest at the United States Treasury Department's current value of funds rate published in the FEDERAL REGISTER. Late payment interest shall be expressed as an annual rate of interest and shall accrue on a daily basis starting on the due date of the delinquent amount and continuing through the date payment is received by the FCA.

(c) The FCA shall waive the collection of interest on the delinquent amounts if such amounts are paid within 30 days of the date interest begins to accrue. The FCA may waive interest due on delinquent amounts upon finding no fault with the performance of the remitter.

(d) The FCA shall charge an amount necessary to cover the administrative costs incurred as a result of collection of any delinquent amount.

(e) The FCA shall charge a penalty of 6 percent per annum on any portion of a delinquent amount that is more than 90 days past due. Such penalty shall accrue from the date the amount became delinquent.

§607.8 Reimbursements for services to non-System entities.

Non-System entities shall be assessed for direct expenses plus an amount for FCA indirect expenses reasonably related to the services rendered to the non-System entity. Such related indirect expenses shall be calculated as a percentage of the FCA's overall indirect expenses based on the extent of FCA activities with respect to the non-System entity during the period since the entity's most recent assessment.

§607.9 Reimbursable billings.

The FCA shall bill the amounts due for services to non-System entities each year subsequent to the issuance of their respective Reports of Examination. Amounts billed are due in full within 30 days from the date billed. If the billed amount or any portion thereof remains unpaid at close of business on the due date, such amount or portion shall be considered delinquent in accordance with §607.7.

§607.10 Adjustments for overpayment or underpayment of assessments.

Where adjustments for overpayment or underpayment of assessments are made pursuant to §§607.3(d), 607.4(a)(2), and 607.4(b), credits for overpayments or charges for underpayments shall be based on FCA administrative operating expenses incurred in the applicable fiscal year and on funds required to be maintained pursuant to section 5.15 of the Act. Such credits or charges shall be applied to the next applicable assessment payment due during the current or subsequent fiscal year. Where such adjustments are made, the FCA shall provide the institution with a statement of adjustment at least 15 days prior to the date when the institution's next assessment payment is due. Adjustments in assessments shall be made in principal amount only. Overdue amounts under §607.7 are not underpayments for assessment adjustment purposes.

§607.11 Report of assessments and expenses.

By January 15 of each calendar year, the FCA shall provide each assessed System institution with a report of assessments and expenses for the preceding fiscal year showing total assessments and other income received as applied to expenses incurred by major budget category and amounts set aside for a necessary reserve.

PART 608—COLLECTION OF CLAIMS OWED THE UNITED STATES

Subpart A—Administrative Collection of Claims

Sec.
608.801 Authority.
608.802 Applicability.
608.803 Definitions.
608.804 Delegation of authority.
608.805 Responsibility for collection.
608.806 Demand for payment.
608.807 Right to inspect and copy records.
608.808 Right to offer to repay claim.
608.809 Right to agency review.
608.810 Review procedures.
608.811 Special review.
608.812 Charges for interest, administrative costs, and penalties.
608.813 Contracting for collection services.
608.814 Reporting of credit information.
608.815 Credit report.

Subpart B—Administrative Offset

608.820 Applicability.
608.821 Collection by offset.
608.822 Notice requirements before offset.
608.823 Right to review of claim.
608.824 Waiver of procedural requirements.
608.825 Coordinating offset with other Federal agencies.
608.826 Stay of offset.
608.827 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Subpart C—Offset Against Salary

608.835 Purpose.
608.836 Applicability of regulations.
608.837 Definitions.
608.838 Waiver requests and claims to the General Accounting Office.
608.839 Procedures for salary offset.
608.840 Refunds.
608.841 Requesting current paying agency to offset salary.
608.842 Responsibility of the FCA as the paying agency.
608.843 Nonwaiver of rights by payments.

AUTHORITY: Sec. 5.17 of the Farm Credit Act; 12 U.S.C. 2252; 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 4 CFR parts 101–105; 5 CFR part 550.

SOURCE: 59 FR 13187, Mar. 21, 1994, unless otherwise noted.

Subpart A—Administrative Collection of Claims

§ 608.801 Authority.

The regulations of this part are issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, 31 U.S.C. 3701–3719 and 5 U.S.C. 5514, and in conformity with the joint regulations issued under that Act by the General Accounting Office and the Department of Justice (joint regulations) prescribing standards for administrative collection, compromise, suspension, and termination of agency collection actions, and referral to the General Accounting Office and to the Department of Justice for litigation of civil claims for money or property owed to the United States (4 CFR parts 101–105).

§ 608.802 Applicability.

This part applies to all claims of indebtedness due and owing to the United States and collectible under procedures authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982. The joint regulations and this part do not apply to conduct in violation of antitrust laws, tax claims, claims between Federal agencies, or to any claim which appears to involve fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, unless the Justice Department authorizes the Farm Credit Administration, pursuant to 4 CFR 101.3, to handle the claim in accordance with the provisions of 4 CFR parts 101–105. Additionally, this part does not apply to Farm Credit Administration assessments under part 607 of this chapter.

§ 608.803 Definitions.

In this part (except where the term is defined elsewhere in this part), the following definitions shall apply:

(a) *Administrative offset* or *offset,* as defined in 31 U.S.C. 3701(a)(1), means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Agency* means a department, agency, or instrumentality in the executive or legislative branch of the Government.

(c) *Claim* or *debt* means money or property owed by a person or entity to an agency of the Federal Government. A ''claim'' or ''debt'' includes amounts due the Government from loans insured by or guaranteed by the United States and all other amounts due from fees, leases, rents, royalties, services, sales of real or personal property, overpayment, penalties, damages, interest, and fines.

(d) *Claim certification* means a creditor agency's written request to a paying agency to effect an administrative offset.

(e) *Creditor agency* means an agency to which a claim or debt is owed.

(f) *Debtor* means the person or entity owing money to the Federal Government.

(g) *FCA* means the Farm Credit Administration.

(h) *Hearing official* means an individual who is responsible for reviewing a claim under § 608.810 of this part.

(i) *Paying agency* means an agency of the Federal Government owing money to a debtor against which an administrative or salary offset can be effected.

(j) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deductions at one or more officially established pay intervals from the current pay account of a debtor.

§ 608.804 Delegation of authority.

The FCA official(s) designated by the Chairman of the Farm Credit Administration are authorized to perform all duties which the Chairman is authorized to perform under these regulations, the Federal Claims Collection Act of 1966, as amended, and the joint regulations issued under that Act.

§ 608.805 Responsibility for collection.

(a) The collection of claims shall be aggressively pursued in accordance with the provisions of the Federal Claims Collection Act of 1966, as amended, the joint regulations issued under that Act, and these regulations. Debts owed to the United States, together with charges for interest, penalties, and administrative costs, should be collected in one lump sum unless otherwise provided by law. If a debtor requests installment payments, the debtor, as requested by the FCA, shall provide sufficient information to demonstrate that the debtor is unable to pay the debt in one lump sum. When appropriate, the FCA shall arrange an installment payment schedule. Claims which cannot be collected directly or by administrative offset shall be either written off as administratively uncollectible or referred to the General Counsel for further consideration.

(b) The Chairman, or designee of the Chairman, may compromise claims for money or property arising out of the activities of the FCA, where the claim (exclusive of charges for interest, penalties, and administrative costs) does not exceed $100,000. When the claim exceeds $100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to accept a compromise rests solely with the Department of Justice. The standards governing the compromise of claims are set forth in 4 CFR part 103.

(c) The Chairman, or designee of the Chairman, may suspend or terminate the collection of claims which do not exceed $100,000 (exclusive of charges for interest, penalties, and administrative costs) after deducting the amount of any partial payments or collections. If, after deducting the amount of any partial payments or collections, a claim exceeds $100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to suspend or terminate rests solely with the Department of Justice. The standards governing the suspension or termination of claim collections are set forth in 4 CFR part 104.

(d) The FCA shall refer claims to the Department of Justice for litigation or to the General Accounting Office (GAO) for claims arising from audit exceptions taken by the GAO to payments made by the FCA in accordance with 4 CFR part 105.

§ 608.806 Demand for payment.

(a) A total of three progressively stronger written demands at not more than 30-day intervals should normally be made upon a debtor, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demands may be preceded by other appropriate actions under Federal law, including immediate referral for litigation and/or administrative offset.

(b) The initial demand for payment shall be in writing and shall inform the debtor of the following:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) The payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the initial demand for payment;

(3) The right of the debtor to inspect and copy the records of the agency related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that the debtor may be assessed for the cost of copying the documents in accordance with § 608.807;

(4) The right of the debtor to obtain a review of the FCA's determination of indebtedness;

(5) The right of the debtor to offer to enter into a written agreement with the agency to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the agency;

(6) That charges for interest, penalties, and administrative costs will be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date;

(7) That if the debtor has not entered into an agreement with the FCA to pay the debt, has not requested the FCA to review the debt, or has not paid the debt by the payment due date, the FCA intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies for assistance in collecting the debt by offset;

(8) The name and address of the FCA official to whom the debtor shall send all correspondence relating to the debt; and

(9) Other information, as may be appropriate.

(c) If, prior to, during, or after completion of the demand cycle, the FCA determines to collect the debt by either administrative or salary offset, the FCA shall follow, as applicable, the requirements for a Notice of Intent to Collect by Administrative Offset or a Notice of Intent to Collect by Salary Offset set forth in § 608.822.

(d) If no response to the initial demand for payment is received by the payment due date, the FCA shall take further action under this part, under the Federal Claims Collection Act of 1966, as amended, under the joint regulations (4 CFR parts 101–105), or under any other applicable State or Federal law. These actions may include reports to credit bureaus, referrals to collection agencies, termination of contracts, debarment, and salary or administrative offset.

§ 608.807 Right to inspect and copy records.

The debtor may inspect and copy the FCA records related to the claim. The debtor shall give the FCA reasonable advance notice that it intends to inspect and copy the records involved. The debtor shall pay copying costs unless they are waived by the FCA. Copying costs shall be assessed pursuant to § 602.267 of this chapter.

§ 608.808 Right to offer to repay claim.

(a) The debtor may offer to enter into a written agreement with the FCA to repay the amount of the claim. The acceptance of such an offer and the decision to enter into such a written agreement is at the discretion of the FCA.

(b) If the debtor requests a repayment arrangement because payment of the amount due would create a financial hardship, the FCA shall analyze the debtor's financial condition. The FCA may enter into a written agreement with the debtor permitting the debtor to repay the debt in installments if the FCA determines, in its sole discretion, that payment of the amount due would create an undue financial hardship for the debtor. The written agreement shall set forth the amount and frequency of installment payments and shall, in accordance with § 608.812, provide for the imposition of charges for interest, penalties, and administrative costs unless waived by the FCA.

(c) The written agreement may require the debtor to execute a confess-judgment note when the total amount of the deferred installments will exceed $750. The FCA shall provide the debtor with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation. The statement shall recite that the written explanation was read and understood before execution of the note and that the debtor signed the note knowingly and voluntarily. Documentation of these procedures will be maintained in the FCA's file on the debtor.

§608.809 Right to agency review.

(a) If the debtor disputes the claim, the debtor may request a review of the FCA's determination of the existence of the debt or of the amount of the debt. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the FCA official named in the initial demand letter, within 15 calendar days after receipt of the letter. The debtor's request for review shall state the basis on which the claim is disputed.

(c) The FCA shall promptly notify the debtor, in writing, that the FCA has received the request for review. The FCA shall conduct its review of the claim in accordance with §608.810.

(d) Upon completion of its review of the claim, the FCA shall notify the debtor whether the FCA's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification shall include a copy of the written decision issued by the hearing official pursuant to §608.810(e). If the FCA's determination is sustained, this notification shall contain a provision which states that the FCA intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies for assistance in collecting the debt by offset.

§608.810 Review procedures.

(a) Unless an oral hearing is required by §608.823(d), the FCA's review shall be a review of the written record of the claim.

(b) If an oral hearing is required under §608.823(d), the FCA shall provide the debtor with a reasonable opportunity for such a hearing. The oral hearing, however, shall not be an adversarial adjudication and need not take the form of a formal evidentiary hearing. All significant matters discussed at the hearing, however, will be carefully documented.

(c) Any review required by this part, whether a review of the written record or an oral hearing, shall be conducted by a hearing official. In the case of a salary offset, the hearing official shall not be under the supervision or control of the Chairman of the Farm Credit Administration.

(d) The FCA may be represented by legal counsel. The debtor may represent himself or herself or may be represented by an individual of the debtor's choice and at the debtor's expense.

(e) The hearing official shall issue a final written decision based on documentary evidence and, if applicable, information developed at an oral hearing. The written decision shall be issued as soon as practicable after the review but not later than 60 days after the date on which the request for review was received by the FCA, unless the debtor requests a delay in the proceedings. A delay in the proceedings shall be granted if the hearing official determines, in his or her sole discretion, that there is good cause to grant the delay. If a delay is granted, the 60-day decision period shall be extended by the number of days by which the review was postponed.

(f) Upon issuance of the written opinion, the FCA shall promptly notify the debtor of the hearing official's decision. Said notification shall include a copy of the written decision issued by the hearing official pursuant to paragraph (e) of this section.

§608.811 Special review.

(a) An employee subject to salary offset, under subpart C of this part, or a voluntary repayment agreement, may, at any time, request a special review by the FCA of the amount of the salary offset or voluntary repayment, based on materially changed circumstances such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) To determine whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The FCA shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an undue financial hardship on the employee. The FCA shall notify the employee in writing of such determination, including, if appropriate, a revised offset or payment schedule.

§ 608.812 Charges for interest, administrative costs, and penalties.

(a) Except as provided in paragraph (d) of this section, the FCA shall:

(1) Assess interest on unpaid claims;

(2) Assess administrative costs incurred in processing and handling overdue claims; and

(3) Assess penalty charges not to exceed 6 percent a year on any part of a debt more than 90 days past due. The imposition of charges for interest, administrative costs, and penalties shall be made in accordance with 31 U.S.C. 3717.

(b)(1) Interest shall accrue from the date of mailing or hand delivery of the initial demand for payment or the Notice of Intent to Collect by either Administrative or Salary Offset if the amount of the claim is not paid within 30 days from the date of mailing or hand delivery of the initial demand or notice.

(2) The 30-day period may be extended on a case-by-case basis if the FCA reasonably determines that such action is appropriate. Interest shall only accrue on the principal of the claim and the interest rate shall remain fixed for the duration of the indebtedness, except, as provided in paragraph (c) of this section, in cases where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, or if the FCA reasonably determines that a higher rate is necessary to protect the interests of the United States.

(c) If a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the FCA may assess a new interest rate on the unpaid claim. In addition, charges for interest, administrative costs, and penalties which accrued but were not collected under the original repayment agreement shall be added to the principal of the claim to be paid under the new repayment agreement. Interest shall accrue on the entire principal balance of the claim, as adjusted to reflect any increase resulting from the addition of these charges.

(d) The FCA may waive charges for interest, administrative costs, and/or penalties if it determines that:

(1) The debtor is unable to pay any significant sum toward the claim within a reasonable period of time;

(2) Collection of charges for interest, administrative costs, and/or penalties would jeopardize collection of the principal of the claim;

(3) Collection of charges for interest, administrative costs, or penalties would be against equity and good conscience; or

(4) It is otherwise in the best interest of the United States, including the situation where an installment payment agreement or offset is in effect.

§ 608.813 Contracting for collection services.

The Chairman, or designee of the Chairman, may contract for collection services in accordance with 31 U.S.C. 3718 and 4 CFR 102.6 to recover debts.

§ 608.814 Reporting of credit information.

The Chairman, or designee of the Chairman, may disclose to a consumer reporting agency information that an individual is responsible for a debt owed to the United States. Information will be disclosed to reporting agencies in accordance with the terms and conditions of agreements entered into between the FCA and the reporting agencies. The terms and conditions of such agreements shall specify that all of the rights and protection afforded to the debtor under 31 U.S.C. 3711(f) have been

fulfilled. The FCA shall notify each consumer reporting agency, to which a claim was disclosed, when the debt has been satisfied.

§ 608.815 Credit report.

In order to aid the FCA in making appropriate determinations regarding the collection and compromise of claims; the collection of charges for interest, administrative costs, and penalties; the use of administrative offset; the use of other collection methods; and the likelihood of collecting the claim, the FCA may institute, consistent with the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681, *et seq.*), a credit investigation of the debtor immediately following a determination that the claim exists.

Subpart B—Administrative Offset

§ 608.820 Applicability.

(a) The provisions of this subpart shall apply to the collection of debts by administrative [or salary] offset under 31 U.S.C. 3716, 5 U.S.C. 5514, or other statutory or common law.

(b) Offset shall not be used to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility of discovering and collecting such debt.

(c) Offset shall not be used with respect to:

(1) Debts owed by other agencies of the United States or by any State or local government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1986, as amended, or tariff laws of the United States; or

(3) Any case in which collection by offset of the type of debt involved is explicitly provided for or prohibited by another statute.

(d) Unless otherwise provided by contract or law, debts or payments which are not subject to offset under 31 U.S.C. 3716 or 5 U.S.C. 5514 may be collected by offset if such collection is authorized under common law or other applicable statutory authority.

§ 608.821 Collection by offset.

(a) Collection of a debt by administrative [or salary] offset shall be accomplished in accordance with the provisions of these regulations, of 4 CFR 102.3, and 5 CFR part 550, subpart K. It is not necessary for the debt to be reduced to judgment or to be undisputed for offset to be used.

(b) The Chairman, or designee of the Chairman, may determine that it is feasible to collect a debt to the United States by offset against funds payable to the debtor.

(c) The feasibility of collecting a debt by offset will be determined on a case-by-case basis. This determination shall be made by considering all relevant factors, including the following:

(1) The degree to which the offset can be accomplished in accordance with law. This determination should take into consideration relevant statutory, regulatory, and contractual requirements;

(2) The degree to which the FCA is certain that its determination of the existence and amount of the debt is correct;

(3) The practicality of collecting the debt by offset. The cost, in time and money, of collecting the debt by offset and the amount of money which can reasonably be expected to be recovered through offset will be relevant to this determination; and

(4) Whether the use of offset will substantially interfere with or defeat the purpose of a program authorizing payments against which the offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, the imposition of offset against such a payment may be inappropriate.

(d) The collection of a debt by offset may not be feasible when there are circumstances which would indicate that the likelihood of collection by offset is less than probable.

(e) The offset will be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset (or Notice of Intent to Collect by Salary Offset if the offset is a salary offset), or upon the expiration of a stay

of offset, unless the FCA determines under § 608.824 that immediate action is necessary.

(f) If the debtor owes more than one debt, amounts recovered through offset may be applied to them in any order. Applicable statutes of limitation would be considered before applying the amounts recovered to any debts owed.

§ 608.822 Notice requirements before offset.

(a) Except as provided in § 608.824, the FCA will provide the debtor with 30 calendar days' written notice that unpaid debt amounts shall be collected by administrative [or salary] offset (Notice of Intent to Collect by Administrative [or Salary] Offset) before the FCA imposes offset against any money that is to be paid to the debtor.

(b) The Notice of Intent to Collect by Administrative [or Salary] Offset shall be delivered to the debtor by hand or by mail and shall provide the following information:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) In the case of an administrative offset, the payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the Notice;

(3) In the case of a salary offset: (i) The FCA's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full; and

(ii) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) The right of the debtor to inspect and copy the records of the FCA related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that the debtor shall be assessed for the cost of copying the documents in accordance with § 608.807;

(5) The right of the debtor to obtain a review of, and to request a hearing, on the FCA's determination of indebtedness, the propriety of collecting the debt by offset, and, in the case of salary offset, the propriety of the proposed repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period). The debtor shall be informed that to obtain a review, the debtor shall deliver a written request for a review to the FCA official named in the Notice, within 15 calendar days after the debtor's receipt of the Notice. In the case of a salary offset, the debtor shall also be informed that the review shall be conducted by an official arranged for by the FCA who shall be a hearing official not under the control of the Chairman of the Farm Credit Administration, or an administrative law judge;

(6) That the filing of a petition for hearing within 15 calendar days after receipt of the Notice will stay the commencement of collection proceedings;

(7) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the written request for review unless the employee requests, and the hearing official grants, a delay in the proceedings;

(8) The right of the debtor to offer to enter into a written agreement with the FCA to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the FCA;

(9) That charges for interest, penalties, and administrative costs shall be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date. The debtor shall be informed that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards (4 CFR parts 103 and 104);

(10) The amount of accrued interest and the amount of any other penalties or administrative costs which may have been added to the principal debt;

(11) That if the debtor has not entered into an agreement with the FCA to pay the debt, has not requested the FCA to review the debt, or has not paid the debt prior to the date on which the offset is to be imposed, the FCA intends to collect the debt by administrative [or salary] offset or by requesting other Federal agencies for assistance in collecting the debt by offset. The debtor shall be informed that the offset shall be imposed against any

funds that might become available to the debtor, until the principal debt and all accumulated interest and other charges are paid in full;

(12) The date on which the offset will be imposed, which shall be 31 calendar days from the date of mailing or hand delivery of the Notice. The debtor shall be informed that the FCA reserves the right to impose an offset prior to this date if the FCA determines that immediate action is necessary;

(13) That any knowingly false or frivolous statements, representations, or evidence may subject the debtor to:

(i) Penalties under the False Claims Act, sections 3729 through 3731 of title 31, United States Code, or any other applicable statutory authority;

(ii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code, or any other applicable statutory authority; and, with regard to employees,

(iii) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code; part 752 of title 5, Code of Federal Regulations, or any other applicable statute or regulation;

(14) The name and address of the FCA official to whom the debtor shall send all correspondence relating to the debt or the offset;

(15) Any other rights and remedies available to the debtor under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) Other information, as may be appropriate.

(c) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the FCA is not required to duplicate those requirements before effecting offset.

§ 608.823 Right to review of claim.

(a) If the debtor disputes the claim, the debtor may request a review of the FCA's determination of the existence of the debt, the amount of the debt, the propriety of collecting the debt by offset, and in the case of salary offset, the propriety of the proposed repayment schedule. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the FCA official named in the Notice of Intent to Collect by Administrative [or Salary] Offset within 15 calendar days after receipt of the notice. The debtor's written request for review shall state the basis on which the claim is disputed and shall specify whether the debtor requests an oral hearing or a review of the written record of the claim. If an oral hearing is requested, the debtor shall explain in the request why the matter cannot be resolved by a review of the documentary evidence alone.

(c) The FCA shall promptly notify the debtor, in writing, that the FCA has received the request for review. The FCA shall conduct its review of the claim in accordance with § 608.810.

(d) The FCA's review of the claim, under this section, shall include providing the debtor with a reasonable opportunity for an oral hearing if:

(1) An applicable statute authorizes or requires the FCA to consider waiver of the indebtedness, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the FCA determines that the question of the indebtedness cannot be resolved by reviewing the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

(e) A debtor waives the right to a hearing and will have his or her debt offset in accordance with the proposed offset schedule if the debtor:

(1) Fails to file a written request for review within the timeframe set forth in paragraph (b) of this section, unless the FCA determines that the delay was the result of circumstances beyond his or her control; or

(2) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines that

the failure to appear was due to circumstances beyond the employee's control.

(f) Upon completion of its review of the claim, the FCA shall notify the debtor whether the FCA's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification shall include a copy of the written decision issued by the hearing official, pursuant to § 608.810(e). If the FCA's determination is sustained, this notification shall contain a provision which states that the FCA intends to collect the debt by offset or by requesting other Federal agencies for assistance in collecting the debt.

(g) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the FCA is not required to duplicate those requirements before effecting offset.

§ 608.824 Waiver of procedural requirements.

(a) The FCA may impose offset against a payment to be made to a debtor prior to the completion of the procedures required by this part, if:

(1) Failure to impose the offset would substantially prejudice the Government's ability to collect the debt; and

(2) The timing of the payment against which the offset will be imposed does not reasonably permit the completion of those procedures.

(b) The procedures required by this part shall be complied with promptly after the offset is imposed. Amounts recovered by offset, which are later found not to be owed to the Government, shall be promptly refunded to the debtor.

§ 608.825 Coordinating offset with other Federal agencies.

(a)(1) Any creditor agency which requests the FCA to impose an offset against amounts owed to the debtor shall submit to the FCA a claim certification which meets the requirements of this paragraph. The FCA shall submit the same certification to any agency that the FCA requests to effect an offset.

(2) The claim certification shall be in writing. It shall certify the debtor owes the debt and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met. If the intended offset is to be a salary offset, a claim certification shall instead certify that the debtor owes the debt and that the applicable requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met.

(3) A certification that the debtor owes the debt shall state the amount of the debt, the factual basis supporting the determination of indebtedness, and the date on which payment of the debt was due. A certification that the requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met shall include a statement that the debtor has been sent a notice of Intent to Collect by Administrative Offset at least 31 calendar days prior to the date of the intended offset or a statement that pursuant to 4 CFR 102.3(b)(5) said Notice was not required to be sent. A certification that the requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met shall include a statement that the debtor has been sent a Notice of Intent to Collect by Salary Offset at least 31 calendar days prior to the date of the intended offset or a statement that pursuant to 4 CFR 102.3(b)(5) said Notice was not required to be sent.

(b)(1) The FCA shall not effect an offset requested by another Federal agency without first obtaining the claim certification required by paragraph (a) of this section. If the FCA receives an incomplete claim certification, the FCA shall return the claim certification with notice that a claim certification which complies with the requirements of paragraph (a) of this section must be submitted to the FCA before the FCA will consider effecting an offset.

(2) The FCA may rely on the information contained in the claim certification provided by a requesting creditor agency. The FCA is not authorized to review a creditor agency's determination of indebtedness.

(c) Only the creditor agency may agree to enter into an agreement with the debtor for the repayment of the claim. Only the creditor agency may

agree to compromise, suspend, or terminate collection of the claim.

(d) The FCA may decline, for good cause, a request by another agency to effect an offset. Good cause includes that the offset might disrupt, directly or indirectly, essential FCA operations. The refusal and the reasons shall be sent in writing to the creditor agency.

§ 608.826 Stay of offset.

(a)(1) When a creditor agency receives a debtor's request for inspection of agency records, the offset is stayed for 10 calendar days beyond the date set for the record inspection.

(2) When a creditor agency receives a debtor's offer to enter into a repayment agreement, the offset is stayed until the debtor is notified as to whether the proposed agreement is acceptable.

(3) When a review is conducted, the offset is stayed until the creditor agency issues a final written decision.

(b) When offset is stayed, the amount of the debt and the amount of any accrued interest or other charges will be withheld from payments to the debtor. The withheld amounts shall not be applied against the debt until the stay expires. If withheld funds are later determined not to be subject to offset, they will be promptly refunded to the debtor.

(c) If the FCA is the creditor agency and the offset is stayed, the FCA will immediately notify an offsetting agency to withhold the payment pending termination of the stay.

§ 608.827 Offset against amounts payable from Civil Service Retirement and Disability Fund.

The FCA may request that monies payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset to collect debts owed to the FCA by the debtor. The FCA must certify that the debtor owes the debt, the amount of the debt, and that the FCA has complied with the requirements set forth in this part, 4 CFR 102.3, and the Office of Personnel Management regulations. The request shall be submitted to the official designated in the Office of Personnel Management regulations to receive the request.

Subpart C—Offset Against Salary

§ 608.835 Purpose.

The purpose of this subpart is to implement section 5 of the Debt Collection Act of 1982 (Pub. L. 97–365)(5 U.S.C. 5514), which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offsets. These regulations provide procedures for the collection of a debt owed to the Government by the imposition of a salary offset against amounts payable to a Federal employee as salary. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management, codified in 5 CFR part 550, subpart K. Since salary offset is a type of administrative offset, this subpart supplements subpart B.

§ 608.836 Applicability of regulations.

(a) These regulations apply to the following cases:

(1) Where the FCA is owed a debt by an individual currently employed by another agency;

(2) Where the FCA is owed a debt by an individual who is currently employed by the FCA; or

(3) Where the FCA currently employs an individual who owes a debt to another Federal agency. Upon receipt of proper certification from the creditor agency, the FCA will offset the debtor-employee's salary in accordance with these regulations.

(b) These regulations do not apply to the following:

(1) Debts or claims rising under the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) Any adjustment to pay arising from an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(3) A claim which has been outstanding for more than 10 years after the creditor agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials charged with the responsibility for discovery and collection of such debts.

§ 608.837 Definitions.

In this subpart, the following definitions shall apply:

(a) *Agency* means:

(1) An executive agency as defined by 5 U.S.C. 105, including the United States Postal Service and the United States Postal Rate Commission;

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court of the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multi-district Litigation;

(4) An agency of the legislative branch, including the United States Senate and the United States House of Representatives; or

(5) Other independent establishments that are entities of the Federal Government.

(b) *Disposable pay* means, for an officially established pay interval, that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay, remaining after the deduction of any amount required by law to be withheld. The FCA shall allow the deductions described in 5 CFR 581.105 (b) through (f).

(c) *Employee* means a current employee of the FCA or other agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

(d) *Waiver* means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to the FCA or another agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 608.838 Waiver requests and claims to the General Accounting Office.

(a) The regulations contained in this subpart do not preclude an employee from requesting a waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office.

(b) These regulations also do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debts being collected.

§ 608.839 Procedures for salary offset.

(a) The Chairman, or designee of the Chairman, shall determine the amount of an employee's disposable pay and the amount to be deducted from the employee's disposable pay at regular pay intervals.

(b) Deductions shall begin within three official pay periods following the date of mailing or delivery of the Notice of Intent to Collect by Salary Offset.

(c)(1) If the amount of the debt is equal to or is less than 15 percent of the employee's disposable pay, such debt should be collected in one lump-sum deduction.

(2) If the amount of the debt is not collected in one lump-sum deduction, the debt shall be collected in installment deductions over a period of time not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any pay period will not exceed 15 percent of the employee's disposable pay for that period, unless the employee has agreed in writing to the deduction of a greater amount.

(3) A deduction exceeding the 15-percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) Whenever an employee subject to salary offset is separated from the FCA and the balance of the debt cannot be liquidated by offset of the final salary check pursuant to 31 U.S.C. 3716, the FCA may offset any later payments of any kind against the balance of the debt.

(d) In instances where two or more creditor agencies are seeking salary offsets against current employees of the FCA or where two or more debts are owed to a single creditor agency, the FCA, at its discretion, may determine whether one or more debts should be offset simultaneously within the 15-percent limitation. Debts owed to the FCA should generally take precedence over debts owed to other agencies.

§ 608.840 Refunds.

(a) In instances where the FCA is the creditor agency, it shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owed to the United States (unless expressly prohibited by statute or regulations); or

(2) An administrative or judicial order directs the FCA to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section shall not bear interest.

§ 608.841 Requesting current paying agency to offset salary.

(a) To request a paying agency to impose a salary offset against amounts owed to the debtor, the FCA shall provide the paying agency with a claim certification which meets the requirements set forth in § 608.825(a). The FCA shall also provide the paying agency with a repayment schedule determined under the provisions of § 608.839 or in accordance with a repayment agreement entered into with the debtor.

(b) If the employee separates from the paying agency before the debt is paid in full, the paying agency shall certify the total amount collected on the debt. A copy of this certification shall be sent to the employee and a copy shall be sent to the FCA. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the FCA must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(c) When an employee transfers to another paying agency, the FCA is not required to repeat the due process procedures set forth in 5 U.S.C. 5514 and this part to resume the collection. The FCA shall, however, review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) If a special review is conducted pursuant to § 608.811 and results in a revised offset or repayment schedule, the FCA shall provide a new claim certification to the paying agency.

§ 608.842 Responsibility of the FCA as the paying agency.

(a) When the FCA receives a claim certification from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The FCA shall send the debtor written notice which provides:

(1) That the FCA has received a valid claim certification from the creditor agency;

(2) The date on which salary offset will begin;

(3) The amount of the debt; and

(4) The amount of such deductions.

(b) If, after the creditor agency has submitted the claim certification to the FCA, the employee transfers to a different agency before the debt is collected in full, the FCA must certify the total amount collected on the debt. The FCA shall send a copy of this certification to the creditor agency and a copy to the employee. If the FCA is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, or other similar payments, it shall provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount).

§ 608.843 Nonwaiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this subpart shall not be construed as a waiver of any rights the employee may have under 5 U.S.C. 5514 or any other provisions of a written contract or law unless there are statutory or contractual provisions to the contrary.

SUBCHAPTER B—FARM CREDIT SYSTEM

PART 611—ORGANIZATION

Subparts A–B—[Reserved]

Subpart C—Election of Directors

Sec.
611.310 Eligibility for membership on bank and association boards and subsequent employment.
611.320 Impartiality in the election of directors.
611.330 Confidentiality in the election of directors.
611.340 Security in the election of directors.

Subpart D—Rules for Compensation of Board Members

611.400 Compensation of bank board members.

Subpart E—Transfer of Authorities

611.500 General.
611.501 Procedures.
611.505 Farm Credit Administration review.
611.510 Approval procedures.
611.515 Information statement.
611.520 Plan of transfer.
611.525 Stockholder reconsideration.

Subpart F—Bank Mergers, Consolidations and Charter Amendments

611.1000 General authority.
611.1010 Bank charter amendment procedures.
611.1020 Requirements for mergers or consolidations of banks.
611.1030 Board of directors of an agricultural credit bank.
611.1040 Creation of new associations.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

611.1120 General authority.
611.1121 Charter amendment procedures.
611.1122 Requirements for mergers or consolidations.
611.1123 Merger or consolidation agreements.
611.1124 Territorial adjustments.
611.1125 Treatment of associations not approving districtwide mergers.

Subpart H—Rules for Inter-System Fund Transfers

611.1130 Inter-System transfer of funds and equities.

Subpart I—Service Organizations

611.1135 Incorporation of service organizations.
611.1136 Incorporated and unincorporated service organization—regulation and examination.
611.1137 Title VIII service corporations.

Subpart J—Merger and Reorganization Proposals Required by the Agricultural Credit Act of 1987

611.1140 Consolidation of Farm Credit Banks.
611.1141—611.1144 [Reserved]
611.1145 Required consideration of proposals to merge production credit associations and Federal land bank associations.

Subpart K—Appointment of Conservators and Receivers

611.1155 General.
611.1157 Conservators and receivers.
611.1158 Action for removal of conservator or receiver.

Subpart L—Liquidation of Associations

611.1160 Appointment of receiver.
611.1161 Powers and duties of the receiver.
611.1162 Preservation of equity.
611.1163 Notice to stockholders.
611.1164 Creditors' claims.
611.1165 [Reserved]
611.1166 Uninsured accounts.
611.1167 Priority of claims.
611.1168 Inventory, examination, audit, and reports to stockholders.
611.1169 Final discharge and release of receiver.

Subpart M—Liquidation of Banks

611.1170 Appointment of receiver.
611.1171 Powers and duties of the receiver.
611.1172 Preservation of equity.
611.1173 Notice to associations, cooperative borrowers, and other financing institutions.
611.1174 Creditors' claims and priority of claims.
611.1175 Inventory, examination, audit, and reports to stockholders.
611.1176 Final discharge and release of receiver.

Subpart N—Conservators and Conservatorships of Banks and Associations

611.1180 Appointment of a conservator.
611.1181 Powers and duties of conservators.

611.1182 Inventory, examination, audit, and reports to stockholders.
611.1183 Final discharge and release of conservators.

Subpart O—Special Reconsideration of Mergers

611.1190 General.
611.1191 Petitions and resolutions.
611.1192 Requirements for petitions.
611.1193 Filing date—additional materials.
611.1194 Farm Credit Administration review.
611.1195 Stockholder vote.
611.1196 Payment of expenses.
611.1197 Information statement.
611.1198 Plan of reorganization.

Subpart P—Termination of Farm Credit Status—Associations

611.1200 General—Applicability.
611.1205 Definitions.
611.1210 Advance notification.
611.1211 Filing of termination application.
611.1212 Filing date of termination application.
611.1215 Farm Credit Administration review and approval.
611.1220 Voting record date and stockholder approval.
611.1225 Requirements for information statement.
611.1226 Prohibited acts.
611.1230 Plan of termination.
611.1235 Stockholder reconsideration.
611.1240 Exit fee.
611.1250 Repayment of debts.
611.1255 Retirement of equities owned.
611.1260 Dissenters' rights.
611.1266 Loan refinancing by borrowers.
611.1270 Continuation of borrower rights.

AUTHORITY: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

SOURCE: 37 FR 11415, June 7, 1972, unless otherwise noted.

Subparts A–B—[Reserved]

Subpart C—Election of Directors

SOURCE: 53 FR 50392, Dec. 15, 1988, unless otherwise noted.

§ 611.310 Eligibility for membership on bank and association boards and subsequent employment.

(a) No person shall be eligible for membership on a bank or association board who is or has been, within 1 year preceding the date the term of office begins, a salaried officer or employee of any bank or association in the System.

(b) No bank or association director shall be eligible to continue to serve in that capacity and his or her office shall become vacant if after election as a member of the board, he or she becomes legally incompetent or is convicted of a felony or held liable in damages for fraud.

(c) No bank director shall, within 1 year after the date when he or she ceases to be a member of the board, serve as a salaried officer or employee of such bank, or any association with which the bank has a discount or agent relationship.

(d) No director of an association shall, within 1 year after he or she ceases to be a member of the board, serve as a salaried officer or employee of such association.

[53 FR 50392, Dec. 15, 1988, as amended at 54 FR 37095, Sept. 7, 1989]

§ 611.320 Impartiality in the election of directors.

(a) Each System institution shall adopt policies and procedures that are designed to assure that the elections of board members are conducted in an impartial manner.

(b) No employee or agent of a System institution shall take any part, directly or indirectly, in the nomination or election of members to the board of directors of a System institution, or make any statement, either orally or in writing, which may be construed as intended to influence any vote in such nominations, or elections. This paragraph shall not prohibit employees or agents from providing biographical and other similar information or engaging in other activities pursuant to policies and procedures for nominations and elections. This paragraph does not affect the right of an employee or agent to nominate or vote for directors of an institution in which the employee or agent is a voting member.

(c) No property, facilities, or resources of any System institution shall be used by any candidate for nomination or election or by any other person for the benefit of any candidate for nomination or election, unless the same property, facilities, or resources are simultaneously available and made known to be available for use by all declared candidates.

(d) No director, employee, or agent of a System institution shall, for the purpose of furthering the interests of any candidates for nomination or election, furnish or make use of records that are not made available for use by all declared candidates.

(e) No System institution shall distribute or mail either directly or at the expense of the institution, any campaign materials for director candidates. Institutions shall request biographical information from all declared candidates who certify that they are eligible, restate such information in a standard format, and distribute or mail it with ballots or proxy ballots.

§ 611.330 Confidentiality in the election of directors.

(a) Each System institution shall adopt policies and procedures that assure that all information regarding how or whether individual stockholders have voted and all materials such as ballots, proxy ballots, election records, and other relevant documentation related to the votes of stockholders shall be held in strict confidence. Such information and materials shall not be disclosed to any person, except as required by the Farm Credit Administration in the event an election is contested, or otherwise.

(b) Except as provided in this paragraph, System institutions shall not use ballots or proxy ballots that must be signed by the stockholder or that contain an identifying character or mark that can be used to identify how an individual stockholder's vote is cast. Institutions may adopt procedures which require the stockholders to sign or otherwise verify their eligibility to vote on an envelope which contains a marked ballot in a sealed envelope. Institutions may also use signed proxy statements or eligibility certificates which will accompany a ballot or instructions on how to vote the proxy in a separate sealed envelope. Where the identity of the voting stockholders is necessary to determine the voting weight of ballots, the institution shall use a form of identity code on the ballot and shall require that the votes are tabulated by an independent party.

(c) When an institution receives a ballot by mail or at a meeting, the vote of such stockholder shall be final. When proxy voting is permitted, a stockholder voting by proxy may revoke the proxy prior to balloting at the stockholders meeting.

§ 611.340 Security in the election of directors.

(a) Each System institution shall adopt policies and procedures that assure the security of all records and materials related to the election of board members including, but not limited to, ballots, proxy ballots, and other related materials.

(b) Bank and association procedures shall assure that ballots and proxy ballots are provided only to stockholders who are eligible to vote.

(c) Ballots and proxy ballots shall be physically safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the banks and associations until disposal. Ballots, proxy ballots, and election records shall be retained until the end of the term of office of the director and promptly destroyed thereafter.

(d) The election procedures of each institution shall provide for the establishment of a tellers committee or other designated group of persons which shall be responsible for validating ballots and proxies and tabulating election results. An institution and its officers, directors and employees shall make no public announcement of the results of an election before the tellers committee or other designated persons have validated the results of the election.

Subpart D—Rules for Compensation of Board Members

§ 611.400 Compensation of bank board members.

(a) Farm Credit System banks are authorized to pay fair and reasonable compensation to directors for services performed in an official capacity at a rate not to exceed the level established in section 4.21 of the Farm Credit Act of 1971, as amended, unless the FCA determines that such a level adversely affects the safety and soundness of the institution.

(b) The bank director compensation level established in section 4.21 of the Act shall be adjusted to reflect changes in the Consumer Price Index (CPI) for all urban consumers, as published by the Bureau of Labor Statistics, in the following manner: Current year's maximum compensation = Prior year's maximum compensation adjusted by the prior year's annual average percent change in the CPI for all urban consumers. Adjustments will be made to the bank director statutory compensation limit beginning from October 28, 1992 (the date of enactment of the Farm Credit Banks and Associations Safety and Soundness Act of 1992). Additionally, each year the FCA will distribute a bookletter to all FCS banks that communicates the CPI adjusted bank director statutory compensation limit.

(c) A waiver of the compensation limitation prescribed by section 4.21 of the Act may be granted under exceptional circumstances as approved on a case-by-case basis by the FCA. However, the FCA shall not grant a waiver that allows a bank to pay any director in excess of 30 percent more than the statutory maximum compensation as determined in accordance with paragraph (b) of this section. A waiver approval shall precede any payments by the bank to its director(s) that exceed the maximum limitation determined in paragraph (b) of this section. A bank seeking a waiver shall provide the FCA Chairman with a written request that:

(1) Describes and explains the exceptional circumstance(s) that the bank believes necessitates a waiver of section 4.21 of the Act;

(2) States the amount and the terms and conditions (if any) of the proposed compensation level for each director that would exceed the statutory maximum determined in accordance with paragraph (b) of this section; and

(3) Justifies the compensation level of each director that would exceed the statutory limitation based on the extraordinary time and service devoted to bank business.

The FCA shall respond to written requests within 60 days of receipt of the preceding information and the receipt of any other additional information requested by the FCA.

(d) Each bank board shall adopt a written policy regarding compensation of bank directors. The policy shall address, at a minimum, the following areas:

(1) The activities or functions for which attendance is necessary and appropriate and may be compensated, except that a Farm Credit System bank shall not compensate any director for rendering services on behalf of any other Farm Credit System institution or a cooperative of which the director is a member, or for performing other assignments of a non-official nature;

(2) The methodology for determining each director's rate of compensation; and

(3) The exceptional circumstances under which the board would seek a waiver of the statutory limitation on bank director compensation for any of its directors and any limitations or conditions the board wishes to place on the availability of such waivers.

(e) Directors may also be reimbursed for reasonable travel, subsistence, and other related expenses in accordance with the policy adopted pursuant to § 618.8270 of this chapter.

[59 FR 37411, July 22, 1994]

Subpart E—Transfer of Authorities

SOURCE: 53 FR 50393, Dec. 15, 1988, unless otherwise noted.

§ 611.500 General.

Each Farm Credit Bank or Agricultural Credit Bank is authorized, in accordance with section 7.6 of the Act, to transfer certain authorities to Federal

land bank associations. The regulations in this subpart set forth the procedures and voting and approval requirements applicable to such transfers.

§611.501 Procedures.

(a) The boards of directors of a bank and an association which seek to transfer authorities may adopt appropriate resolutions approving such transfer and providing for the submission of such a proposal to their respective stockholders for a vote.

(b) The resolutions accompanied by the following information shall be submitted to the Farm Credit Administration for review and approval:

(1) Any proposed amendments to the charters of the institutions;

(2) A copy of the transfer plan as required under §611.520 of this part;

(3) An information statement that complies with the requirements of §611.515;

(4) The proposed bylaws of the bank and the association, as applicable; and

(5) Any additional information the boards of directors wish to submit in support of the request or that the Farm Credit Administration requests.

§611.505 Farm Credit Administration review.

(a) Upon receipt of the board of directors resolution and the accompanying documents, the Farm Credit Administration shall review the request and either deny or give its preliminary approval to the request.

(b) If the request is denied, written notice stating the reasons for the denial shall be transmitted to the chief executive officer of the bank and the association who shall promptly notify their respective boards of directors.

(c) Upon approval of the proposed transfer of authorities by the stockholders as provided in §611.510, the secretary of the bank and the secretary of the association shall forward to the Farm Credit Administration a certified record of the results of the stockholder votes.

(d) Each institution shall notify its stockholders not later than 30 days after the stockholder vote of the final results of the vote. If no petition for reconsideration is filed with the Farm Credit Administration in accordance with §611.525, the transfer shall be effective on the date specified in the transfer plan, or at such later date as may be required by the Farm Credit Administration to grant final approval. Notice of final approval shall be transmitted to the institutions involved.

(e) The effective date of a transfer shall be a date which is not less than 50 days after the notification of the results of the stockholder vote. If a petition for reconsideration is filed within 35 days after the date of mailing of the notification of stockholder vote, the constituent institutions shall agree on a second effective date to be used in the event the transfer is approved on reconsideration. The second effective date shall not be not less than 15 days after the date of the reconsideration vote.

§611.510 Approval procedures.

(a) Upon receipt of approval of a resolution by the Farm Credit Administration, the bank and the association shall call a meeting of their voting stockholders. Each institution shall notify each stockholder that the resolution has been filed and that a meeting will be held in accordance with the institution's bylaws. The stockholders meeting of the bank and the association shall be held within 60 days of receipt of the approval from the Farm Credit Administration.

(b) The notice of meeting to consider and act upon the directors' resolution shall be accompanied by an information statement that complies with the requirements of §611.515.

(c) The proposal shall be approved if agreed to by:

(1) A majority of the stockholders of the bank voting in person or by proxy, with each association entitled to cast a number of votes equal to the number of its voting stockholders;

(2) A majority of the stockholders of the association voting, in person or by proxy;

(3) The Farm Credit Administration.

§611.515 Information statement.

(a) The bank and association shall prepare an information statement which will inform stockholders about the provisions of the proposed transfer

of authorities and the effect of the proposal on the bank and the association.

(b) The information statement for each institution involved shall contain the following materials as applicable to the institution:

(1) A statement either on the first page of the materials or on the notice of the stockholders meeting, in capital letters and boldface type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A description of the material provisions of the plan under § 611.520 and the effect of the transaction on the institution, its stockholders, and the territory to be served.

(3) A statement enumerating the potential advantages and disadvantages of the proposed transfer including, but not limited to, changes in operating efficiencies, one-stop service, branch offices, local control, and financial condition.

(4) A summary of the provisions of the charter and bylaws following the transfer that differ materially from the charter or bylaws currently existing.

(5) A brief statement by the board of directors of the institution setting forth the board's opinion on the advisability of the transfer.

(6) A presentation of the following financial data:

(i) An audited balance sheet and income statement and notes thereto of the bank or the association, as applicable, for the preceding 2 fiscal years.

(ii) If the transfer of authority includes any material transfer of assets, a balance sheet and income statement of the bank and the association showing its financial condition before the transfer of authority and a pro forma balance sheet and income statement for the bank or association, as applicable, showing its financial condition after the transfer. The statements shall meet the following conditions:

(A) Such financial statements shall be presented in columnar form, showing the financial condition as of the end of the most recent quarter of the institution, and operating results since the end of the last fiscal year through the end of the most recent quarter of the institution.

(B) If the request is made within 90 days after the end of the fiscal year, the institution's financial statements shall be as of the most recent fiscal yearend.

(C) If the request is made within 45 days after the end of the most recent quarter, the institution's financial statements shall be as of the end of the quarter preceding the quarter just ended.

(D) If the request is made more than 45 days after the end of the most recent quarter, the institution's financial statements shall be as of the end of that quarter.

(E) The financial statements must be accompanied by appropriate notes, describing any assets being transferred and including data relating to high-risk assets and other property owned, allowance for loan losses, and current year-to-date chargeoffs.

(F) The amount and nature of start-up costs estimated to be associated with the transfer.

(7) A description of the type and dollar amount of any financial assistance that has been provided to the bank or the association, as applicable, during the past year; the conditions on which the financial assistance was extended, the terms of repayment or retirement, if any; and, the liability for repayment of this assistance by the bank or the association if the transfer were approved.

(8) A statement as to whether the bank or the association, as applicable, would require financial assistance during the first 3 years of operation, the estimated type and dollar amount of the assistance, and terms of repayment or retirement, if known.

(9) A statement indicating the possible tax consequences to stockholders and whether any legal opinion, ruling or external auditor's opinion has been obtained on the matter.

(10) A presentation of the association's interest rate and fee programs, interest collection policy, capitalization plan and other factors that would affect a borrower's cost of doing business with the association.

(11) A description of any event subsequent to the date of the last quarterly report, but prior to the stockholder vote, that would have a material impact on the financial condition of the bank or the association.

(12) A statement of any other material fact or circumstances that a stockholder would need in order to make an informed and responsible decision, or that would be necessary in order to provide a disclosure that is not misleading.

(13) A form of written proxy, together with instructions on its purpose, use and authorization by the stockholder. The proxy instructions must ensure the secrecy of the stockholder's ballot if the stockholder votes by proxy.

(14) A copy of the plan of transfer provided for in § 611.520 of this part.

(c) No bank or association director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of the association in connection with a transfer under this subpart.

[53 FR 50393, Dec. 15, 1988, as amended at 58 FR 48790, Sept. 20, 1993]

§ 611.520 Plan of transfer.

The transfer of authorities and assets, as appropriate, shall occur pursuant to a written plan which shall be agreed to by the bank and the association involved. The written plan shall include the following:

(a) An explanation of the value of the equity ownership as of the last monthend held by stockholders of the bank and the association and the impact, if any, of the transfer on the value of that equity.

(b) If the plan provides for a transfer of assets, a description of the terms and conditions upon which such transfer will occur, including, but not limited to, any warranties or representations regarding the value of such assets.

(c) A description of how the association would obtain loan funds after the transfer.

(d) A statement on how the expenses connected with the transfer are to be borne by the affected parties.

(e) A statement of any conditions which must be satisfied prior to the effective date of the transfer, including but not limited to approval by stockholders and approval by the Farm Credit Administration.

(f) A statement that prior to the effective date of the transfer the board of directors of the bank or the association may rescind its resolution and void the transfer, with the concurrence of the Farm Credit Administration, on the basis that:

(1) The information disclosed to stockholders contained material errors or omissions;

(2) Material misrepresentations were made to stockholders regarding the impact of the transfer;

(3) Fraudulent activities were used to obtain the stockholders' approval; or,

(4) An event occurred between the time of the vote and the transfer that would have a significant adverse impact on the future viability of the association.

(g) A designation of those persons who have authority to carry out the plan of transfer, including the authority to execute any documents necessary to perfect title, on behalf of the bank and the association.

§ 611.525 Stockholder reconsideration.

(a) Stockholders have the right to reconsider the approval of the transfer provided that a petition signed by 15 percent of the stockholders of either institution involved in the transfer is filed with the Farm Credit Administration within 35 days after the date of mailing of the notification of the final results of the stockholder vote required under § 611.505(d) and such petition is approved by the Farm Credit Administration.

(b) A special stockholders meeting shall be called by the institution to vote on the reconsideration following the Farm Credit Administration's approval of a stockholder petition to reconsider the transfer. If a majority of stockholders of any institution involved in the transfer votes against the transfer, the transfer is not approved.

Subpart F—Bank Mergers, Consolidations and Charter Amendments

SOURCE: 53 FR 50393, Dec. 15, 1988, unless otherwise noted.

§ 611.1000 General authority.

(a) An amendment to a bank charter may relate to any provision that is properly the subject of a charter, including, but not limited to, the name of the bank, the location of its offices, or the territory served.

(b) The Farm Credit Administration may make changes in the charter of a bank as may be requested by that bank and approved by the Farm Credit Administration pursuant to § 611.1010 of this part.

(c) The Farm Credit Administration may, in accordance with the provisions of the Act, make changes in the charter of a bank as may be necessary or expedient to implement the provisions of the Act.

§ 611.1010 Bank charter amendment procedures.

(a) A bank may recommend a charter amendment to accomplish any of the following actions:

(1) A merger or consolidation with any other bank or banks operating under title I or III of the Act;

(2) A transfer of territory with any other bank operating under the same title of the Act;

(3) A change to its name or location;

(4) Any other change that is properly the subject of a bank charter;

(b) Upon approval of an appropriate resolution by the bank board, the certified resolution, together with supporting documentation, shall be submitted to the Farm Credit Administration for preliminary or final approval, as the case may be.

(c) The Farm Credit Administration shall review the material submitted and either approve or disapprove the request. The Farm Credit Administration may require submission of any supplemental materials it deems appropriate. If the request is for merger, consolidation, or transfer of territory, the approval of Farm Credit Administration will be preliminary only, with final approval subject to a vote of the bank's stockholders.

(d) Following receipt of the Farm Credit Administration's written preliminary approval, the proposal shall be submitted for approval to the voting stockholders of the bank. A proposal shall be approved if agreed to by a majority of the stockholders of each bank voting, in person or by proxy, at a duly authorized stockholder meeting with each association entitled to cast a number of votes equal to the number of the association's voting shareholders.

(e) Upon approval by the stockholders of the bank, the request for final approval and issuance of the appropriate charter or amendments to charter for the banks involved shall be submitted to the Farm Credit Administration.

§ 611.1020 Requirements for mergers or consolidations of banks.

(a) As authorized under sections 7.0 and 7.12 of the Act, a bank may merge or consolidate with one or more banks operating under the same or different titles of the Act.

(b) Where two or more banks plan to merge or consolidate, the banks shall jointly submit to the Farm Credit Administration the documents itemized in §§ 611.1122(a)(1) through (4), (6), (7), 611.1122(e), and 611.1123. In interpreting those sections, the word ''bank'' shall be read for the word ''association.''

(c) No bank director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to any stockholder of the bank in connection with a bank merger or consolidation.

(d) Upon approval of a proposed bank merger or consolidation by the stockholders of each constituent bank, the following documents shall be submitted from the constituent banks to the Farm Credit Administration for final approval and issuance of the appropriate charters or amendments to charter:

(1) A certified copy of the stockholders' resolution, on which the stockholders cast their votes, from each constituent bank;

(2) A certification of the stockholder vote from the corporate secretary of each bank or from an independent third party;

(3) An Agreement of Merger or Consolidation duly executed by those authorized to sign on behalf of each constituent bank.

§611.1030 Board of directors of an agricultural credit bank.

Each agricultural credit bank formed by the consolidation of a Farm Credit Bank and a bank for cooperatives shall elect a board of directors of such number, for such term, in such manner, and with such qualifications, as may be required in its bylaws, except that at least one member shall be elected by the other directors, which member shall not be a director, officer, employee, or stockholder of a System institution. In electing such directors each association shall be entitled to cast a number of votes equal to the number of its voting stockholders.

[53 FR 50393, Dec. 15, 1988, as amended at 61 FR 67185, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67185, Dec. 20, 1996, §611.1030 was amended by removing the words ''Agricultural Credit Bank'' from the heading and text, and adding in their place the words ''agricultural credit bank'', effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§611.1040 Creation of new associations.

Any application for the issuance of a charter to a new production credit association or Federal land bank association shall meet the requirements of sections 2.0 or 2.10, respectively, of the Act. Any application for the issuance of a charter for an agricultural credit association shall meet the requirements of section 2.0 of the Act.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

§611.1120 General authority.

(a) An amendment to an association charter may relate to any provision that is properly the subject of a charter, including, but not limited to, the name of the association, the location of its offices, or the territory served.

(b) The Farm Credit Administration may make changes in the charter of an association as may be requested by that association and approved by the Farm Credit Administration pursuant to §611.1121 of this part.

(c) The Farm Credit Administration may, by order of the Chairman and on its own initiative, make changes in the charter of a Federal land bank association or a production credit association where the Chairman determines that the change is necessary for the accomplishment of the purposes of the Act.

[50 FR 20400, May 16, 1985, as amended at 51 FR 41945, Nov. 20, 1986]

§611.1121 Charter amendment procedures.

This section shall apply to any request by an association to amend its charter.

(a) An association which proposes to amend its charter shall submit a request to its supervising bank containing the following information:

(1) A statement of the provision(s) of the charter that the association proposes to amend and the proposed amendment(s);

(2) A statement of the reasons for the proposed amendment(s), the impact of the amendment(s) on the association and its stockholders, and the requested effective date of the amendment(s);

(3) A certified copy of the resolution of the board of directors of the association approving the amendment(s);

(4) Any additional information or documents that the association wishes to submit in support of the request or that may be requested by the supervising bank.

(b) Upon receipt of a proposed amendment from an association, the district bank shall review the materials submitted and provide the association with its analysis of the proposal within a reasonable period of time. Concurrently, the bank shall communicate its recommendation on the proposal to the Farm Credit Administration, including the reasons for the recommendation, and any analysis the bank believes appropriate. Following review by the bank, the association shall transmit

the proposed amendment with attachments to the Farm Credit Administration.

(c) Upon receipt of an association's request for a charter amendment, the Farm Credit Administration shall review the materials submitted and either approve or disapprove the request. The Farm Credit Administration may require submission of any supplemental materials it deems appropriate.

(d) The Farm Credit Administration shall notify the association of its approval or disapproval of the amendment request, and provide a copy of such communication to the bank. A notification of approval shall be accompanied by a copy of the charter, as amended.

[50 FR 20400, May 16, 1985, as amended at 51 FR 32441, Sept. 12, 1986]

§ 611.1122 Requirements for mergers or consolidations.

This section shall apply to any request for approval of a proposed merger or consolidation of associations. A merger involves the combination of one or more associations into a continuing constituent association, which retains its charter and bylaws (except as amended to effect the merger proposal). A consolidation involves the combination of two or more associations into a newly organized association having a new charter and bylaws.

(a) Where two or more associations plan to merge or consolidate, or where the district board has adopted a reorganization plan for the associations in the district, the associations involved shall jointly submit a request to the district bank containing the following:

(1) In the case of a merger, a copy of the charter of the continuing association reflecting any proposed amendments. In the case of consolidation, a copy of the proposed charter of the new association;

(2) A statement of the reasons for the proposed merger or consolidation, the impact of the proposed transaction on the associations and their stockholders, and the planned effective date of the merger or consolidation;

(3)(i) A certified copy of the resolution of the board of directors of each association recommending approval of the merger or consolidation; or

(ii) In the case of a district reorganization plan, a certified copy of the resolution of the board of directors of each association recommending either approval or disapproval of the proposal.

(4) A copy of the agreement of merger or consolidation;

(5) Two signed copies of the continuing or proposed Articles of Association;

(6) All of the information specified in paragraph (e) of this section; and

(7) Any additional information or documents each association wishes to submit in support of the request or that the supervising bank or the Farm Credit Administration requests.

(b) Upon receipt of a request for approval of an association merger or consolidation, the district bank shall review the materials submitted to determine whether they comply with the requirements of these regulations and shall communicate with the associations concerning any deficiency. When the bank approves the request to merge or consolidate it shall notify the associations and the Farm Credit Administration of its approval together with the reasons for its approval and any supporting analysis the bank deems appropriate. The associations shall jointly submit the proposal together with required documentation to the Farm Credit Administration for preliminary approval.

(c) Upon receipt of an association merger or consolidation request, the Farm Credit Administration shall review the request and either deny or give its preliminary approval to the request. When a request is denied, written notice stating the reasons for the denial shall be transmitted to the associations and a copy provided to the bank. When a request is preliminarily approved, written notice of the preliminary approval shall be given to the associations and a copy provided to the bank. Preliminary approval by the Farm Credit Administration shall not constitute approval of the merger or consolidation. Approval of a merger or consolidation shall be only pursuant to paragraph (g) of this section.

(d) Upon receipt of preliminary approval by the Farm Credit Administration of a merger or consolidation request, each constituent association

shall call a meeting of its voting stockholders. The meeting shall be called on written notice to each stockholder entitled to vote on the transaction, and held in accordance with the terms of each association's bylaws. The affirmative vote of a majority of the voting stockholders of each association present and voting or voting by written proxy at a meeting at which a quorum is present shall be required for stockholder approval of a merger or consolidation proposal.

(e) Notice of the meeting to consider and act upon a proposed merger or consolidation of associations shall be accompanied by the following information covering each constituent association.

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A description of the material provisions of the agreement of merger or consolidation and the effect of the proposed merger or consolidation on the associations, their stockholders, the new or continuing board of directors, and the territory to be served. In addition, a copy of the agreement must be furnished with the notice to stockholders.

(3) A summary of the provisions of the charter and bylaws of the continuing or new association that differ materially from the existing charter or bylaw provisions of the constituent associations.

(4) A brief statement by the boards of directors of the constituent associations setting forth the basis for the boards' recommendation on the merger or consolidation.

(5) A description of any agreement or arrangement between a constituent association and any of its officers relating to employment or termination of employment and arising from the merger or consolidation.

(6) A presentation of the following financial data:

(i) A balance sheet and income statement for each constituent association for each of the 2 preceding fiscal years.

(ii) A balance sheet for each constituent association as of a date within 90 days of the date the request for preliminary approval is forwarded to the Farm Credit Administration presented on a comparative basis with the corresponding period of the prior fiscal year.

(iii) An income statement for the interim period between the end of the last fiscal year and the date of the required balance sheet presented on a comparative basis with the corresponding period of the preceding fiscal year. The balance sheet and income statement format shall be that contained in the association's annual report to stockholders; shall contain any significant changes in accounting policies that differ from those in the latest association annual report to stockholders; and shall contain appropriate footnote disclosures, including data relating to high-risk assets and other property owned, and allowance for loan losses, including net chargeoffs as required in paragraph (e)(10) of this section.

(7) The financial statements (balance sheet and income statement) shall be in sufficient detail to show separately all significant categories of interest-earning assets and interest-bearing liabilities and the income or expense accrued thereon.

(8) Attached to the financial statements for each constituent association, either:

(i) A statement signed by the chief executive officer and each member of the board of directors of the association that the various financial statements are unaudited, but have been prepared in all material respects in accordance with generally accepted accounting principles (except as otherwise disclosed therein) and are, to the best of the knowledge of the board, a fair and accurate presentation of the financial condition of the association; or

(ii) A signed opinion by an independent certified public accountant that the various financial statements have

been examined in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances, and, as of the date of the statements, present fairly the financial position of the association in conformity with generally accepted accounting principles applied on a consistent basis, except as otherwise noted thereon.

(9) A presentation for each constituent association regarding its policy on accounting for loan performance, together with the number and dollar amount of loans in all performance categories, including those categorized as high-risk assets.

(10) Information of each constituent association concerning the amount of loans charged off in each of the 2 fiscal years preceding the date of the balance sheet, the current year-to-date net chargeoff amount, and the balance in the allowance for loan losses account and a statement regarding whether, in the opinion of management, the allowance for loan losses is adequate to absorb the risk currently existing in the loan portfolio. This information may be appropriately included in the footnotes to the financial statements.

(11) A management discussion and analysis of the financial condition and results of operation for the past 2 fiscal years for each constituent institution. This requirement can be satisfied by including the materials contained in the management discussion and analysis of each institution's most recent annual report.

(12) A discussion of any material changes in financial condition of each constituent institution from the end of the last fiscal year to the date of the interim balance sheet provided.

(13) A discussion of any material changes in the results of operations of each constituent institution with respect to the most recent fiscal-year-to-date period for which an income statement is provided.

(14) A discussion of any change in the tax status of the new institution from those of the constituent institutions as a result of merger or consolidation. A statement on any adverse tax consequences to the stockholders of the institution as a result of the change in tax status.

(15) A statement on the proposed institution's relationship with an independent public accountant, including any change that may occur as a result of the merger or consolidation.

(16) A pro forma balance sheet of the continuing or consolidated association presented as if the merger or consolidation had occurred as of the date on the balance sheets required in paragraph (e)(6) of this section, as recommended to the stockholders. A pro forma summary of earnings for the continuing or consolidated association presented as if the merger or consolidation had been effective at the beginning of the interim period between the end of the last fiscal year and the date of the balance sheets.

(17) A description of the type and dollar amount of any financial assistance that has been provided during the past year or will be provided by the supervising bank or other party to assist the constituent or the continuing or new association(s), the conditions on which financial assistance has been or will be extended, the terms of repayment or retirement, if any, and the impact of the assistance on the subject association(s) or the stockholders.

(18) A presentation for each constituent association of interest rate comparisons for the last 2 fiscal years preceding the date of the balance sheet, together with a statement of the continuing or new association's proposed interest rate and fee programs, interest collection policies, capitalization rates, dividends or patronage refunds, and other factors that would affect a borrower's cost of doing business with the continuing or new association. Where agreement has not been reached on such matters, current related information shall be presented for each constituent association.

(19) A description for each constituent association of any event subsequent to the date of the financial statements, but prior to the merger or consolidation vote, that would have a material impact on the financial condition of the constituent or continuing or new association(s).

(20) A statement of any other material fact or circumstance that a stockholder would need in order to make an informed decision on the merger or consolidation proposal, or that is necessary to make the required disclosures not misleading.

(21) Where proxies are to be solicited, a form of written proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholder.

(f) No bank or association, or director, officer, or employee thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of any association in connection with an association merger or consolidation.

(g) Upon approval of a proposed merger or consolidation by the stockholders of the constituent associations, a certified copy of the stockholders' resolution shall be forwarded to the Farm Credit Administration. Each constituent association shall notify its stockholders not later than 30 days after the stockholder vote of the final results of the vote. If no petition is filed with the Farm Credit Administration to reconsider the vote, upon final approval by the FCA, the merger or consolidation shall be effective on the date specified in the merger agreement or at such later date as may be required by the Farm Credit Administration to grant final approval. Notice of final approval shall be transmitted to the associations and a copy provided to the affiliated bank.

(h) No director, officer, or employee of a bank or an association shall make an oral or written representation to any person that a preliminary or final approval by the Farm Credit Administration of an association merger or consolidation constitutes, directly or indirectly, either a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(i) The notice and accompanying information required under paragraph (e) of this section shall not be sent to stockholders until preliminary approval of the merger or consolidation has been given by the Farm Credit Administration.

(j) Where a proposed merger or consolidation will involve more than three associations, the Farm Credit Administration may require the supplementation, or allow the condensation or omission of any information required under paragraph (e) of this section in furtherance of meaningful disclosure to stockholders. Any waiver sought under this paragraph shall be obtained before preparation of the financial statements and accompanying schedules required under paragraph (e) of this section.

(k) The effective date of a merger or consolidation shall be a date which is not less than 50 days after the date of mailing of the notification of the results of the stockholder vote. If a petition for reconsideration is filed within 35 days after the date of mailing of the notification of the stockholder vote, the constituent institutions shall agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. The second effective date shall be not less than 15 days after the date of the reconsideration vote.

[50 FR 20400, May 16, 1985; 50 FR 32165, Aug. 9, 1985, as amended at 51 FR 32441, Sept. 12, 1986; 53 FR 50396, Dec. 15, 1988; 56 FR 2674, Jan. 24, 1991; 58 FR 48790, Sept. 20, 1993]

§611.1123 Merger or consolidation agreements.

(a) Associations operating under the same title of the Act may merge or consolidate voluntarily only pursuant to a written agreement. The agreement shall set forth all of the terms of the transaction, including, but not limited to, the following:

(1) The proposed effective date of the merger or consolidation.

(2) The proposed name and headquarters location of the continuing or consolidated association.

(3) The names of the persons nominated to serve as directors until the first regular annual meeting of the continuing or consolidated association to be held after the effective date of

the merger or consolidation. Any director of a constituent association may be designated in the agreement to serve as a director of the continuing or consolidated association for a period not to exceed his or her current term, after which he or she must stand for reelection. However, the terms of the agreement must provide for the election of at least one director at each annual meeting subsequent to the effective date of the merger or consolidation. The bylaws of the continuing or consolidated association shall reflect the provisions of the merger or consolidation agreement regarding director terms.

(4) A statement of the formula to be used to exchange the stock of the constituent associations for the stock of the continuing or consolidated association. No fractional shares of stock shall be issued.

(5) A statement of any conditions which must be satisfied prior to the effective date of the proposed transaction, including but not limited to approval by stockholders, the supervising bank, and the Farm Credit Administration.

(6) A statement of the representations or warranties, if any, made or to be made by any association, or its officers, directors, or employees that is a party to the proposed transactions.

(7) A statement that the board of directors of each constituent association can terminate the agreement before the effective date upon a determination by an association, with the concurrence of the Farm Credit Administration, that:

(i) The information disclosed to stockholders contained material errors or omissions;

(ii) Material misrepresentations were made to stockholders regarding the impact of the merger or consolidation;

(iii) Fraudulent activities were used to obtain stockholders' approval; or

(iv) An event occurred between the time of the vote and the merger that would have a significant adverse impact on the future viability of the continuing institution.

(8) A description of the legal opinions or rulings (including those related to tax matters), if any, that have been obtained or furnished by any party in connection with the proposed transaction. Also, refer to paragraph (a)(5) of this section.

(9) The capitalization plan and capital structure for the new institution and a statement that the capitalization plan shall comply with applicable FCA regulations.

(10) Provision for the employee benefits plan, its subsequent continuation or adaptation by the board of directors of the proposed institution following the merger or consolidation.

(11) A statement of the authority of those persons designated to carry out the terms of the agreement, including the authority to waive provisions of the agreement and to execute any documents necessary to perfect title, on behalf of the constituent associations.

(b) As an attachment to the agreement, set forth those provisions of the charter and bylaws of the continuing or consolidated association which differ from the existing charter or bylaw provisions of the constituent associations.

(c) Stockholders have the right to reconsider the approval of the merger provided that a petition signed by 15 percent of the stockholders eligible to vote of one or more of the constituent institutions is filed with the Farm Credit Administration within 35 days after the date of mailing the notification of the final results of the stockholder vote required under § 611.1122(g). The Farm Credit Administration will review the petition to determine whether it complies with the requirements of section 7.9 of the Act. Following a determination that the petition complies with the applicable requirements, a special stockholders meeting shall be called by the institution to reconsider the vote. If a majority of the stockholders voting, in person or by proxy, of any one of the constituent institutions that is a party to the merger vote against the merger, the merger shall not take place.

[50 FR 20400, May 16, 1985, as amended at 51 FR 32442, Sept. 12, 1986; 53 FR 50396, Dec. 15, 1988]

§ 611.1124 Territorial adjustments.

This section shall apply to any request submitted to the Farm Credit Administration to modify association

charters for the purpose of transferring territory from one association to another.

(a) Territorial adjustments, except as specified in paragraph (m) of this section, require approval of a majority of the voting stockholders of each association present and voting or voting by written proxy at a duly authorized meeting at which a quorum is present.

(b) When two or more associations agree to transfer territory, each association shall submit a proposal to the district bank containing the following:

(1) A statement of the reasons for the proposed transfer and the impact the transfer will have on its stockholders and holders of participation certificates;

(2) A certified copy of the resolution of the board of directors of each association approving the proposed territory transfer;

(3) A copy of the agreement to transfer territory that contains the following information:

(i) A description of the territory to be transferred.

(ii) Transferor association's plan to transfer loans and the types of loans to be transferred.

(iii) Transferor association's plan to retire and transferee association's plan to issue equities held by holders of stock, participation certificates, and allocated equities, if any, and a statement by each association that the book value of its equities is at least equal to par.

(iv) An inventory of the assets to be sold by the transferor association and purchased by the transferee association.

(v) An inventory of the liabilities to be assumed from the transferor association by the transferee association.

(vi) A statement that the holders of stock and participation certificates whose loans are subject to transfer have 60 days from the effective date of the territory transfer to inform the transferor association of their decision to remain with the transferor association for normal servicing until the current loan is paid.

(vii) A statement that the transfer is conditioned upon the approval of the stockholders of each constituent association.

(viii) The effective date of the proposed territory transfer.

(4) A copy of the stockholder disclosure statement provided for in paragraph (f) of this section; and

(5) Any additional relevant information or documents that the association wishes to submit in support of its request or that may be required by the Farm Credit Administration.

(c) Upon receipt of documents supporting a proposed territory transfer, the district bank shall review the materials submitted and provide the associations with its analysis of the proposal within a reasonable period of time. The bank shall concurrently advise the Farm Credit Administration of its recommendation regarding the proposed territory transfer. Following review by the bank, the associations shall transmit the proposal to the Farm Credit Administration together with all required documents.

(d) Upon receipt of an association's request to transfer territory, the Farm Credit Administration shall review the request and either deny or give preliminary approval to the request. When a request is denied, written notice stating the reasons for the denial shall be transmitted to the associations, and a copy provided to the bank. When a request is preliminarily approved, written notice of the preliminary approval shall be transmitted to the associations, and a copy provided to the bank. Preliminary approval by the Farm Credit Administration shall not constitute approval of the territory transfer. Final approval shall be granted only in accordance with paragraph (h) of this section.

(e) Upon receipt of preliminary approval by the Farm Credit Administration, each constituent association shall, by written notice, and in accordance with its bylaws, call a meeting of its voting stockholders. The affirmative vote of a majority of the voting stockholders of each association present and voting or voting by written proxy at a meeting at which a quorum is present shall be required for stockholder approval of a territory transfer.

(f) Notice of the meeting to consider and act upon a proposed territory transfer shall be accompanied by the

following information covering each constituent association:

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A copy of the Agreement to Transfer Territory and a summary of the major provisions of the Agreement.

(3) The reason the territory transfer is proposed.

(4) A map of the association's territory as it would look after the transfer.

(5) A summary of the differences, if any, between the transferor and transferee associations' interest rates, interest rate policies, collection policies, service fees, bylaws, and any other items of interest that would impact a borrower's lending relationship with the institution.

(6) A statement that all loans of the transferor association that finance operations located in the transferred territory shall be transferred to the transferee association except as otherwise provided for in this section or in accordance with agreements between the associations as provided for in § 614.4070 of this chapter.

(7) Where proxies are to be solicited, a form of written proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholders.

(8) A statement that the associations' bylaws, financial statements for the previous 3 years, and any financial information prepared by the associations concerning the proposed transfer of territory are available on request to the stockholders of any association involved in the transaction.

(g) No bank or association, or director, officer, or employee thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of any association in connection with a territory transfer.

(h) Upon approval of a proposed territory transfer by the stockholders of the constituent associations, a certified copy of the stockholders' resolution for each constituent association and one executed Agreement to Transfer Territory shall be forwarded to the Farm Credit Administration. The territory transfer shall be effective when thereafter finally approved and on the date as specified by the Farm Credit Administration. Notice of final approval shall be transmitted to the associations and a copy provided to the bank.

(i) No director, officer, or employee of a bank or an association shall make an oral or written representation to any person that a Preliminary or final approval by the Farm Credit Administration of a territory transfer constitutes, directly or indirectly, a recommendation on the merits of the transaction or an assurance concerning the adequacy or accuracy of any information provided to any association's stockholders in connection therewith.

(j) The notice and accompanying information required under paragraph (f) of this section shall not be sent to stockholders until preliminary approval of the territory transfer has been granted by the Farm Credit Administration.

(k) Where a territory transfer is proposed simultaneously with a merger or consolidation, both transactions may be voted on by stockholders at the same meeting. Only stockholders of a transferee or transferor association shall vote on a territory transfer.

(l) Each borrower whose real estate or operations is located in a territory that will be transferred shall be provided with a written Notice of Territory Transfer immediately after the Farm Credit Administration has given final approval of the territory transfer. The Notice shall inform the borrower of the transfer of the borrower's loan to the transferee association and the exchange of related equities for equities of like kinds and amounts in the transferee association. If a like kind of equity is not available in the transferee association, similar equities shall

be offered that will not adversely affect the interest of the owner. The Notice shall give the borrower 60 days from the effective date of the territory transfer to notify the transferor association in writing if the borrower decides to stay with the transferor association for normal servicing until the current loan is paid. Any application by the borrower for renewal or for additional credit shall be made to the transferee association, except as otherwise provided for by an agreement between associations in accordance with §614.4070 of this chapter.

(m) This section shall not apply to territory transfers initiated by order of the Chairman of the Farm Credit Administration or to territory transfers due to the liquidation of the transferor association.

(n) Where a proposed action involves the transfer of a portion of an association's territory to an association operating in a different district, such proposal must comply with the provisions of this section and §611.1090 of this part.

[51 FR 32442, Sept. 12, 1986]

§611.1125 Treatment of associations not approving districtwide mergers.

(a) *Issuance of charters.* When issuing charters or certificates of territory for districtwide mergers or consolidations of associations, the Farm Credit Administration will not issue any charters or certificates of territory that include the territory of one or more associations whose stockholders voted to disapprove the merger or consolidation.

(b) A district bank shall not take any of the following actions with respect to an association that has determined to not participate in a districtwide merger or consolidation:

(1) Discriminate in the provision of any financial service and assistance, including, but not limited to, access to loan funds and rates of interest on loans and discounts offered by the district bank to associations and their member/borrowers;

(2) Discriminate in the provision of any related services that are offered by the district bank to associations and their member/borrowers;

(3) Discriminate in the provision of any professional assistance that may be normally provided by the district bank to associations; or

(4) Discriminate in the provision of any technical assistance that may be normally provided by the district bank to associations.

(c) This regulation does not prohibit a district bank from taking any action with respect to an association, including, but not limited to, charging different rates of interest or different prices for services, or declining to provide financial assistance; provided that any such action is fully documented and based on an objective analysis of applicable criteria that are uniformly and consistently applied by the district bank to all associations in the district.

[51 FR 32443, Sept. 12, 1986, as amended at 60 FR 34099, June 30, 1995]

Subpart H—Rules for Inter-System Fund Transfers

§611.1130 Inter-System transfer of funds and equities.

(a) Section 5.17(a)(6) of the Act authorizes the FCA to regulate the borrowing, repayment, and transfer of funds and equities between institutions of the System, including banks, associations, and service organizations organized under the Act. This section sets forth the circumstances and procedures under which the FCA may direct such a transfer of funds and equities based on its determination with respect to the financial condition of one or more institutions of the System. For purposes of this section, the term ''bond'' refers to long-term notes, bonds, debentures, or other similar obligations, or short-term discount notes issued by one or more banks pursuant to section 4.2 of the Act.

(b) The FCA may direct a transfer of funds or equities by one or more banks of the System to another bank of the System where it determines that:

(1) The receiving institution will not be able to make payments of principal or interest on bonds for which it is primarily liable within the meaning of section 4.4(a) of the Act; or

(2) The common or preferred stock, participation certificates, or allocated equities of the receiving institution

have a book value less than their par or stated values; or

(3) The total bonds outstanding for which the receiving institution is primarily liable exceed 20 times the combined capital and surplus accounts of the bank; or

(4) Based on application to it of one or more of the following ratios, the receiving institution is not financially viable in that it will not be able to continue to extend new or additional credit or financial assistance to its eligible borrowers:

(i) The ratio of stock to earned net worth (including legal reserve, unallocated and reserved surplus, undistributed earnings, and allowance for losses) exceeds 2 to 1;

(ii) The ratio of the outstanding bonds to capital and surplus exceeds 15 to 1;

(iii) Nonearning assets (any noninterest-bearing assets, including but not limited to cash, noninterest-earning loans, net fixed assets, other property owned, accrued interest receivable, and accounts receivable) exceed 15 percent of total assets;

(iv) Lendable net worth (interest-earning assets less interest-bearing liabilities) is zero or less.

(c) The FCA may direct a transfer of funds or equities between two or more Federal land bank associations or two or more production credit associations in district where it determines that such transfer:

(1) Is necessary to provide financial support to the district bank in which those associations are stockholders based on application of the criteria to the bank as set forth in paragraph (b) of this section; or

(2) Is necessary to provide financial support to one or more other like associations in the district based on application of the criteria set forth in paragraph (b)(2) or (b)(4) of this section to the associations, provided that in applying paragraph (b)(4)(ii) of this section the ratio of outstanding indebtedness to capital and surplus of the receiving association(s) shall not exceed 9 to 1; or

(3) Is an integral part of a plan that has been adopted by other institutions of the System, and approved by the FCA, under which those institutions will extend financial assistance to the district bank in which those associations are stockholders.

(d) A direction by the FCA for a transfer of funds or equities pursuant to this section shall be signed by the Chairman and shall establish the amount, timing, duration, repayment, and other terms of assessments necessary to accomplish such transfer, taking into consideration the financial condition of each institution to be assessed. Where the FCA directs a transfer of funds or equities between associations under paragraph (c) (1) or (2) of this section, it may authorize the district bank in which such associations are stockholders to accomplish the necessary assessments through debits and credits to the accounts of the bank.

[50 FR 36986, Sept. 11, 1985. Redesignated at 51 FR 8666, Mar. 13, 1986, as amended at 51 FR 41945, Nov. 20, 1986; 58 FR 48790, Sept. 20, 1993; 59 FR 21643, Apr. 26, 1994]

Subpart I—Service Organizations

§ 611.1135 Incorporation of service organizations.

(a) *General.* Any Farm Credit bank(s) or association(s) may organize a corporation to perform, for or on behalf of the bank(s) or association(s), any function or service that the bank(s) or association(s) is authorized to perform under the Act and the regulations, except extending credit and providing the sale of insurance services. The bank(s) or association(s) wishing to organize such a corporation shall submit an application to the Farm Credit Administration according to the application requirements of paragraph (b) of this section. If the proposal meets the requirements of the Act, the regulations, and any other conditions that the Farm Credit Administration may impose, the Agency may issue a charter for the service corporation making it a federally chartered instrumentality of the United States. Such service corporation shall be subject to examination, supervision, and regulation by the Farm Credit Administration. Only Farm Credit banks or associations are eligible to become stockholders in such a corporation. Each bank or association shall be eligible to become a

stockholder of each service corporation organized under this section.

(b) *Application.* The application for a corporate charter shall include:

(1) The certified resolution of the board of each organizating bank or association authorizing the incorporation.

(2) A request signed by the president(s) of the organizing bank(s) or association(s) to the Farm Credit Administration to issue a charter, supported by a detailed statement demonstrating the need and the justification for the proposed entity.

(3) The proposed articles of incorporation addressing, at a minimum, the following:

(i) The name of the corporation;

(ii) The city and State in which the principal offices of the corporation are to be located;

(iii) The general purposes for which the corporation is formed;

(iv) The general powers of the corporation;

(v) The procedures under which a bank or association may become a stockholder;

(vi) The procedures by which bylaws may be adopted and amended;

(vii) The title, par value, voting and other rights, and authorized amount of each class of stock to be issued by the corporation, and the procedures by which each class may be retired;

(viii) The notice and quorum requirement for a meeting of shareholders, and the vote required for shareholder action on various matters;

(ix) The procedures and shareholder voting requirements for the merger, voluntary liquidation, or dissolution of the corporation or the distribution of corporate assets;

(x) The standards and procedures for the application and distribution of corporate earnings;

(xi) The duration of the corporation.

(4) The proposed bylaws which shall address general matters of corporate procedure.

(5) A statement as to the proposed amounts and sources of capitalization and operating funds.

(6) Any agreements between the organizing banks or associations relating to the organization or the operation of the corporation.

(7) Any other supporting documentation as may be requested by the Farm Credit Administration.

(c) *Approval.* The Farm Credit Administration may condition the issuance of a charter as it deems appropriate and for good cause may deny the application. Upon approval by the Farm Credit Administration of a completed application, which shall be kept on file at the Farm Credit Administration, the Agency shall issue a charter for the service corporation which shall thereupon become a corporate body and a Federal instrumentality.

(d) *Amendment of articles of incorporation.* The articles of incorporation of a service corporation may be amended in either of two ways:

(1) The board of directors of the corporation may request that the Farm Credit Administration amend the articles of incorporation by sending with its request a certified resolution of the board of directors of the service corporation and stating:

(i) The section(s) to be amended;

(ii) The reason(s) for the amendment;

(iii) The language of the articles of incorporation provision, as amended; and

(iv) That the requisite shareholder approval has been obtained. The request shall be subject to the approval of the Farm Credit Administration as stated in paragraphs (a) and (c) of this section.

(2) The Farm Credit Administration may at any time make any and all changes in the articles of incorporation of a service corporation that are necessary and appropriate for the accomplishment of the purposes of the Act.

(e) *Amendment of bylaws.* Amendments of the bylaws of a service corporation shall require prior approval of the Chairman.

[47 FR 27061, June 23, 1982, as amended at 50 FR 46418, Nov. 8, 1985. Redesignated at 51 FR 8666, Mar. 13, 1986, as amended at 51 FR 41945, Nov. 20, 1986; 56 FR 2674, Jan. 24, 1991; 61 FR 67185, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67185, Dec. 20, 1996, in § 611.1135 (a), (b)(1), (2), (3)(v), (6), (7), (c), (d)(1) introductory text, (d)(1)(iv) and (2), were revised, and (e) was removed, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are

in session. The text remaining in effect until further notice appears below.

§ 611.1135 Incorporation of service organizations.

(a) *General.* Any Farm Credit bank(s) may organize a corporation to perform, for or on behalf of the bank(s), any function or service that the bank(s) is authorized to perform under the Act and the regulations, except extending credit and providing the sale of insurance services. The bank(s) wishing to organize such a corporation shall submit an application to the Farm Credit Administration according to the application requirements of paragraph (b) of this section. If the proposal meets the requirements of the Act, the regulations, and any other conditions which the Chairman may impose, the Chairman may issue a charter for the service corporation making it a federally chartered instrumentality of the United States. Such service corporation shall be subject to examination, supervision, and regulation by the Farm Credit Administration. Only Farm Credit banks are eligible to become stockholders in such a corporation. Each bank shall be eligible to become a stockholder of each service corporation organized under this section.

(b) * * *

(1) The certified resolution of the board of each organizing bank authorizing the incorporation.

(2) A request signed by the president(s) of the organizing bank(s) to the Chairman of the Farm Credit Administration to issue a charter, supported by a detailed statement demonstrating the need and the justification for the proposed entity.

(3) * * *

(v) The procedures under which a bank may become a stockholder;

* * * * *

(6) Any agreements between the organizing banks relating to the organization or the operation of the corporation.

(7) Any other supporting documentation as may be requested by the Chairman of the Farm Credit Administration.

(c) *Approval.* The Chairman may condition the issuance of a charter as he deems appropriate and for good cause may deny the application. Upon approval by the Chairman of a completed application, which shall be kept on file at the Farm Credit Administration, the Chairman shall issue a charter for the service corporation which shall thereupon become a corporate body and a Federal instrumentality.

(d) * * *

(1) The board of directors of the corporation may request that the Chairman amend the articles of incorporation by sending with its request a certified resolution of the board of directors of the service corporation and stating:

* * * * *

(iv) That the requisite shareholder approval has been obtained. The request shall be subject to the approval of the Chairman as stated in paragraphs (a) and (c) of this section.

(2) The Chairman may at any time make any and all changes in the articles of incorporation of a service corporation that he deems necessary and appropriate for the accomplishment of the purposes of the Act.

* * * * *

§ 611.1136 Incorporated and unincorporated service organization—regulation and examination.

Incorporated and unincorporated service organizations shall be subject to regulations for the banks and associations of the Farm Credit System, and shall be subject to examination by the Farm Credit Administration.

[53 FR 27155, July 19, 1988]

§ 611.1137 Title VIII service corporations.

(a) Service corporations may be organized by any Farm Credit institution(s) other than the Federal Agricultural Mortgage Corporation or its affiliates for the purpose of exercising the authorities granted under title VIII of the Act to act as agricultural mortgage marketing facilities. The requirements of §§ 611.1135 and 611.1136 apply as if such organizing institutions were banks, except for good cause as determined by the Farm Credit Administration. Such service corporations may issue stock to Farm Credit institutions other than the Federal Agricultural Mortgage Corporation or its affiliates and to persons that are not Farm Credit System institutions, provided at least 80 percent of the voting stock is at all times held by Farm Credit institutions other than the Federal Agricultural Mortgage Corporation or its affiliates.

(b) For the purposes of this regulation, *person* means an individual or a legal entity organized under the laws of the United States or any State or territory thereof.

[57 FR 26992, June 17, 1992]

Subpart J—Merger and Reorganization Proposals Required by the Agricultural Credit Act of 1987

EFFECTIVE DATE NOTE: At 61 FR 67186, Dec. 20, 1996, Subpart J was removed, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§611.1140 Consolidation of Farm Credit Banks.

(a) In accordance with section 412 of the Agricultural Credit Act of 1987, representatives of each Farm Credit Bank Board are required to participate in the development of a proposal under which the stockholders of each or some of such banks will vote on merger plans. The proposal may provide for mergers of Farm Credit Banks that will result in the reduction in the number of Farm Credit Banks to no less than six such banks.

(b)(1) For the purpose of developing the merger proposal for the Farm Credit Banks and the individual merger plans, there will be established not later than July 5, 1988, a Special Committee on the Merger of Farm Credit Banks. The Special Committee shall be composed of one director from the board of directors of each Farm Credit Bank and the members of the Farm Credit System Assistance Board. The Special Committee shall elect a chairman from among its members.

(2) The Board of Directors of each Farm Credit Bank shall elect its representative to the Special Committee by majority vote from among its members. In those districts where the Farm Credit Bank will not have its first board of directors' meeting prior to July 5, 1988, the Special Committee member shall be elected prior to such date by the members of the District Board elected by the Federal land bank associations, production credit associations and borrowers at large. Each board of directors shall also elect an alternate member of the Special Committee who shall attend meetings and vote on matters when the principal representative is unable to attend.

(c) The proposal developed by the Special Committee may include one or more merger plans involving two or more Farm Credit Banks. Upon approval of the entire proposal by a majority of the members of the Farm Credit System Assistance Board and approval of any merger plan contained in the proposal by the Special Committee representatives of the banks involved in such merger, the merger plans shall be submitted to the stockholders of the banks involved.

(d) The proposal of the Special Committee and each merger plan, together with the disclosure materials, shall be submitted to the Farm Credit Administration for approval not later than 120 days prior to the scheduled date for the stockholder votes for each merger involved. The stockholder votes shall be scheduled to occur not later than July 5, 1989, and the effective dates of the mergers shall not be later than January 1, 1990.

(e) If the proposed effective date of the merger is scheduled to occur more than 60 days after the stockholder vote, the boards of directors of the Farm Credit Banks involved shall enter into an agreement in connection with their approval of the merger agreement. The agreement shall contain adequate procedures and approval requirements that will govern the activities of the banks involved during the interim period between an affirmative stockholder vote and the effective date of the merger.

[53 FR 16695, May 11, 1988, as amended at 53 FR 29446, Aug. 5, 1988]

§§611.1141—611.1144 [Reserved]

§611.1145 Required consideration of proposals to merge production credit associations and Federal land bank associations.

(a) In accordance with section 411 of the Agricultural Credit Act of 1987 certain Federal land bank associations and production credit associations are required to develop proposals for the merger of such associations, with the resulting association to have the authority of an agricultural credit association.

(b) Merger proposals shall be developed in those instances in which 90 percent or more of the chartered territory

of a production credit association overlaps with 90 percent or more of the chartered territory of a Federal land bank association. A determination of whether the chartered territories of two associations overlap shall be based on charters in effect on July 5, 1988.

(c) Merger proposals shall be developed by the associations involved and submitted to the affiliated Farm Credit Bank for approval not later than October 5, 1988. Following review and approval by the affiliated Farm Credit Bank, the associations shall submit the merger proposal to the Farm Credit Administration for approval not later than November 5, 1988.

(d) Each merger proposal shall comply with and be subject to all of the provisions of subpart G of part 611 relating to contents of the proposal, required information statements, Farm Credit Administration approval, and stockholder votes.

(e) Not later than January 5, 1989, each merger proposal must be submitted to the stockholders for a vote, and any resulting mergers shall have an effective date which shall not be later than 90 days after an affirming stockholder vote.

[53 FR 39080, Oct. 5, 1988]

Subpart K—Appointment of Conservators and Receivers

EFFECTIVE DATE NOTE: At 61 FR 67186, Dec. 20, 1996, Subpart K was removed, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§ 611.1155 General.

The Farm Credit Administration Board has exclusive authority to appoint conservators or receivers for System institutions and to establish the procedures under which conservatorships and receiverships are operated. This subpart sets forth the basis for the appointment of conservators and receivers and establishes general guidance for the operations of conservatorships and receiverships. Subparts L and M of this part set forth the specific powers and procedures for receivers of associations and banks, respectively. Subpart N of this part sets forth the powers and procedures applicable to conservatorships of banks and associations. Subparts K, L, M, and N of this part shall not apply to conservatorships or receiverships for which the Farm Credit System Insurance Corporation is appointed as conservator or receiver. Such conservatorships and receiverships shall be governed by part 627 of this chapter.

[51 FR 32443, Sept. 12, 1986, as amended at 54 FR 1148, Jan. 12, 1989; 57 FR 46487, Oct. 9, 1992]

§ 611.1157 Conservators and receivers.

(a) A Farm Credit Administration conservator is appointed by the Farm Credit Administration Board pursuant to section 4.12(b) of the Act and § 627.2710 of this chapter to take possession of an institution in accordance with the terms of the appointment. Upon appointment, a conservator shall direct the institution's further operation until the Farm Credit Administration Board decides whether to liquidate the institution. Upon correction or resolution of the problem or condition that provided the basis for the appointment and upon a determination by the Farm Credit Administration Board that the institution can be returned to normal operations, the Farm Credit Administration Board may turn the institution over to such management as the Farm Credit Administration may direct. A conservator shall exercise all powers necessary to continue the ongoing operations of the institution, to conserve and preserve the institution's assets and property, and otherwise protect the interests of the institution, its stockholders, and creditors as provided in subpart N of this part.

(b) A Farm Credit Administration receiver is appointed by the Farm Credit Administration Board pursuant to section 4.12(b) of the Act and § 627.2710 of this chapter to take possession of a System institution in order to wind up the business operations of such institution, collect the debts owed to the institution, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to its stockholders. A receiver shall exercise all

powers necessary to the efficient termination of an institution's operation, as provided for in subparts L and M of this part.

[51 FR 32443, Sept. 12, 1986, as amended at 54 FR 1148, Jan. 12, 1989; 57 FR 46487, Oct. 9, 1992]

§611.1158 Action for removal of conservator or receiver.

Upon the appointment of a conservator or receiver to a System institution by the Farm Credit Administration Board, the institution may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the home office of the institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration Board to remove such conservator or receiver. Notwithstanding any other provisions of subpart L, M, or N of this part, the institution's board of directors is empowered to meet subsequent to such appointment and authorize the filing of an action for removal. An action for removal may only be authorized by such institution's board of directors.

[51 FR 32443, Sept. 12, 1986, as amended at 54 FR 1148, Jan. 12, 1989]

Subpart L—Liquidation of Associations

EFFECTIVE DATE NOTE: At 61 FR 67186, Dec. 20, 1996, Subpart L was removed, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§611.1160 Appointment of receiver.

(a) The board of directors of an association, by the adoption of an appropriate resolution, may vote to liquidate the association, and upon approval of the resolution by the Farm Credit Administration Board after consultation with the supervisory bank, the Board by order may place the association in receivership and appoint a receiver.

(b) The Farm Credit Administration Board may, at its discretion, appoint a receiver for any System association in accordance with the grounds for appointment set forth in §627.2710 of this chapter.

(c) Upon the appointment of a receiver and acceptance by the receiver of the appointment, the Chairman shall immediately notify the institution and its district bank and notice of the appointment shall be published in the FEDERAL REGISTER.

(d) Upon the issuance of the order placing an association in liquidation, all rights, privileges, and powers of the board of directors, officers, and employees of the association are vested exclusively in the receiver, and said individuals are suspended except as provided for in paragraph (g) of this section. Persons who were serving as officers or employees may be employed by the receiver in accordance with §611.1161 of this part.

(e) The voluntary or involuntary liquidation of an association shall be conducted by the receiver as agent of the Farm Credit Administration. The receiver shall be responsible for collecting the assets, paying the creditors, and paying any liquidating dividend to stockholders of the association. Upon completion of the liquidation and discharge of the receiver by the Farm Credit Administration Board, the Board will cancel the charter of the association.

(f) The Board may at any time remove or replace the receiver or may terminate the receivership and direct the receiver to turn over the association to its previous management or such other management as the Board may order, in which event the provisions of this subpart shall no longer apply.

(g) In the case of the voluntary liquidation of an association where grounds for the appointment of a receiver pursuant to §627.2710 of this chapter do not exist, the Board may appoint a receiver, taking into consideration the recommendations of the board of directors of the liquidating association. The board of directors of the association may, at the discretion of the Board, remain in office to provide

advice and recommendations to the receiver during the pendency of the liquidation.

[51 FR 32444, Sept. 12, 1986, as amended at 54 FR 1148, Jan. 12, 1989; 57 FR 46487, Oct. 9, 1992]

§ 611.1161 Powers and duties of the receiver.

The receiver of an association serves as the trustee of the receivership estate and conducts its operations for the benefit of the creditors and stockholders of the association. In this capacity, as trustee of the estate, the receiver is an agent of and is subject to the specific procedures and approval requirements established by the Farm Credit Administration Board and enjoys the same immunities against personal liability that exist for all employees and agents of the Farm Credit Administration. As the agent of the Farm Credit Administration and acting on behalf of the association in receivership, the receiver is authorized and empowered to:

(a) Exercise all powers as are conferred upon the officers and directors of the association under law and the charter, articles, and bylaws of the association.

(b) Take any action the receiver considers appropriate or expedient to carry on the business of the association during the process of liquidating its assets and winding up its affairs.

(c) Extend credit to existing borrowers as necessary to honor existing commitments and to effectuate the purposes of the receivership.

(d) Borrow such sums as necessary to effectuate the purposes of the receivership.

(e) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the association's assets or property, or rehabilitate or improve such property and assets.

(f) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the association has a lien or in which the association has a financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property.

(g) Investigate any matter related to the conduct of the business of the association, including, but not limited to, any claim of the association against any individual or entity, and institute appropriate legal or other proceedings in the name of the association to prosecute such claims.

(h) Institute, prosecute, maintain, defend, intervene, and otherwise participate in the name of the association in any legal proceeding by or against the association or in which the association or its creditors or members have any interest, and represent in every way the association, its members, and creditors.

(i) Employ attorneys, accountants, appraisers, and other professionals to give advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs.

(j) Hire any employees necessary for proper administration of the receivership, which employees shall be covered by a bond satisfactory to the receiver and the Farm Credit Administration.

(k) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effectual as if it had been executed by the association's officers by authority of its board of directors.

(l) Sell for cash or otherwise, any mortgage, deed of trust, chose in action, note, contract, judgment or decree, stock, or debt owed to the association, or any property (real or personal, tangible or intangible).

(m) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership.

(n) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome.

(o) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the association or the receiver.

(p) Pay out of the assets of the association, all expenses of the receivership

and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(q) Pay out of the assets of the association, all approved claims of indebtedness in accordance with priorities established in this subpart.

(r) Take all actions in the name of the association in receivership, and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(s) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration Board authorizes, directs, confers, or imposes by order or by amendment of any order or by regulation.

[51 FR 32444, Sept. 12, 1986, as amended at 54 FR 1148, Jan. 12, 1989]

§611.1162 Preservation of equity.

(a) Except as provided for upon final distribution of the assets of the association, no capital stock, participation certificates, equity reserves, or other allocated equities of an association in receivership shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities.

(b) Immediately upon the adoption of a resolution by its board of directors to liquidate the association, the capital stock, participation certificates, equity reserves, and allocated equities of the association shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities until such time as the Farm Credit Administration Board disapproves such resolution. In the event the resolution is approved and the association is placed in receivership, the provisions of paragraph (a) of this section shall govern further disposition of the equities of the association.

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

(d) Nothing above shall affect the authority of an association in receivership to issue preferred stock in accordance with title VI of the Act.

[50 FR 37990, Sept. 19, 1985. Redesignated at 51 FR 8666, Mar. 13, 1986, and amended at 54 FR 1148, Jan. 12, 1989; 55 FR 10042, Mar. 19, 1990]

§611.1163 Notice of stockholders.

As soon as practicable after the receiver takes possession of the association, the receiver shall notify, by first class mail, each holder of stock and participation certificates of the following matters:

(a) The number of shares such holder owns;

(b) That the stock and other equities of the association may not be retired or transferred until the liquidation is completed; whereupon, the receiver will distribute a liquidating dividend, if any, to the owners of such equities.

(c) The options available to such holder regarding the repayment or transfer of loans;

(d) The services available to current borrowers during the winding up of the affairs of the association;

(e) The name(s) and location(s) of the other association(s) to which the territory has been transferred; and

(f) Such other matters as the receiver or the Farm Credit Administration deems necessary.

[50 FR 37990, Sept. 19, 1985. Redesignated at 51 FR 8666, Mar. 13, 1986]

§611.1164 Creditors' claims.

(a) The receiver shall publish promptly a notice to creditors to present their claims against the association, with proof thereof, to the receiver by a date specified in the notice, which shall be 90 calendar days after the first publication. The notice shall be published again on or about 30 days and 60 days, respectively, after the first publication. Claims filed after the specified date shall be disallowed, except as the receiver may approve them for full or partial payment from the association's asets remaining undistributed at the time of approval. The receiver shall promptly send, by first class mail, a similar notice to any creditor shown on the association's books at the creditor's last address appearing thereon.

(b) The receiver shall allow any claim that is timely received and

proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority which is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Sending the notice of disallowance by first class mail to the claimant's address appearing on the proof of claim shall be sufficient notice. The disallowance shall be final, unless, within 30 days after notice of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance. The receiver shall reconsider any claim upon the timely request of the claimant and may approve or disapprove such claim in whole or in part.

(c) The receiver shall cause to be filed with the Farm Credit Administration, at such times and in such manner as the Farm Credit Administration shall require, a complete list of claims presented, indicating the character of each claim and whether allowed by the receiver.

(d) Creditors' claims that are allowed shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established in this subpart and in such manner and amounts as the receiver deems appropriate. In the event the association has a claim against a creditor of the association, the receiver shall offset the amount of such claim against the claim asserted by such creditor.

[50 FR 37990, Sept. 19, 1985. Redesignated at 51 FR 8666, Mar. 13, 1986]

§ 611.1165 [Reserved]

§ 611.1166 Uninsured accounts.

Upon placing an institution in liquidation, the receiver shall immediately notify every borrower who has an uninsured account (voluntary or involuntary) that the funds will be applied against the outstanding indebtedness of any loans of such borrower unless, within 15 days of such notice, the borrower directs the receiver to otherwise apply such funds in the manner provided for in existing loan documents.

[54 FR 1148, Jan. 12, 1989]

§ 611.1167 Priority of claims.

(a) The following priority of claims shall apply to the distribution of the assets of an association in liquidation:

(1) All costs, expenses, and debts that were incurred by the receiver in connection with the administration of the receivership.

(2) All claims for taxes.

(3) All claims of creditors, including the supervisory bank, which are secured by assets or equities of the association in accordance with Federal or State law.

(4) All claims of the supervising bank, other than as provided for in paragraph (a)(3) of this section, based on the financing agreement between the association and the bank, including interest accrued before and after the appointment of the receiver, minus any setoff for stock or other equity of the supervising bank owned by the association made in accordance with this paragraph or paragraph (a)(3) of this section. Prior to making such setoff, the supervising bank must obtain the approval of the Farm Credit Administration Board for the retirement of such equities.

(5) All claims of general creditors.

(b) All claims of each class described in paragraph (a) of this section shall be paid in full, or provision made for such payment, prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay any class of claims in full, distribution on such class shall be on a pro rata basis.

(c) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the association to the owners of stock, participation certificates, and other equities in accordance with the priorities for impairment set forth in the bylaws of the association.

(d) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

[50 FR 37990, Sept. 19, 1985. Redesignated at 51 FR 8666, Mar. 13, 1986. Further redesignated and amended at 54 FR 1148, Jan. 12, 1989; 55 FR 10042, Mar. 19, 1990]

§611.1168 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of an association, the receiver shall make an inventory of the assets and liabilities as of the date possession was taken. Such inventory shall include the book value and the fair market value of the association's assets. The method of listing assets must provide such information to the satisfaction of the Farm Credit Administration Board. One copy of the inventory shall be filed with the Farm Credit Administration Board.

(b) The association in receivership shall be examined on an annual basis by the Farm Credit Administration. The association shall be audited by a certified public accountant approved by the Farm Credit Administration at such times as the Farm Credit Administration determines. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the association in receivership.

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the association in receivership or any member of the public.

(d) Upon the final liquidation of the association, the receiver shall cause to be sent to each stockholder of record, a report summarizing the activities of the receiver and describing the disposition of the assets of the receivership and claims against the receivership.

[51 FR 32445, Sept. 12, 1986. Redesignated and amended at 54 FR 1148, Jan. 12, 1989; 56 FR 29420, June 27, 1991; 56 FR 42649, Aug. 28, 1991; 57 FR 46487, Oct. 9, 1992]

§611.1169 Final discharge and release of receiver.

The association shall continue as an association chartered in accordance with the Act until such time as the liquidation has been completed and the charter of the association has been canceled by the Farm Credit Administration Board. When the receiver recommends final distribution of assets or is otherwise relieved of its duties by the Farm Credit Administration Board, the receiver shall file with the Farm Credit Administration a detailed report in a form satisfactory to the Farm Credit Administration. Upon final liquidation of the receivership or when the receiver completes or is otherwise relieved of its duties, the receivership shall be examined and audited. The receiver's accounts shall thereupon be approved or disapproved, and if approved, the receiver shall thereby be completely and finally released. The records of the receivership shall be stored and maintained in the manner directed by the Farm Credit Administration.

[51 FR 41945, Nov. 20, 1986. Redesignated and amended at 54 FR 1148, Jan. 12, 1989]

Subpart M—Liquidation of Banks

EFFECTIVE DATE NOTE: At 61 FR 67186, Dec. 20, 1996, Subpart M was removed, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§611.1170 Appointment of receiver.

(a) The board of directors of a bank, by the adoption of appropriate resolution, may vote to liquidate the bank, and upon approval of the resolution by the Farm Credit Administration Board, the Board may, by order, place the bank in receivership and appoint a receiver.

(b) The Farm Credit Administration Board may, at its discretion, appoint a receiver for any System bank in accordance with the grounds for appointment set forth in §627.2710 of this chapter.

(c) Upon the issuance of an order placing a bank in liquidation, all rights, privileges, and powers of the board of directors, officers, and employees of the bank are vested exclusively in the receiver, and such individuals are suspended, except as provided for in paragraph (g) of this section. Persons who were serving as officers or employees may be employed by the receiver in accordance with §611.1171 of this part.

(d) Upon the appointment of a receiver, and acceptance by the receiver of the appointment, the Chairman shall immediately notify the institution, and notice of the appointment shall be published in the FEDERAL REGISTER.

(e) A voluntary or involuntary liquidation of a bank shall be conducted by the receiver, as agent of the Farm Credit Administration. The receiver shall be responsible for collecting the assets, paying the creditors, paying any liquidating dividend to stockholders, and winding up the affairs of the bank. Upon completion of the liquidation, the Board will revoke the charter of the bank.

(f) The Board may at any time remove and replace the receiver or may direct the receiver to return the bank to the previous management or such other management as the Board may order, in which event the provisions of this subpart shall no longer apply.

(g) In the case of the voluntary liquidation of a bank, where the grounds for the appointment of a receiver pursuant to § 627.2710 of this chapter do not exist, the Board may appoint a receiver, taking into consideration the recommendations of the board of directors of the liquidating bank. The board of directors may, at the discretion of the Board, remain in office to provide advice and recommendations to the receiver during the pendency of the liquidation.

(h) For purposes of this subpart the term ''bank'' will include all banks, service corporations chartered under title IV of the Act, the Federal Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

[51 FR 32446, Sept. 12, 1986, as amended at 54 FR 1148, Jan. 12, 1989; 57 FR 46487, Oct. 9, 1992]

§ 611.1171 Powers and duties of the receiver.

A receiver of a bank is an agent of the Farm Credit Administration and has the same powers and duties with respect to a bank in receivership as the receiver of an association has in accordance with § 611.1161. In interpreting § 611.1161 for purposes of this section, the word ''bank'' shall be read for the word ''association.''

[50 FR 37993, Sept. 19, 1985. Redesignated at 51 FR 8671, Mar. 13, 1986]

§ 611.1172 Preservation of equity.

(a) Except as provided for upon a final distribution of the assets of the bank, no capital stock, participation certificates, equity reserves, or other allocated equities of a bank in receivership shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities.

(b) Immediately upon the adoption of a resolution by its board of directors to liquidate a bank, the capital stock, participation certificates, equity reserves, and allocated equities shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owner of such equities until such time as the Farm Credit Administration Board disapproves such resolution. In the event the resolution is approved and the bank is placed in receivership, the provisions of paragraph (a) of this section shall govern further deposition of the equities of the bank.

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

(d) Nothing in this section shall affect the authority of a bank in receivership to issue preferred stock in accordance with title VI of the Act.

[50 FR 37993, Sept. 19, 1985. Redesignated at 51 FR 8671, Mar. 13, 1986. Further redesignated and amended at 54 FR 1149, Jan. 12, 1989; 55 FR 10042, Mar. 19, 1990]

§ 611.1173 Notice to associations, cooperative borrowers, and other financing institutions.

As soon as practicable after the receiver takes possession of the bank, the receiver shall notify, by first class mail, the production credit associations, Federal land bank associations, cooperative borrowers, and other financing institutions that own stock or other equities of the bank of the following matters:

(a) The number of shares or certificates such holder owns and the value of any equity specifically allocated to such member.

(b) The steps that will be taken to provide for the purchase of assets and assumption of liabilities by the bank that is or will be chartered to serve the territory formerly served by the bank in liquidation.

(c) Such other matters as the receiver or the Farm Credit Administration deems necessary.

[50 FR 37993, Sept. 19, 1985. Redesignated at 51 FR 8671, Mar. 13, 1986]

§611.1174 Creditors' claims and priority of claims.

(a) Except as provided for in paragraph (b) of this section, the provisions of §611.1164 regarding the claims of creditors of associations in receivership shall also apply to the claims of creditors of a bank in receivership. In interpreting §611.1164 for purposes of this section, the word ''bank'' shall be read for the word ''association.''

(b) The holders of long-term notes, bonds, debentures, or other similar obligations, or discount notes (hereinafter referred to collectively as ''bonds'') in book entry and definitive form issued by the bank individually or jointly with one or more System banks pursuant to 12 U.S.C. 2153(b), (c), (d), or (e) are not required to submit claims in accordance with this section. The Farm Credit Administration shall advise the receiver of the outstanding amount of bonds issued by or on behalf of the bank for which the bank is primarily liable within the meaning of 12 U.S.C. 2155(a).

(c) The following priority of claims shall apply to the distribution of assets of a bank in liquidation:

(1) All costs, expenses, and debts that were incurred by the receiver in connection with the administration of the receivership.

(2) All claims for taxes.

(3) All claims of creditors which are secured by specific assets of the bank, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(4) All claims of holders of bonds issued by the bank individually to the extent such are collateralized in accordance with 12 U.S.C. 2154.

(5) All claims of holders of consolidated and Systemwide bonds and claims of the other System banks arising from their payments pursuant to section 4.4 of the Act.

(6) All claims of general creditors.

(d) All claims of each class described in paragraph (c) of this section shall be paid in full, or provisions shall be made for such payment prior to the payment of any claim of lesser priority. The receiver shall immediately reserve funds sufficient to pay all claims provided for in paragraphs (c) (1) and (2) of this section. Thereafter, the receiver may enter into a purchase and assumption agreement with a System bank authorized to serve the territory, pursuant to which the purchasing bank will acquire loan assets of the receivership and assume a like amount of obligations of the bank in receivership on its notes and bonds. The receiver shall then liquidate the remaining assets of the bank in a manner that minimizes the potential for any interruption in the timely repayment of principal and interest on claims provided for in paragraphs (c) (4) and (5) of this section in accordance with the maturity dates of such obligations.

(e) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the bank to the owners of stock, participation certificates, and other equities in accordance with the priorities for impairment set forth in the bylaws of the bank.

(f) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

[50 FR 37993, Sept. 19, 1985. Redesignated at 51 FR 8671, Mar. 13, 1986, and amended at 53 FR 18810, May 24, 1988]

§611.1175 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of a bank, the receiver shall make an inventory of the assets and liabilities of the bank as of the date possession was taken. Such inventory shall include the book value and fair market value of the bank's assets and the book value of the bank's liabilities and any security therefor. The method of listing assets and liabilities must provide such information to the satisfaction of the Farm Credit Administration. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The bank in receivership shall be examined on an annual basis by the Farm Credit Administration. The bank

shall be audited by a certified public accountant approved by the Farm Credit Administration at such times as the Farm Credit Administration determines. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the bank in receivership.

(c) The receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the bank in receivership or any member of the public.

(d) Upon the final liquidation of the bank, the receiver shall cause to be sent to each stockholder of record a report summarizing the activities of the receiver and describing the disposition of the assets of the receivership and claims against the receivership.

[51 FR 32446, Sept. 12, 1986, as amended at 54 FR 1149, Jan. 12, 1989; 56 FR 29421, June 27, 1991; 56 FR 42649, Aug. 28, 1991; 57 FR 46487, Oct. 9, 1992]

§ 611.1176 Final discharge and release of receiver.

The bank in receivership shall continue as a bank chartered in accordance with the Act until such time as the liquidation has been completed and the charter of the bank has been canceled by the Board of the Farm Credit Administration. When the receiver recommends final distribution of assets or is otherwise relieved of its duties by the Farm Credit Administration Board, the receiver shall file a detailed report with, and in a form satisfactory to, the Farm Credit Administration. Unless the Farm Credit Administration otherwise directs, upon final liquidation of the receivership or when the receiver completes or is otherwise relieved of its duties, the receivership shall be examined and audited. The receiver's accounts shall thereupon be approved or disapproved, and if approved, the receiver shall thereby be completely and finally released. The records of the receivership shall be stored and maintained in the manner directed by the Farm Credit Administration.

[51 FR 41946, Nov. 20, 1986, as amended at 54 FR 1149, Jan. 12, 1989]

Subpart N—Conservators and Conservatorships of Banks and Associations

EFFECTIVE DATE NOTE: At 61 FR 67186, Dec. 20, 1996, Subpart N was removed, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§ 611.1180 Appointment of a conservator.

(a) The Farm Credit Administration Board may appoint ex parte and without notice a conservator for any System institution provided the grounds for appointment as set forth in § 627.2710 of this chapter exist.

(b) Upon the appointment of a conservator and acceptance by the conservator of the appointment, the Chairman of the Farm Credit Administration shall immediately notify the institution and, in the case of an association, the district bank, and notice of the appointment shall be published in the FEDERAL REGISTER. As soon as practicable after the conservator takes possession of the institution, the conservator shall notify, by first class mail, each holder of stock and participation certificates in the institution of the establishment of the conservatorship and shall describe the effect of the conservatorship on the institution's operations and on the borrower's loan and equity holdings.

(c) Upon the issuance of the order placing a System institution in conservatorship, all rights, privileges, and powers of the members, board of directors, officers, and employees of the institution are vested exclusively in the conservator.

(d) The conservatorship of a System institution shall be conducted by the conservator as agent of the Farm Credit Administration. The conservator, under the direction and supervision of the Farm Credit Administration, shall be responsible for conserving and preserving the assets of the institution and continuing the ongoing operations of the institution until the conservatorship is terminated by order of the Board.

(e) The Board may, at any time, remove or replace the conservator or

may terminate the conservatorship and direct the conservator to turn over the institution's operations to such management as the Board may designate, in which event the provisions of this subpart shall no longer apply.

(f) For purposes of this subpart ''System institution'' will mean all banks, associations, service corporations chartered under title IV of the Act, the Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

[51 FR 32447, Sept. 12, 1986, as amended at 54 FR 1149, Jan. 12, 1989; 57 FR 46487, Oct. 9, 1992]

§611.1181 Powers and duties of conservators.

(a) The conservator of an institution serves as the trustee of the institution and conducts its operations for the benefit of the creditors and stockholders of the institution. In this capacity, as trustee, the conservator is an agent of and is subject to the specific procedures and approval requirements established by the Farm Credit Administration and enjoys the same immunities against personal liability that exist for all employees and agents of the Farm Credit Administration.

(b) The conservator may, with respect to System institutions, exercise the powers that a receiver of an association may exercise under §611.1161(d), (k), (p), (r), and (s) of this part. The conservator may, with the prior approval of the Farm Credit Administration Board, exercise the powers that a receiver of a System bank or association may exercise under §§611.1161 (i), (j), (l), (n), (o), and (q) and 611.1171 of this part. In interpreting those paragraphs for purposes of this section, the term ''conservator'' and ''conservatorship'' shall be read for ''receiver'' and ''receivership,'' and ''institution'' shall be read for ''association.''

(c) The conservator may also, subject to the restrictions contained in this section:

(1) Exercise all powers as are conferred upon the officers and directors of the institution under law and the charter, articles, and bylaws of the institution, except that the conservator may not declare, credit, pay, or otherwise distribute dividends on stock or other equities of a System institution without the prior approval of the Farm Credit Administration Board;

(2) Pay any sum the conservator deems necessary or advisable to preserve, conserve, or protect the institution's assets or property, or with prior approval of the Farm Credit Administration, rehabilitate or improve such property and assets;

(3) Extend credit to new and existing borrowers as is necessary to the continuing operation of the institution and to effectuate the purposes of the conservatorship;

(4) Investigate any matter related to the conduct of the business of the institution including, but not limited to, any claim of the institution against any individual or entity and, under the supervision of the General Counsel of the Farm Credit Administration, institute, prosecute, maintain, defend, intervene, and otherwise participate in legal or other proceedings in the name of the institution in which the institution, its creditors, or stockholders have any interest, and otherwise represent in every way the institution, its creditors, or stockholders;

(5) Purchase or lease, for 1 year or less, property and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the conservatorship, or with the prior approval of the Farm Credit Administration, lease property for greater than 1 year; or

(6) Take any action the conservator considers appropriate or expedient to the continuing operation of the institution subject to the restrictions contained in this section.

[51 FR 32447, Sept. 12, 1986, as amended at 54 FR 1149, Jan. 12, 1989]

§611.1182 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of a Farm Credit System institution the conservator shall, as may be directed by the Farm Credit Administration Board, make an inventory of the assets and liabilities of the institution as of the date possession was taken. Such inventory shall include the scheduling of the book value

and fair market value of the institution's assets and the book value of the institution's liabilities and any security therefrom. The inventory must be in a form acceptable to the Farm Credit Administration and contain such other information as the Farm Credit Administration may require. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The institution in conservatorship shall be examined by the Farm Credit Administration on an annual basis. The institution shall also be audited by a certified public accountant approved by the Farm Credit Administration at such times as the Farm Credit Administration may determine. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the institution in conservatorship unless otherwise ordered by the Farm Credit Administration.

(c) Each institution in conservatorship shall prepare and file with the Farm Credit Administration financial reports in accordance with the requirements of part 621 of this chapter. The conservator of the institution shall provide the certification required in § 621.14 of this chapter.

(d) Each institution in conservatorship shall prepare and issue published financial reports in accordance with provisions of part 620 of this chapter, provided that the certifications and signatures of the board of directors or management provided for in §§ 620.2(b), 620.2(c), and 620.5(m)(2) shall be provided by the conservator of the institution.

[51 FR 32447, Sept. 12, 1986, as amended at 54 FR 1149, Jan. 12, 1989; 56 FR 29421, June 27, 1991; 58 FR 48790, Sept. 20, 1993]

§ 611.1183 Final discharge and release of conservators.

(a) *Final report.* At such time as the conservator shall be relieved of the conservatorship duties, the conservator shall file with the Farm Credit Administration a detailed report in a form satisfactory to the Farm Credit Administration.

(b) *Discharge.* At such time as the conservator shall be relieved of the conservatorship duties, the Chairman may direct an examination of the institution and/or an audit of the books and records of the institution in connection with the final report of the conservator. The accounts of the conservator shall be approved or disapproved by the Farm Credit Administration and, if approved, the conservator shall thereupon be completely and finally released.

[51 FR 32447, Sept. 12, 1986]

Subpart O—Special Reconsideration of Mergers

SOURCE: 53 FR 50396, Dec. 15, 1988, unless otherwise noted.

EFFECTIVE DATE NOTE: At 61 FR 67186, Dec. 20, 1996, Subpart O was removed, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§ 611.1190 General.

The regulations in this subpart O implement the provisions of the Agricultural Credit Act of 1987 relating to special reconsideration of voluntary mergers and consolidations that occurred after December 23, 1985 and prior to January 6, 1988. The regulations establish the procedures for petitions, disclosures, and stockholder votes for reconsideration of such mergers and consolidations and, if approved by stockholders, for the establishment of separate associations. The regulations shall apply to any request to reorganize an association that was created by merger or consolidation and became effective during the period, December 24, 1985 to January 5, 1988. For the purposes of this part, the term ''merger'' includes a merger or consolidation. The regulations in this subpart are applicable only to those associations that were created by the merger of two or more associations after December 23, 1985 and before January 6, 1988.

§ 611.1191 Petitions and resolutions.

(a) The voting stockholders of an association who were stockholders of a predecessor association may seek to have the stockholders reconsider their association's participation in such

merger by filing a petition for reconsideration with the Farm Credit Administration. The purpose of the petition shall be either:

(1) The withdrawal of one or more predecessor associations from the existing association; or

(2) The general reorganization into two or more separate associations of the existing association that was formed by the merger of three or more predecessor associations.

(b) The board of directors of an association may adopt a resolution proposing the general reorganization of the association into two or more separate associations and the submission of such proposal to the stockholders for a vote.

§611.1192 Requirements for petitions.

(a) In order for a petition to be acted upon, the petition must be signed by 15 percent or more of the voting stockholders of the existing association who were stockholders of each of the predecessor associations that seeks to withdraw from the existing association, or 5 percent of the total number of voting stockholders of the existing association if the petition seeks to reorganize the existing association that was formed by the merger of three or more associations.

(b) Each petition shall include the signature, printed name and the full address of each voting stockholder on the petition. If the petition proposes the withdrawal of one or more predecessor associations, the association shall certify that the signatures on the petition are the signatures of persons who were voting stockholders of such predecessor associations and that such persons continue to have their farming operations in the territory that was served by the predecessor association. If the petition proposes the reorganization of the entire association, the association shall certify that the signatures are from voting stockholders of the association.

(c) The petition shall describe the manner in which the existing association will be reorganized and the territory in which each proposed separate association would operate. In the case of a withdrawal of an association, the withdrawing association shall have the same chartered territory it had prior to the merger.

(d) The certification process shall be completed and the petition forwarded to the Farm Credit Administration within 5 working days of the date of its receipt by the association. The filing date of a petition or resolution shall be the date the petition or resolution is received by the FCA.

(e) No petition will be considered by the Farm Credit Administration if filed later than February 21, 1990.

§611.1193 Filing date—additional materials.

(a) The persons who are designated as directors of the initial board(s) of directors of the resulting association(s) shall prepare the additional materials provided for in this section. The existing association shall provide such assistance to the initial board(s) as the initial board(s) shall reasonably request in the preparation of these additional materials. Not later than 60 days after the filing of a petition or resolution, the initial board(s) shall transmit the additional materials provided for in this section to the Farm Credit Administration.

(b) The additional materials submitted in connection with a petition or resolution shall include the following:

(1) The proposed charter for each of the separate associations and the proposed effective date of the withdrawal or reorganization;

(2) A statement of the reasons for the proposed reorganization of the existing association or the proposed withdrawal of one or more associations from the existing association;

(3) A copy of the reorganization plan as required under §611.1198 of this part;

(4) An information statement that complies with the requirements of §611.1197.

(5) A notice of meeting to act upon the petition or resolution.

(6) Any additional information that the petitioning stockholders or the board of directors wishes to submit in support of its request or that the Farm Credit Administration requests.

§ 611.1194 Farm Credit Administration review.

(a) Upon receipt of the petition or resolution and the accompanying documents, the Farm Credit Administration shall review the request and either deny or give its approval to the request.

(b) If the request is denied, written notice stating the reasons for the denial shall be transmitted to the chief executive officer of the association who shall notify the board of directors and the stockholders of such denial.

(c) Upon approval of the proposed withdrawal or reorganization by the stockholders as provided for in § 611.1195, the secretary of the association shall forward to the Farm Credit Administration a certification of the stockholder vote and a signed copy of the Articles of Association.

(d) On receipt of the certification and Articles of Association as required in paragraph (c) of this section, the Farm Credit Administration shall issue charters or amended charters as are necessary to reflect the territory to be served by the resulting associations.

§ 611.1195 Stockholder vote.

(a) Upon approval of a petition or resolution by the Farm Credit Administration, the association shall call a meeting of its voting stockholders. The association shall notify each stockholder that a petition or resolution has been filed and that a meeting will be held in accordance with the association's bylaws. The stockholders meeting shall be scheduled for a date which is no later than 60 days after the date the Farm Credit Administration gives preliminary approval.

(b) In the case of a petition to withdraw from the existing association, ballots shall be sent to each stockholder of the existing association who would be a stockholder of one of a separate association. The petition, as it applies to each such separate association, shall be approved, by stockholders who vote in person or by proxy, if agreed to by a majority of the stockholders who would be served by the separate association.

(c) Approval of the resolution or petition to reorganize the entire association into two or more associations shall require the affirmative vote of a majority of the stockholders voting, in person or by proxy, of the existing association.

[53 FR 50396, Dec. 15, 1988, as amended at 54 FR 2994, Jan. 23, 1989]

§ 611.1196 Payment of expenses.

(a) The expenses associated with the consideration of a petition or resolution will be borne as provided for in this section unless an agreement that othewise designates how these expenses will be paid has been agreed to by the parties, in which case that agreement will prevail.

(b) The expenses associated with the consideration of a petition or resolution to reorganize the existing association into two or more associations will be borne by the existing association.

(c) The expenses associated with the consideration to withdraw a predecessor association from the existing association will be borne as follows:

(1) If the petition is approved, the resulting association will pay the expenses associated with the petition and vote.

(2) If the petition is disapproved, the existing association will pay the expenses associated with the petition and vote.

§ 611.1197 Information statement.

(a) An information statement shall be prepared which discloses certain information regarding the existing association and (1) each association that is proposed to be withdrawn from the existing association, or (2) each association that would result from the total reorganization of the existing association.

(b) The information statement shall be certified as true, complete and accurate by the persons designated as directors of the initial boards(s) of directors of the resulting association(s) and shall contain the following materials:

(1) A statement either on the first page of the materials or on the notice of the stockholders' meeting, in capital letters and bold face type, that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(2) A description of the material provisions of the reorganization plan and the effect of the reorganization on each proposed association, their stockholders, and the territory to be served.

(3) A statement enumerating the anticipated advantages and potential disadvantages of the proposed reorganization which may include, but are not limited to, changes in operating efficiencies, one-stop service, branch offices, local control, financial condition, etc.

(4) A summary of the provisions of the charter and bylaws of the proposed association that differ materially from the charter or bylaws of the existing association.

(5) A brief statement by the board of directors of the existing association setting forth the board's opinion on the advisability of the separation or reorganization.

(6) A presentation of the following financial data:

(i) An audited balance sheet and income statement and notes thereto of the existing association for the preceding 2 fiscal years.

(ii) A balance sheet and income statement of the existing association showing its financial condition before the separation or reorganization and the pro forma balance sheet and income statement of each proposed association showing its financial condition which meet the following conditions:

(A) The financial statements of the existing and each proposed association (collectively, ''constituent financial statements'') shall be presented in columnar form, showing the financial condition as of the end of the most recent quarter of the existing association, and operating results since the end of the last fiscal year through the end of the most recent quarter of the existing association.

(B) If the request is made within 90 days after the end of the fiscal year, the constituent financial statements shall be based on the most recent fiscal yearend financial statements of the existing association.

(C) If the request is made within 45 days after the end of the most recent quarter, the constituent financial statements shall be based on the financial statements of the existing association as of the end of the quarter preceding the quarter just ended.

(D) If the request is made more than 45 days after the end of the most recent quarter, the constituent financial statements shall be based on the financial statements of the existing association as of the end of that quarter.

(E) The financial statements must be accompanied by appropriate notes, including data relating to high-risk assets and other property owned, allowance for loan losses, and current year-to-date chargeoffs.

(7) A description of the type and dollar amount of any financial assistance that has been provided to the existing association during the past year; the conditions on which the financial assistance was extended; the terms of repayment or retirement, if any; and the liability for repayment of this assistance by the existing and proposed associations if the withdrawal or reorganization were approved.

(8) A statement as to whether the proposed association would require financial assistance during the first 3 years of its operation as a new association, the estimated type and dollar amount of the assistance, and terms of repayment or retirement, if known.

(9) A statement indicating the possible tax consequences to stockholders and to the proposed associations, and whether any legal opinion, ruling or external auditor's opinion has been obtained on the matter.

(10) A presentation of each proposed association's interest rate and fee programs, interest collection policy, capitalization plan and other factors that would affect a borrower's cost of doing business with the association.

(11) A description of any event subsequent to the date of the last quarterly report, but prior to the stockholder vote, that would have a material impact on the financial condition of each proposed association as of its effective date.

(12) A statement of any other material fact or circumstance that a stockholder would need in order to make an informed and responsible decision, or that would be necessary in order to provide a disclosure that is not misleading.

(13) A form of written proxy, together with instructions on its purpose, use and authorization by the stockholder. The proxy instructions must ensure the secrecy of the stockholder's ballot if the stockholder votes by proxy.

(14) A copy of the plan of reorganization provided for in § 611.1198 of this part.

(c) No bank or association director, officer, or employee shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact necessary under the circumstances to make statements made not misleading, to a stockholder of the association in connection with a reorganization under this subpart.

[53 FR 50396, Dec. 15, 1988, as amended at 58 FR 48790, Sept. 20, 1993]

§ 611.1198 Plan of reorganization.

(a) The withdrawal of an association or other reorganization under this subpart shall occur pursuant to a written plan. There shall be a written plan of reorganization for each association to be withdrawn from an existing association or each association to be created by the complete reorganization of an existing association.

(b) A written plan shall include, but not be limited to, all of the following provisions:

(1) The proposed Articles of Association which shall contain the following:

(i) The proposed name and headquarters of the association.

(ii) The territory to be served by the association.

(iii) The purposes for which the association is being formed.

(iv) The powers and authorities to be exercised by the association in carrying out its functions under title II of the Act.

(v) A statement which shall provide that the corporate existence of the association shall commence upon issuance of its charter by the Farm Credit Administration and shall continue until dissolved in accordance with the Act.

(vi) The signatures of those persons who choose to establish the association and a statement signed by each such person establishing eligibility to borrow from the association in which such person will become a stockholder.

(2) As an attachment to the Articles of Association, the proposed bylaws of the new association.

(3) An explanation of the value of the equity ownership as of the last monthend held by stockholders of the existing association who would be served by the proposed association.

(4) A statement on the formula for the retirement and transfer of stock, participation certificates and equities held by stockholders of the existing association who would become stockholders of the proposed association, and the issuance of an equivalent amount of stock, participation certificates and equities by the proposed association to its stockholders.

(5) A provision for the distribution of assets and liabilities of the existing association and a description of the basis upon which the distribution is to be made to the proposed association.

(6) A statement on how the expenses connected with the reorganization are to be borne by the affected parties in accordance with § 611.1196.

(7) The names of the persons who will serve as the initial board of directors until the first annual meeting of stockholders following the reorganization. Any director of an existing association who is eligible to serve as a director of the proposed association may be designated as a member of the initial board of directors for a period not to exceed his or her current term, after which he or she must stand for reelection.

(8) A statement of any conditions which must be satisfied prior to the effective date of the proposed reorganization, including but not limited to, approval by stockholders and issuance of a charter by the Farm Credit Administration.

(9) A statement that prior to the effective date of the reorganization, the petitioning stockholders may withdraw their petition or the board of directors of the existing association may rescind

its resolution, with the concurrence of the Farm Credit Administration, on the basis that:

(i) The information disclosed to stockholders contained material errors or omissions;

(ii) Material misrepresentations were made to stockholders regarding the impact of the reorganization;

(iii) Fraudulent activities were used to obtain the stockholders' approval; or,

(iv) An event occurred between the time of the vote and the reorganization that would have a significant adverse impact on the future viability of the proposed association.

(10) A designation of those persons who have authority to carry out the plan of reorganization, including the authority to execute any documents necessary to perfect title, on behalf of the proposed association.

Subpart P—Termination of Farm Credit Status—Associations

SOURCE: 56 FR 3407, Jan. 30, 1991, unless otherwise noted.

§611.1200 General—Applicability.

(a) Each association is authorized, in accordance with sections 7.10 and 7.11 of the Act, to terminate the status of the association as a Farm Credit institution. The regulations in this subpart set forth the procedural, disclosure, voting and approval requirements applicable to such termination. The Farm Credit Administration may in its sole discretion grant a waiver in writing from any requirement of this subpart for good cause shown.

(b) Except as provided in paragraph (c) of this section, these regulations are applicable to an association that seeks to terminate its status as a Farm Credit institution and to charter the institution as a bank, savings and loan association, or other type of financial institution. In the event that a receiver or conservator is appointed by the Farm Credit Administration in the case of a voluntary or involuntary liquidation of the association, the provisions of subpart L of part 611 apply, and the provisions of this subpart shall not apply.

(c) These regulations are not applicable to the termination of an association whose investment in the Farm Credit Bank or agricultural credit bank of which it is a member is in excess of 25 percent of the bank's capital as computed according to GAAP, or whose indebtedness to the Farm Credit Bank or agricultural credit bank of which it is a member is in excess of 25 percent of the total loans of the bank as of the quarter end preceding the adoption of the commencement resolution.

[56 FR 3407, Jan. 30, 1991, as amended at 61 FR 67186, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67186, Dec. 20, 1996, in §611.1200, paragraph (c) was amended by adding the words ''or agricultural credit bank'' after the words ''Farm Credit Bank'' each place they appeared, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§611.1205 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Commencement resolution* means the resolution adopted pursuant to §611.1210(a) to indicate the commencement of the termination process.

(b) *GAAP* means generally accepted accounting principles, which is that body of conventions, rules and procedures necessary to define accepted accounting practice at a particular time, as promulgated by the Financial Accounting Standards Board and other authoritative sources recognized assetting standards for the accounting profession in the United States. GAAP shall include not only broad guidelines of general application but also detailed practices and procedures that constitute standards against which financial presentations are evaluated. When the Farm Credit Administration's interpretation of how GAAP should be applied to a specific event or transaction differs from an association's interpretation, the interpretation of the Farm Credit Administration shall prevail.

(c) *OFI* means other financing institutions, as that term is defined in §614.4540(e).

(d) *Reconsideration vote* means the vote at which the voting stockholders reconsider whether to terminate the terminating association's Farm Credit status.

(e) *Successor institution* means the institution to which the terminating association will convert when its Farm Credit charter is revoked.

(f) *Terminating association* means an association seeking to terminate its status as a Farm Credit institution and to charter the institution as a bank, savings and loan association, or other type of financial institution.

(g) *Termination resolution* means the resolution adopted pursuant to § 611.1211(a) approving the applications for termination and a new charter and providing for submission of the termination proposal to a stockholder vote.

(h) *Termination vote* means the stockholder vote at which the termination proposal is first submitted to the voting stockholders for their approval or disapproval.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991]

§ 611.1210 Advance notification.

(a) An association's board of directors shall commence the process of termination by adopting a commencement resolution indicating the association's intention to terminate its Farm Credit status.

(b) Within 5 days of the adoption of the commencement resolution by the board of directors, the terminating association shall:

(1) Submit a certified copy of the commencement resolution to the Farm Credit Administration; and

(2) Mail a brief announcement to all holders of equity in the association which states that the board is taking steps to terminate its Farm Credit status and which describes the process of termination, the anticipated effect of termination on current holders of equity, and the type of institution the successor institution will be. If bylaws are adopted in accordance with paragraph (e) of this section, the announcement shall also state that, during the time period from the passage of the commencement resolution until the effective date of termination, new common stock and participation certificates either purchased from the association in connection with a loan or sold to the association prior to the termination will not entitle the holder to receive a share in the adjusted book value in excess of par of the association.

(c)(1) Within 15 days after submission of the commencement resolution pursuant to paragraph (b)(1) of this section, the terminating association shall submit to the Farm Credit Administration a statement of its estimation of the exit fee together with an explanation of the computation of the exit fee pursuant to the requirements of § 611.1240. For purposes of this estimate of the exit fee, the computation date set forth in § 611.1240(c) shall be the quarter end preceding the date of the commencement resolution.

(2) Within 45 days of its receipt of the terminating association's estimated exit fee, the Farm Credit Administration shall either confirm the association's estimation of the exit fee or notify the association of any required revisions to the computation.

(3) In the event that the Farm Credit Administration requires adjustments to the estimated exit fee pursuant to paragraph (c)(2) of this section, the terminating association may request reconsideration of any revisions. Such request shall be in writing and shall set forth specific reasons why the revisions should not be made. The Farm Credit Administration shall reconsider the revisions and shall inform the terminating association of its determination within 15 days of the receipt of the reconsideration request.

(d) During the time period after the board of directors' adoption of the commencement resolution pursuant to paragraph (a) of this section and prior to the effective date of termination, the following conditions shall apply to the terminating association's conduct of business:

(1) Each prospective new borrower shall be informed of the effect of the proposed termination upon the borrower's loan and shall be specifically informed whether the borrower will continue to have any of the borrower rights provided under the Act and regulations promulgated thereunder;

(2) Any common stockholders or participation certificate holders who seek to have such equity interest retired before termination shall be informed that the retirement would extinguish the holder's right to an interest in the successor institution if the termination is completed or to dissent from the termination and receive an amount equal to the adjusted book value of the holder's equity in the terminating association.

(e) Notwithstanding any provisions of §615.5230(b) to the contrary, an association may adopt bylaws which provide for the issuance of a special class of common stock and participation certificates in connection with loans granted during the time period subsequent to the adoption of the commencement resolution and prior to the termination. Such common stock or participation certificates, which shall be issued in accordance with section 4.3A of the Act, shall have characteristics identical to shares of the existing classes of common stock or participation certificates issued as a condition of the extension of a loan, except for the following:

(1) In the event of termination, the holder shall be entitled to receive the following:

(i) If the holder is eligible to vote and does not vote against the termination, an interest in the successor institution in an amount equal to the adjusted book value or the purchase price of the stock, whichever is less;

(ii) If the holder is not eligible to vote or is eligible to vote and votes against the termination, either an interest in the successor institution as set forth in paragraph (e)(1)(i) of this section, or, if such holder dissents pursuant to §611.1260, cash in the amount of the purchase price or the adjusted book value of the stock or participation certificate, whichever is less.

(2) In the event that the termination does not occur, the special classes of stock or participation certificates shall automatically convert into shares of the otherwise identical classes of stock or participation certificates issued prior to the adoption of the commencement resolution.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991]

§611.1211 Filing of termination application.

(a) The board of directors of an association that seeks to terminate its status shall adopt an appropriate termination resolution approving an application for such termination, approving an application for a new charter for the successor institution, and providing for the submission of such termination proposal to its stockholders for a vote.

(b) An original and three copies of a termination application consisting of the following materials shall be submitted by the terminating association to the Farm Credit Administration for review and preliminary approval:

(1) A certified copy of the termination resolution adopted pursuant to paragraph (a) of this section;

(2) A copy of the plan of termination as required under §611.1230;

(3) An information statement that complies with the requirements of §611.1225;

(4) All other information that is to be submitted to the stockholders and other equity holders in connection with the contemplated action; and

(5) Any additional information the board of directors wishes to submit to the Farm Credit Administration in support of the request or that the Farm Credit Administration requests.

(c) The terminating association shall provide the Farm Credit Administration with any material revisions to information in the plan of termination, including updated financial information, that becomes available during the pendency of the termination application and prior to termination.

§611.1212 Filing date of termination application.

(a) Except as provided in paragraph (c) of this section, the termination application will be given a filing date which shall be the date on which it is determined to be technically complete. Within 10 business days after the Farm Credit Administration receives the termination application, the Farm Credit Administration shall determine that the application is technically complete and give it a filing date, or return the application to the terminating association if it is incomplete. If the Farm Credit Administration fails to make a

determination or to return the application before the end of the 10-day review period, the application shall be deemed to be technically complete and shall receive a filing date which is the last day of the 10-day review period.

(b) A termination application is considered to be technically complete when it is determined upon preliminary review to contain responses to all items required to be submitted to the Farm Credit Administration under § 611.1211.

(c) In the event the advance notification required in § 611.1210 is not received by the Farm Credit Administration at least 60 days prior to the filing date which would otherwise be assigned to the termination application in accordance with paragraph (a) of this section, the filing date shall be the date that is 60 days following the date on which the terminating association first informs the Farm Credit Administration of the association's intention to terminate its Farm Credit status. During this 60-day period, the Farm Credit Administration shall contact other associations to determine their willingness to provide service to the territory of the terminating association or to determine if there are persons who wish to charter a new association to serve the territory. An inability of the Farm Credit Administration to arrange for a new service provider for the territory shall not be grounds for an extension of the 60-day period. However, the Farm Credit Administration may in its sole discretion reduce the required 60-day period in the event that a new service provider to serve the territory is determined. This paragraph shall not apply if the entire chartered territory of the terminating association is already included in the charter of one or more associations that are chartered to offer credit services of the same type as the terminating association.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991]

§ 611.1215 Farm Credit Administration review and approval.

(a) When the termination application has received a filing date, the Farm Credit Administration shall review the application and either disapprove or give its preliminary approval pursuant to section 7.11(a)(2) of the Act.

(b) The Farm Credit Administration Board shall have 30 days from the filing date, as defined in § 611.1212, to approve or disapprove the termination application. If the Farm Credit Administration Board does not act within such 30-day period, the plan of termination may be submitted to the stockholders pursuant to section 7.11(a)(2) of the Act.

(c) If the application is disapproved, written notice specifying the reasons for disapproval shall be transmitted to the chief executive officer of the association, who shall promptly notify the association's board of directors. If the application is disapproved, it shall not be submitted to the stockholders for a vote.

(d) Upon stockholder approval of the proposed termination as provided in § 611.1220, the secretary of the terminating association shall forward to the Farm Credit Administration a certified record of the results of the stockholder vote and shall notify its stockholders and other equity holders of the results of the vote as provided in § 611.1220(e).

(e) Final approval by the Farm Credit Administration Board pursuant to section 7.10(a)(2) shall be conditioned upon the following:

(1) A termination vote in favor of termination and, if a reconsideration vote is held, a reconsideration vote in favor of termination;

(2) Receipt by the Farm Credit Administration of conformed executed copies of all contracts and agreements submitted pursuant to § 611.1230;

(3) Satisfactory evidence of the terminating association's adequate provision for payment of debts and retirement of equities;

(4) Evidence of the grant of a new charter for the successor institution by the appropriate Federal or State chartering authority;

(5) Payment of the exit fee by certified check of other means agreed upon by the Farm Credit Administration and the terminating association; and

(6) The fulfillment of any other condition of termination imposed by the Farm Credit Administration Board which is necessary and appropriate to

provide for the equitable treatment of the parties affected by the termination.

(f) If the Farm Credit Administration grants final approval, the terminating association's charter shall be revoked, and the termination shall be effective on the last to occur of—

(1) The proposed termination date of the terminating association;

(2) Ninety (90) days after receipt by the Farm Credit Administration of the notice required to be submitted pursuant to paragraph (d) of this section; and

(3) Receipt of final payment of the exit fee.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991]

§611.1220 Voting record date and stockholder approval.

(a) Upon receipt of preliminary approval of the termination application by the Farm Credit Administration Board, or if the Board takes no action prior to the end of the 30-day review period, the association shall call a meeting of its voting stockholders. The stockholders meeting shall be held within 60 days of the last day of the 30-day review period. All holders of equity in the terminating association shall be permitted to attend the meeting. The stockholders eligible to vote shall be the stockholders who are eligible to vote on the voting record date as determined by the association's bylaws if such date is not more than 70 days prior to the stockholder vote, or on a date fixed by the board of directors which shall be not more than 70 days prior to the date of the stockholder vote. The association shall notify each stockholder that the resolution has been filed and that a meeting will be held in accordance with the association's bylaws.

(b) The notice of meeting to consider and act upon the board of directors' resolutions shall be accompanied by an information statement that complies with the requirements of §611.1225.

(c)(1) The terminating association shall establish voting security procedures that comply with the procedures for the election of directors in §611.330, as applicable. Specifically, the terminating association shall ensure that all information regarding how or whether individual stockholders have voted and all materials such as ballots, proxy ballots, election records, and other relevant documentation related to the votes of stockholders is held in strict confidence.

(2) The terminating association may adopt procedures that require the stockholders to sign or otherwise verify their eligibility to vote on an envelope which contains a marked ballot in a sealed envelope. The terminating association may also use signed proxies or eligibility certificates that will accompany a ballot or instructions on how to vote the proxy in a separate sealed envelope.

(3) The terminating association shall use a form of identity code on the ballot enabling it to determine which stockholders are eligible to exercise dissenters' rights and shall require that the votes be tabulated by an independent party who is not a stockholder, director, or officer of the terminating association or the successor institution. When the terminating association receives notification pursuant to §611.1260 that a stockholder intends to exercise dissenters' rights, the association will verify with the independent party that the stockholder voted against the termination. The terminating association shall be informed of the vote of a stockholder only in the event that stockholder exercises the right to retire stock in the association in accordance with §611.1260.

(d) The proposal shall be approved by the stockholders if agreed to by a majority of the eligible voting stockholders of the association voting in person or by proxy at the stockholders' meeting.

(e) Upon approval of a proposed termination by the stockholders of the terminating association, a certified statement showing the results of the stockholder vote shall be forwarded to the Farm Credit Administration within 10 days following the stockholders' meeting. The terminating association shall notify its stockholders and other holders of equity interests of the results of the vote not later than 30 days after the final vote. If the stockholder

vote is in favor of termination, stockholders who voted against the termination and other equity holders shall be informed of their right to dissent as provided in § 611.1260(f). In addition, the terminating association shall further notify stockholders of their right to file a petition for reconsideration in accordance with § 611.1235 and that any petition for reconsideration must be filed on or before a date certain, which shall be 35 days after the date the terminating association mails notice to the stockholders of the results of the stockholder vote.

§ 611.1225 Requirements for information statement.

Notice of the meeting to consider and act upon a proposed termination shall be sent to all stockholders and other holders of equity interests and shall be accompanied by an information statement that contains the information and materials set forth in this regulation as follows:

(a) A statement on either the first page of the material or the notice of the stockholders' meeting, in capital letters and boldface type that:

THE FARM CREDIT ADMINISTRATION HAS NEITHER APPROVED NOR PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION ACCOMPANYING THE NOTICE OF MEETING OR PRESENTED AT THE MEETING AND NO REPRESENTATION TO THE CONTRARY SHALL BE MADE OR RELIED UPON.

(b) A statement on the first page of the material entitled ''Executive Summary'' and consisting of a concise description of the material changes in rights of the borrowers, stockholders, and holders of other equity interests to occur as a result of the termination, the effect of such changes, and the potential benefits and disadvantages to them of the termination.

(c) A description of the plan of termination as required in § 611.1230.

(d) A statement by the board of directors of the terminating association enumerating the potential benefits and disadvantages of the termination together with the basis for the board's recommendation for termination.

(e) A list of the initial board of directors and senior officers of the successor institution, together with a brief description of the business experience of each such person, including principal occupation and employment, during the past 5 years.

(f) A summary of the provisions of the organizational documents of the successor institution, including the articles of incorporation and bylaws, that differ materially from the charter and bylaws of the terminating association. The summary shall indicate both whether the maintenance of a borrowing relationship with the successor institution will be required as a condition for maintaining a stockholder's interest, and whether the maintenance of a stockholder's interest will be required as a condition for maintaining a borrowing relationship.

(g) An explanation of any changes in the nature of the stockholders' and other equity holders' investment in the association, including but not limited to any changes in dividends, patronage refunds, voting rights, preferences, retirement of equities, and priority upon liquidation. If any eligible borrower stock is outstanding, such explanation shall include a statement that the guaranty afforded to eligible borrower stock by section 4.9A of the Act shall be extinguished at termination and that any stock of the successor institution received in exchange for eligible borrower stock shall not be protected under section 4.9A of the Act.

(h) An explanation of the effect of termination on the rights that borrowers are afforded under the Act; the expiration date of those rights, if applicable, under the provisions of the plan of termination; a statement that borrowers may seek to have their loans sold to or refinanced with another lending institution, including the association(s) that will be chartered to serve the terminating association's territory or any other associations that already serve the territory, provided that any such Farm Credit institution is authorized to make such a loan in accordance with part 614 of this chapter; and an explanation of the procedure for a borrower to apply for the sale or refinancing of his loan to the association(s) that will be chartered to serve the terminating association's territory, if such designations have been made. The

disclosure shall include the name, address and telephone number of such association(s), together with a statement that any such association is not obligated to accept any loans of the terminating association.

(i) An explanation of the formula and process by which equity of the terminating association will be exchanged for equity in the successor institution or other consideration.

(j) A description of any agreement or arrangement with any person, including any officers or directors of the terminating association, relating to employment or termination of employment with the terminating association or employment with the successor institution.

(k) An explanation of the computation of the exit fee and the estimated amount of the exit fee.

(l) A statement detailing the nature and type of financial institution that the successor institution will become after termination and the conditions of approval, if any, placed on the successor institution by the State or Federal financial regulator that will charter the successor institution.

(m) A summary of the differences, if any, between the terminating association and the successor institution with respect to interest rates, interest rate policies, collection policies, services provided, service fees, and any other item of interest that would affect a borrower's lending relationship with the successor institution including whether stockholders will be restricted in any way in their ability to borrow from the successor institution.

(n) A discussion of the expected capital requirements of the successor institution, and the amount and method of capitalization for the successor institution.

(o) An explanation of the sources and manner of funding the operations of the successor institution.

(p) An explanation of the existence of any continuing contingent liability that will not be paid immediately upon termination and the manner in which this liability will be addressed by the successor institution.

(q) A summary of the differences in tax status of the terminating association and the successor institution, and an explanation of the effect of such changes on both the successor institution and the stockholders.

(r) A brief description of the regulatory environment for the successor institution and a summary of the differences from the current regulatory environment that affect the cost of doing business of the value of equity and that are not addressed elsewhere in the information statement.

(s) A statement describing those stockholders and other holders of equity that are entitled to dissenters' rights and an explanation of those rights as set forth in §611.1260, including the estimated value of the stock upon distribution, procedures for the exercise of dissenters' rights, and the time period during which such rights may be exercised, and a statement that eligible voting stockholders who do not vote against the termination will not receive dissenters' rights.

(t)(1) A presentation of the following financial data:

(i) A balance sheet and income statement for the terminating institution for each of the 2 preceding fiscal years;

(ii) A balance sheet for the terminating institution as of a date within 90 days of the date the termination application is forwarded to the Farm Credit Administration, presented on a comparative basis with the corresponding period of the prior fiscal year;

(iii) An income statement for the interim period between the end of the last fiscal year and the date of the required balance sheet presented on a comparative basis with the corresponding period of the prior fiscal year;

(iv) A pro forma balance sheet of the successor institution presented as if termination had occurred as of the date of the most current balance sheet presented in the statement; and

(v) A pro forma summary of earnings for the successor institution presented as if the termination has been effective at the beginning of the interim period between the end of the last fiscal year and the date of the balance sheet presented pursuant to paragraph (t)(1)(iv) of this section.

(2) The format for the balance sheet and income statement shall be the same as is contained in the institution's annual report to stockholders

and shall contain appropriate footnote disclosures, including data relating to high-risk assets and other property owned, and allowance for losses.

(3) The financial statements shall include either of the following:

(i) A statement signed by the chief executive officer and each member of the board of directors of the terminating association that the various financial statements are unaudited, but have been prepared in all material respects in accordance with GAAP (except as otherwise disclosed therein) and are, to the best of each signer's knowledge, a fair and accurate presentation of the financial condition of the association; or

(ii) A signed opinion by an independent certified public accountant that the various financial statements have been examined in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and other such auditing procedures as were considered necessary in the circumstances, and, as of the date of the statements, present fairly the financial position of the terminating association in accordance with GAAP applied on a consistent basis, except as otherwise disclosed therein.

(u) A description of any event subsequent to the date of the financial statements, but prior to the date upon which the termination application is submitted to the Farm Credit Administration, that would have a material impact on the financial condition of the terminating association or the successor institution.

(v) A description of any event subsequent to the submission of the termination application to the Farm Credit Administration that would have a material impact on any information in the termination application.

(w) A statement of any other material fact or circumstance that a stockholder would need to know in order to make an informed decision on the proposed plan of termination, or that is necessary to make the required disclosures not misleading.

(x) A proxy, together with instructions on the purpose and authority for its use, and the proper method for signature by the stockholder.

(y) A certification signed by the entire board of directors of the terminating association as to the truth, accuracy, and completeness of the information contained in the information statement. If any director refuses to sign the certification, the director shall inform the Farm Credit Administration of the reasons for such refusal.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991; 58 FR 48790, Sept. 20, 1993]

§ 611.1226 Prohibited acts.

(a) No terminating association or director, officer, employee or agent thereof, shall make any untrue or misleading statement of a material fact, or fail to disclose any material fact concerning the proposed plan of termination to a stockholder of the association.

(b) No director, officer, employee, or agent of a terminating association shall make an oral or written representation to any person that a preliminary or final approval by the Farm Credit Administration of an association's plan of termination constitutes, directly or indirectly, either a recommendation on the merits of the proposal or an assurance concerning the adequacy or accuracy of any information provided to the association's stockholders and other equity holders in connection therewith.

§ 611.1230 Plan of termination.

The plan of termination shall include the following information:

(a) Copies of all contracts, agreements and other documents pertaining to the proposed termination and organization of the successor institution.

(b) A statement of the means by which the assets of the terminating association will be transferred to, and its liabilities assumed by, the successor institution.

(c) The terminating association's plan to retire, and the successor institution's plan to issue, equities held by holders of stock, participation certificates, and allocated equities, if any.

(d) A copy of the charter application filed with the appropriate Federal or State chartering authority, together with any exhibits or other supporting information that is submitted to such authority.

(e) A statement whether the successor institution will continue to have a credit relationship with the Farm Credit bank and the effect such status will have on the provision for payment of the terminating association's debts. The plan of termination shall include evidence of the agreement and plan for satisfaction of outstanding debts, whether contained in a general financing agreement or otherwise.

(f) The proposed effective date of the termination.

§611.1235 Stockholder reconsideration.

(a) Eligible voting stockholders have the right to reconsider the approval of the termination provided that—

(1) A petition signed by 15 percent of the eligible voting stockholders of the association is filed with the association, and a copy of such petition is filed with the Farm Credit Administration, within 35 days after the date of mailing of the notification to stockholders of the final results of the stockholder vote required under §611.1215; and

(2) Such petition is certified by the terminating association as provided in paragraph (b) of this section.

(b) Each petition shall include the signature, printed name and full address of each voting stockholer signing the petition. Within 5 days of its receipt of a timely filed stockholder petition, the association shall certify whether the signatures on the petition are the signatures of persons who were eligible voting stockholders of the terminating association on the voting record date, and the association shall notify the Farm Credit Administration of such certification.

(c) The petition shall include the name and address of a person who shall serve as petitioners' representative and who shall represent the interests of the petitioners in the reconsideration vote process.

(d) If the terminating association certifies that at least 15 percent of eligible voting stockholders have signed the petition, a special stockholders' meeting shall be called by the association to vote on the reconsideration. Such meeting shall be held within 60 days after the date on which the stockholders were notified of the final result of the termination vote. If a majority of stockholders of the association voting in person or by written proxy vote against the termination, the termination is not approved. If a majority of stockholders of the association voting in person or by written proxy do not vote against the termination, the termination shall be effective pursuant to the provisions of §611.1215(f), but not less than 15 days after the reconsideration vote.

(e) The petitioners, through the petitioners' representative, and board of directors of the terminating association shall each have the opportunity to present to the stockholders and other equity holders a written statement of their views regarding the reasons for calling a reconsideration vote. Such statements shall be reasonable in length and shall be mailed to stockholders and other equity holders along with the notice of stockholders' meeting for the reconsideration vote.

(f) The terminating association shall, at its expense, immediately provide the stockholders initiating the petition with a list of the names and addresses of all of the eligible voting stockholders of the association. All other expenses for the petition shall be borne by the petitioners. Reasonable expenses for the reconsideration vote shall be borne by the terminating association.

§611.1240 Exit fee.

(a) For the purposes of this section, the following definitions apply:

(1) *Assets* means all assets less appropriate valuation reserves as determined in accordance with GAAP except where otherwise noted in this section.

(2) *Contingent liabilities* means those liabilities that, in accordance with GAAP, will materialize if certain events occur.

(3) *Total capital* means all capital stock, surplus and undivided profits accounts as determined in accordance with GAAP, except where otherwise noted in this section, and as adjusted pursuant to the requirements of §611.1240.

(b) A terminating association shall pay an exit fee equal to the amount by

which the total capital of the association exceeds 6 percent of its assets. The exit fee shall be paid to the Farm Credit Assistance Fund if the effective date of termination is prior to January 1, 1992 or to the Farm Credit Insurance Fund if the effective date is after that date.

(c) The computation date for the exit fee shall be the quarter end preceding the filing date. A certified audit of the terminating association shall be performed by a qualified public accountant, as defined in § 621.2(i), as of the computation date. The Farm Credit Administration may, in its complete discretion, waive this requirement if such an audit was performed as of a date within the 6 months preceding the computation date.

(d) The method of computation shall be as follows:

(1) The average daily balance of assets and total capital for the past 12 months preceding the computation date will be computed as a basis for determining the exit fee; and

(2) Account balances shall be computed in accordance with GAAP and adjusted in accordance with paragraphs (e), (f), (g), and (h) of this section.

(e) For purposes of determining the amount of the exit fee, the Farm Credit Administration will review the terminating association's transactions over a 3-year period prior to the date of the adoption of the termination resolution. If this review determines that the terminating association's account balances do not accurately reflect the value of its assets and liabilities, or that the association has retired capital outside the ordinary course of business, or that the association has taken any other actions unrelated to its core business that have the effect of increasing or decreasing the amount of the exit fee, the Farm Credit Administration may make adjustments to the association's assets, liabilities, or capital and recompute the exit fee based on these adjustments. The review by the Farm Credit Administration shall include, but not be limited to:

(1) Additions to or subtractions from the allowance for loan losses;

(2) Additions to assets from transactions that are outside the terminating association's ordinary course of business;

(3) Dividends or patronage refunds exceeding the terminating association's usual practices;

(4) Changes in the terminating association's capitalization plan or implementation of that plan that increased or decreased the level of borrower investment;

(5) Contingent liabilities, such as loss-sharing obligations, that can be reasonably quantified; and

(6) Assets that may be overvalued, undervalued or not recorded on the books of the association.

(f) Capital of the terminating association owned by another Farm Credit institution or by the Financial Assistance Corporation shall not be included in capital for the purpose of determining the exit fee.

(g) In the event that GAAP requires that a liability be recorded on the balance sheet that will be offset by an unrecorded asset, the transaction recording the liability shall be reversed.

(h) In the event the terminating association has recorded expenses that would not have been recorded but for the termination, such transactions shall be reversed.

(i) The exit fee shall be paid by certified check, or other means agreed upon by the Farm Credit Administration and the terminating association.

[56 FR 3407, Jan. 30, 1991, as amended at 58 FR 48790, Sept. 20, 1993]

§ 611.1250 Repayment of debts.

(a) The terminating association shall provide for the payment or assumption by the successor institution of all outstanding debt obligations.

(b) The terminating association may establish and maintain an OFI relationship with the Farm Credit Bank or agricultural credit bank, subject to all applicable requirements of part 614, subpart P, of this chapter. The general financing agreement establishing the OFI relationship shall provide for the assumption by the successor institution of any direct loan or other obligation that a production credit association is authorized to incur and that is not repaid at the time of termination. Any part of the direct loan or other obligation that is not linked to a loan

covered by the general financing agreement shall be repaid as provided in paragraph (c) of this section.

(c) A terminating association that will not become an OFI shall either repay its direct loan and any other obligations to the Farm Credit Bank or agricultural credit bank upon termination or shall arrange with the appropriate bank to repay the loan or obligation. The terminating association may, with the concurrence of the Farm Credit Bank or agricultural credit bank, repay the loan or obligation over a period that shall not exceed 3 years following termination.

(d) The terminating association shall pay or make provision for payment of obligations to any other Farm Credit institutions under any loss-sharing agreement or other agreement.

[56 FR 3407, Jan. 30, 1991, as amended at 61 FR 67186, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67186, Dec. 20, 1996, §611.1250 was amended by adding the words ''or agricultural credit bank'' after the words ''Farm Credit Bank'' in the first sentence of paragraph (b) and in the first and third place they appear in paragraph (c); and by removing the words ''Farm Credit Bank'' the second place they appear and adding in their place the words ''appropriate bank'' in the first sentence of paragraph (c), effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§611.1255 Retirement of equities owned.

(a) The Farm Credit Bank or agricultural credit bank may retire all equities of the bank that are owned by the terminating association on the termination date or may enter into an agreement with the terminating association that would provide for a phased retirement of the equities. Any such plan for phased retirement shall provide for such retirement to be completed by the earlier to occur of the date on which the terminating association repays all indebtedness to the bank or the date that is 3 years from the termination date, provided that no retirement shall occur during that period if any such retirement would result in the Bank's failure to meet minimum capital requirements.

(b) If the Farm Credit Bank or agricultural credit bank, and the terminating association are unable to reach agreement regarding the retirement of the bank's equities, either institution may send the most recent proposals to the Farm Credit Administration along with an explanation of the points of disagreement. The Farm Credit Administration may require the bank to retire terminating association equities under such conditions as the Farm Credit Administration may require.

(c) No retirement shall occur if the Farm Credit Administration determines that the retirement of equities of the Farm Credit Bank or the agricultural credit bank would threaten the viability of the bank.

(d) The amount to be paid to a terminating association in the retirement of equities owned in the Farm Credit Bank or the agricultural credit bank shall be equal to the amount of the allocated equities owned by the terminating association in the bank, less any impairment, at the date the request for retirement is made by the terminating association.

(e) If the terminating association has outstanding stock issued to another Farm Credit institution, the association shall retire all such investment prior to termination.

(f) A Farm Credit Bank's or agricultural credit bank's equities obligated to be retired under any agreement between the terminating association and the bank shall not be considered as part of the permanent capital of the Farm Credit Bank or agricultural credit bank for purposes of §615.5240.

[61 FR 67186, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67186, Dec. 20, 1996, in §611.1255 was revised, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

§611.1255 Retirement of equities owned.

(a) The Farm Credit Bank may retire all equities of the Farm Credit Bank that are owned by the terminating association on the termination date or may enter into an agreement with the terminating association that would provide for a phased retirement of the equities. Any such plan for phased retirement shall provide for such retirement to be

completed by the earlier to occur of the date on which the terminating association repays all indebtedness to the bank or the date which is 3 years from the termination date, provided that no retirement shall occur during that period if any such retirement would result in the Farm Credit Bank's failure to meet minimum capital requirements.

(b) If the Farm Credit Bank and the terminating association are unable to reach agreement regarding the retirement of Farm Credit Bank equities, either institution may send the most recent proposals to the Farm Credit Administration along with an explanation of the points of disagreement. The Farm Credit Administration may require the bank to retire terminating association equities under such conditions as the Farm Credit Administration may require.

(c) No retirement shall occur if the Farm Credit Administration determines that the retirement of equities of the Farm Credit Bank would threaten the viability of the Farm Credit Bank.

(d) The amount to be paid to a terminating association in the retirement of equities owned in the Farm Credit Bank shall be equal to the amount of the allocated equities owned by the terminating association in the Farm Credit Bank, less any impairment, at the date the request for retirement is made by the terminating association. If the Financial Assistance Corporation owns any preferred stock in the Farm Credit Bank, any impairment of bank capital shall be applied first against the value of association-owned equities for determining the value of stock to be retired.

(e) If the terminating association has outstanding stock issued to another Farm Credit institution or outstanding preferred stock issued to the Financial Assistance Corporation, the association shall retire all such investment prior to termination.

(f) A Farm Credit Bank's equities obligated to be retired under any agreement between the terminating association and the Farm Credit Bank shall not be considered as part of the permanent capital of the Farm Credit Bank for purposes of § 615.5240.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991]

§ 611.1260 Dissenters' rights.

(a) Dissenting stockholders, at their discretion, may, but are not required to, have their stock or participation certificates in the terminating association retired as provided in paragraph (b) of this section. To be eligible to be a dissenting stockholder a person must be the owner, other than a Farm Credit institution, of voting or non-voting stock or other equities of the terminating association who was either–

(1) Not eligible to vote on the termination resolution; or

(2) Eligible to vote on the termination resolution and voted, in person or by proxy, against such resolution.

(b) The terminating association shall pay dissenting stockholders in accordance with the priorities in liquidation set forth in the bylaws of the terminating association. Notwithstanding any provision of paragraph (c) to the contrary, dissenting stockholders who hold eligible borrower stock shall receive not less than par value for their stock.

(c)(1) Except as provided in paragraph (d) of this section, the price paid to dissenting stockholders who own common stock or participation certificates shall be the adjusted book value, which is the book value on the computation date adjusted to reflect—

(i) Any increase or decrease in asset value resulting from the appraisals required in § 611.1240; and

(ii) Deduction of the amount of the exit fee.

(2) Payments made to dissenting stockholders who own common stock or participation certificates referred to in paragraph (c)(1) of this section shall be made on the following basis. If the adjusted book value of the common stock is less than or equal to the par or stated value of the stock, the full amount of the payment shall be in cash. If the adjusted book value of the common stock is greater than its par or stated value, the association:

(i) Shall pay in cash an amount equal to the par or stated value of the stock or participation certificate; and

(ii) Shall cause or otherwise provide for the successor institution to issue on the date of termination subordinated debt to the stockholder in an amount equal to the amount by which the book value exceeds the par or stated value of the stock or participation certificate. Such subordinated notes shall have a maturity date not in excess of 7 years after the date of issuance, shall have a priority on liquidation ahead of all equity shares but shall be subordinated to the claims of all other creditors, and shall carry a rate of interest that shall be not less than the rate for debt of comparable

maturity issued by the Treasury of the United States plus 1 percent.

(d) If the association has adopted bylaws in accordance with §611.1210(e), dissenting stockholders who own common stock or participation certificates issued in accordance with such bylaws shall be paid in cash an amount equal to the lesser of the par or adjusted book value of such stock or certificates.

(e) For the purposes of this section, common stock consists of voting stock, non-voting stock that was formerly voting stock, and stock that has no priority of payment over any other class upon liquidation.

(f) The notice to stockholders and other holders of equity interests required in §611.1220(e) shall include the following information:

(1) A statement of the rights of dissenting stockholders as specified in paragraph (a) of this section;

(2) The current book and par value per share, and the expected book and market value of the stockholder's pro rata interest in the successor institution; and

(3) An explanation of the procedure by which stockholders may exercise dissenters' rights and the form they shall return to the terminating association informing it of their intent to exercise such rights. The notification form by which stockholders may exercise dissenters' rights shall include the date by which the form must be returned to the terminating association, as specified in paragraph (b) of this section, and a place for stockholders to mark or indicate that they intend to exercise dissenters' rights. The notification form shall be a convenient method for the stockholders to notify the association and may consist of, but is not limited to, a postcard or preprinted return envelope.

(g) An explanation that dissenting stockholders shall have until 30 days following notification of their dissenters' rights to request retirement of their stock or participation certificates. The stockholders' election to retire stock shall be rescinded in a petition for reconsideration is successful.

(h) An explanation that maintenance of a borrowing relationship with the successor institution shall not be required as a condition for owning stock in the successor institution, unless otherwise directed by the bylaws of the successor institution.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991]

§611.1266 Loan refinancing by borrowers.

(a) All loans and loan assets of the terminating association shall become assets of the successor institution unless they have been sold by the terminating association to another lending institution or refinanced by the borrower.

(b) If an association has been designated to serve the territory of the terminating association prior to the mailing of the information statement, or if an association that offers credit services of the same type as the terminating association is already chartered to serve the territory, such association shall be identified in the information statement. In addition, such association shall provide the terminating association with the following information:

(1) The name and address of the association office that the borrower may contact;

(2) An explanation of the procedures to apply for financing with the association and the procedures by which the loan may be transferred to the association;

(3) An explanation of the stock purchase requirements of the new association; and

(4) Any other information the association wishes to include or routinely provides to new borrowers.

(c) If the terminating association receives the information required in paragraph (b) of this section prior to the mailing of the information statement to borrowers, the terminating association shall include such information in the information statement. If an association has not been designated to serve the territory or if the terminating association does not receive the information required in paragraph (b) of this section prior to the mailing of the information statement, the terminating association shall furnish each borrower with the address and telephone number of the funding bank with

instructions that the bank may be contacted in the future to determine the name and address of the association(s) that will serve the territory in the future.

(d) The terminating association shall provide credit and loan information to the association designated to serve the territory upon the borrower's request, in accordance with §§ 618.8300 through 618.8325, and take such other steps as are necessary to facilitate the transfer of the loan to the association.

[56 FR 3407, Jan. 30, 1991, as amended at 61 FR 67186, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67186, Dec. 20, 1996, in § 611.1266 paragraph (c), the words ''district Farm Credit Bank'' were removed and in their place the words ''funding bank'' were added, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§ 611.1270 Continuation of borrower rights.

Terminating associations which maintain an OFI relationship with the Farm Credit bank shall comply with borrower rights provisions contained in part 614, subparts K, L, M and N of this chapter. The terminating association may not require a waiver of applicable borrower rights provisions as a condition of ownership interest in and continued financing by the successor institution.

[56 FR 3407, Jan. 30, 1991; 56 FR 11589, Mar. 19, 1991]

PART 612—STANDARDS OF CONDUCT

Sec.

612.2130 Definitions.
612.2135 Director and employee responsibilities and conduct—generally.
612.2140 Directors—prohibited conduct.
612.2145 Director reporting.
612.2150 Employees—prohibited conduct.
612.2155 Employee reporting.
612.2157 Joint employees.
612.2160 Institution responsibilities.
612.2165 Policies and procedures.
612.2170 Standards of Conduct Official.
612.2260 Standards of conduct for agents.
612.2270 Purchase of System obligations.

AUTHORITY: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

SOURCE: 59 FR 24894, May 13, 1994, unless otherwise noted.

§ 612.2130 Definitions.

For purposes of this part, the following terms are defined:

(a) *Agent* means any person, other than a director or employee, who represents a System institution in contacts with third parties or who provides professional services to a System institution, such as legal, accounting, appraisal, and other similar services.

(b) A *conflict of interest* or the appearance thereof exists when a person has a financial interest in a transaction, relationship, or activity that actually affects or has the appearance of affecting the person's ability to perform official duties and responsibilities in a totally impartial manner and in the best interest of the employing institution when viewed from the perspective of a reasonable person with knowledge of the relevant facts.

(c) *Controlled entity* and *entity controlled by* mean an entity in which the individual, directly or indirectly, or acting through or in concert with one or more persons:

(1) Owns 5 percent or more of the equity;

(2) Owns, controls, or has the power to vote 5 percent or more of any class of voting securities; or

(3) Has the power to exercise a controlling influence over the management of policies of such entity.

(d) *Director* means a member of a board of directors.

(e) *Employee* means any salaried officer or part-time, full-time, or temporary salaried employee.

(f) *Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution, except System institutions.

(g) *Family* means an individual and spouse and anyone having the following relationship to either: parents, spouse, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, uncle, aunt, nephew, niece, grandparent, grandson, granddaughter, and the spouses of the foregoing.

(h) *Financial interest* means an interest in an activity, transaction, property, or relationship with a person or an entity that involves receiving or providing something of monetary value or other present or deferred compensation.

(i) *Financially obligated with* means having a joint legally enforceable obligation with, being financially obligated on behalf of (contingently or otherwise), having an enforceable legal obligation secured by property owned by another, or owning property that secures an enforceable legal obligation of another.

(j) *Material,* when applied to a financial interest or transaction or series of transactions, means that the interest or transaction or series of transactions is of such magnitude that a reasonable person with knowledge of the relevant facts would question the ability of the person who has the interest or is party to such transaction(s) to perform his or her official duties objectively and impartially and in the best interest of the institution and its statutory purpose.

(k) *Mineral interest* means any interest in minerals, oil, or gas, including, but not limited to, any right derived directly or indirectly from a mineral, oil, or gas lease, deed, or royalty conveyance.

(l) *OFI* means other financing institutions that have established an access relationship with a Farm Credit Bank or an agricultural credit bank under section 1.7(b)(1)(B) of the Act.

(m) *Officer* means the chief executive officer, president, chief operating officer, vice president, secretary, treasurer, general counsel, chief financial officer, and chief credit officer of each System institution, and any person not so designated who holds a similar position of authority.

(n) *Ordinary course of business,* when applied to a transaction, means: (1) A transaction that is usual and customary between two persons who are in business together; or

(2) A transaction with a person who is in the business of offering the goods or services that are the subject of the transaction on terms that are not preferential. Preferential means that the transaction is not on the same terms as those prevailing at the same time for comparable transactions for other persons who are not directors or employees of a System institution.

(o) *Person* means individual or entity.

(p) *Relative* means any member of the family as defined in paragraph (g) of this section.

(q) *Service organization* means each service organization authorized by section 4.25 of the Act, and each unincorporated service organization formed by one or more System institutions.

(r) *Standards of Conduct Official* means the official designated under §612.2170 of these regulations.

(s) *Supervised institution* is a term which only applies within the context of a System bank or an employee of a System bank and refers to each association supervised by that bank.

(t) *Supervising institution* is a term that only applies within the context of an association or an employee of an association and refers to the bank that supervises that association.

(u) *System institution* and *institution* mean any bank, association, or service organization in the Farm Credit System, including the Farm Credit Banks, banks for cooperatives, agricultural credit banks, Federal land bank associations, agricultural credit associations, Federal land credit associations, production credit associations, the Federal Farm Credit Banks Funding Corporation, and service organizations.

§612.2135 Director and employee responsibilities and conduct—generally.

(a) Directors and employees of all System institutions shall maintain high standards of industry, honesty, integrity, impartiality, and conduct in order to ensure the proper performance of System business and continued public confidence in the System and each of its institutions. The avoidance of misconduct and conflicts of interest is indispensable to the maintenance of these standards.

(b) To achieve these high standards of conduct, directors and employees shall observe, to the best of their abilities, the letter and intent of all applicable local, state, and Federal laws and regulations and policy statements, instructions, and procedures of the Farm

Credit Administration and System institutions and shall exercise diligence and good judgment in carrying out their duties, obligations, and responsibilities.

§ 612.2140 Directors—prohibited conduct.

A director of a System institution shall not:

(a) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interest of the director, any relative of the director, any person residing in the director's household, any business partner of the director, or any entity controlled by the director or such persons (alone or in concert), except those matters of general applicability that affect all shareholders/borrowers in a nondiscriminatory way, e.g., a determination of interest rates.

(b) Divulge or make use of, except in the performance of official duties, any fact, information, or document not generally available to the public that is acquired by virtue of serving on the board of a System institution.

(c) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, any person residing in the director's household, any business partner of the director, any entity controlled by the director or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(d) Use the director's position or information acquired in connection with the director's position to solicit or obtain, directly or indirectly, any gift, fee, or other present or deferred compensation or for any other personal benefit on behalf of the director, any relative of the director, any person residing in the director's household, any business partner of the director, any entity controlled by the director or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(e) Accept, directly or indirectly, any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of a System institution.

(f) Knowingly acquire, directly or indirectly, except by inheritance or through public auction or open competitive bidding available to the general public, any interest in any real or personal property, including mineral interests, that was owned by the employing, supervising, or any supervised institution within the preceding 12 months and that had been acquired by any such institution as a result of foreclosure or similar action; provided, however, a director shall not acquire any such interest in real or personal property if he or she participated in the deliberations or decision to foreclose or to dispose of the property or in establishing the terms of the sale.

(g) Directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution, unless:

(1) The transaction is with a relative or any person residing in the director's household;

(2) The transaction is undertaken in an official capacity in connection with the institution's discounting, lending, or participation relationships with OFIs and other lenders; or

(3) The Standards of Conduct Official determines, pursuant to policies and procedures adopted by the board, that the potential for conflict is insignificant because the transaction is in the ordinary course of business or is not material in amount and the director does not participate in the determination of any matter affecting the financial interests of the other party to the transaction except those matters affecting all shareholders/borrowers in a nondiscriminatory way.

(h) Violate an institution's policies and procedures governing standards of conduct.

§612.2145 Director reporting.

(a) Annually, as of the institution's fiscal year end, and at such other times as may be required to comply with paragraph (c) of this section, each director shall file a written and signed statement with the Standards of Conduct Official that fully discloses:

(1) The names of any immediate family members as defined in §620.1(e) of this chapter, or affiliated organizations, as defined in §620.1(a) of this chapter, who had transactions with the institution at any time during the year;

(2) Any matter required to be disclosed by §620.5(k) of this chapter; and

(3) Any additional information the institution may require to make the disclosures required by part 620 of this chapter.

(b) Each director shall, at such intervals as the institution's board shall determine is necessary to effectively enforce this regulation and the institution's standards-of-conduct policy adopted pursuant to §612.2165, file a written and signed statement with the Standards of Conduct Official that contains those disclosures required by the regulations and such policy. At a minimum, these requirements shall include:

(1) The name of any relative or any person residing in the director's household, business partner, or any entity controlled by the director or such persons (alone or in concert) if the director knows or has reason to know that such individual or entity transacts business with the institution or any institution supervised by the director's institution; and

(2) The name and the nature of the business of any entity in which the director has a material financial interest or on whose board the director sits if the director knows or has reason to know that such entity transacts business with: (i) The director's institution or any institution supervised by the director's institution; or

(ii) A borrower of the director's institution or any institution supervised by the director's institution.

(c) Any director who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported under this section or could constitute a conflict of interest shall promptly report such involvement in writing to the Standards of Conduct Official for a determination of whether the relationship, transaction, or activity is, in fact, a conflict of interest.

(d) Unless a disclosure as a director candidate under part 620 of this chapter has been made within the preceding 180 days, a newly elected or appointed director shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official within 30 days after the election or appointment and thereafter shall comply with the requirements of this section.

§612.2150 Employees—prohibited conduct.

An employee of a System institution shall not:

(a) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interest of the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, or any entity controlled by the employee or such persons (alone or in concert), except those matters of general applicability that affect all shareholders/borrowers in a nondiscriminating way, e.g. a determination of interest rates.

(b) Divulge or make use of, except in the performance of official duties, any fact, information, or document not generally available to the public that is acquired by virtue of employment with a System institution.

(c) Use the employee's position to obtain or attempt to obtain special advantage or favoritism for the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, any entity controlled by the employee or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(d) Serve as an officer or director of an entity that transacts business with a System institution in the district or of any commercial bank, savings and

loan, or other non-System financial institution, except employee credit unions. For the purposes of this paragraph, ''transacts business'' does not include loans by a System institution to a family-owned entity, service on the board of directors of the Federal Agricultural Mortgage Corporation, or transactions with nonprofit entities or entities in which the System institution has an ownership interest. With the prior approval of the board of the employing institution, an employee of a Farm Credit Bank or association may serve as a director of a cooperative that borrows from a bank for cooperatives. Prior to approving an employee request, the board shall determine whether the employee's proposed service as a director is likely to cause the employee to violate any regulations in this part or the institution's policies, e.g., the requirements relating to devotion of time to official duties.

(e) Use the employee's position or information acquired in connection with the employee's position to solicit or obtain any gift, fee, or other present or deferred compensation or for any other personal benefit for the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, any entity controlled by the employee or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants.

(f) Accept, directly or indirectly, any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered to influence official action or to obtain information the employee has access to by reason of employment with a System institution.

(g) Knowingly acquire, directly or indirectly, except by inheritance, any interest in any real or personal property, including mineral interests, that was owned by the employing, supervising, or any supervised institution within the preceding 12 months and that had been acquired by any such institution as a result of foreclosure or similar action.

(h) Directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the employing, supervising, or a supervised institution or a borrower or loan applicant of the employing institution, unless:

(1) The transaction is with a relative or any person residing in the employee's household;

(2) The transaction is undertaken in an official capacity in connection with the institution's discounting, lending, or participation relationships with OFIs and other lenders; or

(3) The Standards of Conduct Official determines, pursuant to policies and procedures adopted by the board, that the potential for conflict is insignificant because the transaction is in the ordinary course of business or is not material in amount and the employee does not participate in the determination of any matter affecting the financial interests of the other party to the transaction except those matters affecting all shareholders/borrowers in a nondiscriminatory way.

(i) Violate an institution's policies and procedures governing standards of conduct.

(j) Act as a real estate agent or broker; provided that this paragraph shall not apply to transactions involving the purchase or sale of real estate intended for the use of the employee, a member of the employee's family, or a person residing in the employee's household.

(k) Act as an agent or broker in connection with the sale and placement of insurance; provided that this paragraph shall not apply to the sale or placement of insurance authorized by section 4.29 of the Act.

§ 612.2155 Employee reporting.

(a) Annually, as of the institution's fiscal yearend, and at such other times as may be required to comply with paragraph (c) of this section, each senior officer, as defined in § 620.1(o) of this chapter, shall file a written and signed statement with the Standards of Conduct Official that fully discloses:

(1) The names of any immediate family members, as defined in § 620.1(e) of this chapter, or affiliated organizations, as defined in § 620.1(a) of this chapter, who had transactions with the

institution at any time during the year;

(2) Any matter required to be disclosed by §620.5(k) of this chapter; and

(3) Any additional information the institution may require to make the disclosures required by part 620 of this chapter.

(b) Each employee shall, at such intervals as the Board shall determine necessary to effectively enforce this regulation and the institution's standards-of-conduct policy adopted pursuant to §612.2165, file a written and signed statement with the Standards of Conduct Official that contains those disclosures required by the regulation and such policy. At a minimum, these requirements shall include:

(1) The name of any relative or any person residing in the employee's household, any business partner, or any entity controlled by the employee or such persons (alone or in concert) if the employee knows or has reason to know that such individual or entity transacts business with the employing institution or any institution supervised by the employing institution; and

(2) The name and the nature of the business of any entity in which the employee has a material financial interest or on whose board the employee sits if the employee knows or has reason to know that such entity transacts business with:

(i) The employing institution or any institution supervised by the employing institution; or

(ii) A borrower of the employing institution or any institution supervised by the employing institution.

(c) Any employee who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported under this section or could constitute a conflict of interest shall promptly report such involvement in writing to the Standards of Conduct Official for a determination of whether the relationship, transaction, or activity is, in fact, a conflict of interest.

(d) A newly hired employee shall report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official within 30 days after accepting an offer for employment and thereafter shall comply with the requirements of this section.

§612.2157 Joint employees.

No officer of a Farm Credit Bank or an agricultural credit bank may serve as an employee of an association in its district and no employee of a Farm Credit Bank or an agricultural credit bank may serve as an officer of an association in its district. Farm Credit Bank or agricultural credit bank employees other than officers may serve as employees other than officers of an association in its district provided each institution appropriately reflects the expense of such employees in its financial statements.

§612.2160 Institution responsibilities.

Each institution shall: (a) Ensure compliance with this part by its directors and employees and act promptly to preserve the integrity of and public confidence in the institution in any matter involving a conflict of interest, whether or not specifically addressed by this part or the policies and procedures adopted pursuant to §612.2165;

(b) Take appropriate measures to ensure that all directors and employees are informed of the requirements of this regulation and policies and procedures adopted pursuant to §612.2165;

(c) Adopt and implement policies and procedures that will preserve the integrity of and public confidence in the institution and the System pursuant to §612.2165;

(d) Designate a Standards of Conduct Official pursuant to §612.2170; and

(e) Maintain all standards-of-conduct policies and procedures, reports, investigations, determinations, and evidence of compliance with this part for a minimum of 6 years.

§612.2165 Policies and procedures.

(a) Each institution's board of directors shall issue, consistent with this part, policies and procedures governing standards of conduct for directors and employees.

(b) Board policies and procedures issued pursuant to paragraph (a) of this section shall reflect due consideration of the potential adverse impact of any activities permitted under the policies and shall at a minimum:

(1) Establish such requirements and prohibitions as are necessary to promote public confidence in the institution and the System, preserve the integrity and independence of the supervisory process, and prevent the improper use of official property, position, or information. In developing such requirements and prohibitions, the institution shall address such issues as the hiring of relatives, political activity, devotion of time to duty, the exchange of gifts and favors among directors and employees of the employing, supervising, and supervised institution, and the circumstances under which gifts may be accepted by directors and employees from outside sources, in light of the foregoing objectives;

(2) Outline authorities and responsibilities of the Standards of Conduct Official;

(3) Establish criteria for business relationships and transactions not specifically prohibited by this part between employees or directors and borrowers, loan applicants, directors, or employees of the employing, supervised, or supervising institutions, or persons transacting business with such institutions, including OFIs or other lenders having an access or participation relationship;

(4) Establish criteria under which employees may accept outside employment or compensation;

(5) Establish conditions under which employees may receive loans from System institutions;

(6) Establish conditions under which employees may acquire an interest in real or personal property that was mortgaged to a System institution at any time within the preceding 12 months;

(7) Establish conditions under which employees may purchase any real or personal property of a System institution acquired by such institution for its operations;

(8) Provide for a reasonable period of time for directors and employees to terminate transactions, relationships, or activities that are subject to prohibitions that arise at the time of adoption or amendment of the policies.

(9) Require new directors and new employees involved at the time of election or hiring in transactions, relationships, and activities prohibited by these regulations or internal policies to terminate such transactions within the same time period established for existing directors or employees pursuant to paragraph (b)(8) of this section, beginning with the commencement of official duties, or such shorter time period as the institution may establish.

(10) Establish procedures providing for a director's or employee's recusal from official action on any matter in which he or she is prohibited from participating under these regulations or the institution's policies.

(11) Establish documentation requirements demonstrating compliance with standards-of-conduct decisions and board policy;

(12) Establish reporting requirements, consistent with this part, to enable the institution to comply with § 620.5 of this chapter, monitor conflicts of interest, and monitor recusal compliance; and

(13) Establish appeal procedures available to any employee to whom any required approval has been denied.

§ 612.2170 Standards of Conduct Official.

(a) Each institution's board shall designate a Standards of Conduct Official who shall:

(1) Advise directors, director candidates, and employees concerning the provisions of this part;

(2) Receive reports required by this part;

(3) Make such determinations as are required by this part;

(4) Maintain records of actions taken to resolve and/or make determinations upon each case reported relative to provisions of this part;

(5) Make appropriate investigations, as directed by the institution's board; and

(6) Report promptly, pursuant to part 617 of this chapter, to the institution's board and the Office of General Counsel, Farm Credit Administration, all cases where:

(i) A preliminary investigation indicates that a Federal criminal statute may have been violated;

(ii) An investigation results in the removal of a director or discharge of an employee; or

(iii) A violation may have an adverse impact on continued public confidence in the System or any of its institutions.

(b) The Standards of Conduct Official shall investigate or cause to be investigated all cases involving:

(1) Possible violations of criminal statutes;

(2) Possible violations of §§612.2140 and 612.2150, and applicable policies and procedures approved under §612.2165;

(3) Complaints received against the directors and employees of such institution; and

(4) Possible violations of other provisions of this part or when the activities or suspected activities are of a sensitive nature and could affect continued public confidence in the Farm Credit System.

(c) An association board may comply with this section by contracting with the Farm Credit Bank or agricultural credit bank in its district to provide a Standards of Conduct Official.

§612.2260 Standards of conduct for agents.

(a) Agents of System institutions shall maintain high standards of honesty, integrity, and impartiality in order to ensure the proper performance of System business and continued public confidence in the System and all its institutions. The avoidance of misconduct and conflicts of interest is indispensable to the maintenance of these standards.

(b) System institutions shall utilize safe and sound business practices in the engagement, utilization, and retention of agents. These practices shall provide for the selection of qualified and reputable agents. Employing System institutions shall be responsible for the administration of relationships with their agents, and shall take appropriate investigative and corrective action in the case of a breach of fiduciary duties by the agent or failure of the agent to carry out other agent duties as required by contract, FCA regulations, or law.

(c) System institutions shall be responsible for exercising corresponding special diligence and control, through good business practices, to avoid or control situations that have inherent potential for sensitivity, either real or perceived. These areas include the employment of agents who are related to directors or employees of the institutions; the solicitation and acceptance of gifts, contributions, or special considerations by agents; and the use of System and borrower information obtained in the course of the agent's association with System institutions.

§612.2270 Purchase of System obligations.

(a) Employees and directors of System institutions, other than the Federal Farm Credit Banks Funding Corporation, may only purchase joint, consolidated, or Systemwide obligations that are:

(1) Part of an offering available to the general public; and

(2) Purchased through a dealer or dealer bank affiliated with a member of the selling group designated by the Federal Farm Credit Banks Funding Corporation or purchased in the secondary market.

(b) No director or employee of the Federal Farm Credit Banks Funding Corporation may purchase or otherwise acquire, directly or indirectly, except by inheritance, any joint, consolidated, or Systemwide obligation.

PART 613—ELIGIBILITY AND SCOPE OF FINANCING

Subpart A—General

Sec.
613.3000 Authority.
613.3005 Lending objective.

Subpart B—Eligibility To Borrow From Farm Credit Banks, Agricultural Credit Banks, Production Credit Associations, Agricultural Credit Associations and Federal Land Credit Associations

613.3010 Definitions.
613.3015 Combined operations.
613.3020 Eligibility.
613.3040 Rural residents.
613.3045 Financing of basic processing and marketing activities.
613.3050 Farm-related business.

Subpart C—Eligibility of Financial Institutions To Borrow From a Farm Credit Bank or Agricultural Credit Bank

613.3060 Institutions eligible.

Subpart D—Eligibility To Borrow From Banks for Cooperatives and Agricultural Credit Banks

613.3110 Domestic lending.
613.3120 International lending.

Subpart E—Nondiscrimination in Lending

613.3145 Definitions.
613.3150 Nondiscrimination in lending and other services.
613.3151 Nondiscrimination in applications.
613.3152 Nondiscriminatory appraisal.
613.3160 Nondiscriminatory advertising.
613.3170 Equal housing lender poster.
613.3175 Complaints.

AUTHORITY: Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 5.9, 5.17 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2243, 2252; 42 U.S.C. 3601 *et seq.*; 15 U.S.C. 1691 *et seq.*; 12 CFR part 202, 24 CFR parts 100, 109, and 110.

Subpart A—General

§ 613.3000 Authority.

Farm Credit Banks, agricultural credit banks, Federal land credit associations, production credit associations and agricultural credit associations are authorized to make loans under titles I and II of the Act to bona fide farmers, ranchers, producers or harvesters of aquatic products, persons eligible for financing of the processing and marketing of agricultural or aquatic products of eligible borrowers under § 613.3045, rural residents, and persons furnishing services directly related to the on-farm operating needs of farmers and ranchers. Banks for cooperatives are authorized, under title III of the Act, to make loans to eligible cooperatives and other eligible entities, as defined in § 613.3110, and loans to domestic or foreign parties not otherwise eligible in connection with transactions related to the import or export of agricultural or aquatic products, when the loan substantially benefits an eligible cooperative that is a voting stockholder of the bank. Eligibility requirements are set forth in part 613, and lending authorities and requirements are set forth in part 614.

[55 FR 24877, June 19, 1990; 55 FR 28511, July 11, 1990]

§ 613.3005 Lending objective.

(a) It is the objective of each bank and association, except banks for cooperatives, to provide full credit, to the extent of creditworthiness, to the full-time bona fide farmer (one whose primary business and vocation is farming, ranching, or producing or harvesting aquatic products); and conservative credit to less than full-time farmers for agricultural enterprises, and more restricted credit for other credit requirements as needed to ensure a sound credit package or to accommodate a borrower's needs as long as the total credit results in being primarily an agricultural loan. However, the part-time farmer who needs to seek off-farm employment to supplement farm income or who desires to supplement off-farm income by living in a rural area and is carrying on a valid agricultural operation, shall have availability of credit for mortgages, other agricultural purposes, and family needs in the preferred position along with full-time farmers. Loans to farmers shall be on an increasingly conservative basis as the emphasis moves away from the full-time bona fide farmer to the point where agricultural needs only will be financed for the applicant whose business is essentially other than farming. Credit shall not be extended where investment in agricultural assets for speculative appreciation is a primary factor.

(b) It is the objective of banks for cooperatives to provide a full range of credit services to eligible cooperatives, as defined in § 613.3110(b), to assist such cooperatives in increasing the income of their members as patrons. The type of cooperative operation, quality of management, and basic financial factors shall be carefully evaluated as to their effect upon long-range benefit to members. Each bank for cooperatives shall develop policies and procedures for the administration of quality standards that fully consider the needs of, support by, and service performed for members, and risk protection afforded the lender.

(c) Each Farm Credit bank and association board shall adopt policies providing direction to management in administering credit and lending standards. Management shall prescribe operating procedures to administer board policies that include provisions to ensure that proper weight is given to the wide variety of relationships between applicants, types of property serving as collateral and financing purposes that can exist. For institutions operating under titles I and II of the Act, these policies shall require that loans made under the eligibility provisions of §613.3020 be predominantly for agricultural or aquatic purposes and shall ensure that nonagricultural-related assets owned by applicants or included in collateral appraisals are not given undue weight in the final loan decision. Management procedures administering these policies shall identify the portion of mixed value (agricultural and nonagricultural) assets that may be considered agricultural for lending purposes.

[55 FR 24877, June 19, 1990; 55 FR 28511, July 11, 1990]

Subpart B—Eligibility To Borrow From Farm Credit Banks, Agricultural Credit Banks, Production Credit Associations, Agricultural Credit Associations and Federal Land Credit Associations

§613.3010 Definitions.

For the purposes of determining eligibility, the following definitions shall apply:

(a) *Bona fide farmer or rancher* means a person owning agricultural land, or engaged in the production of agricultural products, including aquatic products under controlled conditions.

(b) *Legal entity* means any partnership, corporation, estate, trust, or other entity which is established pursuant to the laws of the United States, or any State thereof, including the Commonwealth of Puerto Rico or the District of Columbia, and which is legally authorized to conduct a business.

(c) *Person* means an individual who is a citizen of the United States or who has been lawfully admitted into the United States for permanent residence, as defined in 8 U.S.C. 1101(a)(20), and is so domiciled or a legal entity in which essentially all of the outstanding stock or equity and voting control is directly or indirectly owned by, or held for the benefit of such individual(s).

(d) *Producer or harvester of aquatic products* means a person engaged in producing or harvesting aquatic products for economic gain in open waters under uncontrolled conditions.

[55 FR 24877, June 19, 1990]

§613.3015 Combined operations.

(a) Where an applicant's operations include a combination of farming, producing or harvesting aquatic products, or a farm-related business the determination of eligibility can be made on the basis of the criteria set out for either or any combination of these operations.

(b) [Reserved]

[37 FR 11421, June 7, 1972]

§613.3020 Eligibility.

(a) *Generally*. To be eligible to borrow from a bank or association under title I or II of the Act, an applicant must be:

(1) A person who is a bona fide farmer, rancher or producer or harvester of aquatic products;

(2) A person qualifying under §613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) A rural resident, as defined in §613.3040(a)(1); or

(4) A farm-related business, as defined in §613.3050.

(b) *Eligibility of legal entities.* For the purposes of paragraph (a)(1) of this section, if the applicant is a legal entity—

(1) The legal entity shall satisfy at least one of the criteria set forth in paragraphs (b)(1)(i) through (iii) at the time of application:

(i) More than 50 percent of the value or number of shares of the entity's outstanding voting stock or equity shall be owned by the individuals conducting the agricultural or aquatic operation.

(ii) More than 50 percent of the value of the entity's assets shall consist of

assets related to the production of agricultural products or the production or harvesting of aquatic products.

(iii) More than 50 percent of the entity's income shall be generated by its production of agricultural products or the production or harvesting of aquatic products.

(2) In addition to the requirements of paragraph (b)(1) of this section, if the legal entity is one in which 50 percent or more of the ownership or control is vested directly or indirectly in another legal entity that does not satisfy the requirements of paragraph (b)(1) of this section, the applicant shall demonstrate that it can operate as a counterpart to the normal agricultural or aquatic business eligible to borrow without jeopardy to such normal agricultural or aquatic business or the general agricultural or aquatic economy. Such loans shall be appropriately designated in such a manner as to permit segregation for the purpose of monitoring the number and volume of such loans.

(3) Notwithstanding any other provision of this section, a legal entity engaged in agriculture or the production or harvesting of aquatic products for the primary purpose of conducting its operation at a loss to absorb taxable income from nonagricultural or nonaquatic sources shall not be eligible to borrow. Each legal entity shall demonstrate at the time of application that its purpose is to operate for profit.

(c) *Documentation of eligibility*. Each applicant shall submit a complete description of the ownership of the agricultural or aquatic operation being financed and sufficient supporting documentation to demonstrate the applicant's eligibility at the time of application.

[55 FR 24877, June 19, 1990]

§ 613.3040 Rural residents.

(a) *Definitions.* For the purposes of nonfarm lending only, the following definitions shall apply:

(1) A rural resident is an individual residing in a rural area who is a citizen of the United States or who has been lawfully admitted into the United States for permanent residence and is so domiciled.

(2) A rural residence is a single-family, moderate-priced dwelling with appropriate appurtenances, which is or will be used as a permanent, year-round home by the applicant and which is located on an appropriate site in a rural area. Rural residences may include conventional housing, modular housing, or mobile homes which are related to a specific real estate site. A moderate-priced dwelling is one which provides adequate housing not in excess of the living standards of persons in the middle range of income, and not inconsistent with the general quality and standards of housing existing in, or planned for, that area of the Farm Credit district. Due to the wide variations in housing costs, income levels and area standards for housing the value of moderate-priced housing will vary.

(3) A rural area is open country which may include any city or village with a population not exceeding 2,500 persons or any rural subdivision whose design is determined to encourage orderly development pursuant to policies adopted by the bank board for such subdivisions. A rural area does not include cities, subdivisions, or villages associated with a larger population center. The intent is to avoid lending in concentrated, high density, residential areas or villages which are a part of an urbanizing area surrounding or immediately adjoining an urban area of a larger population center. Rural areas may include open areas which are undeveloped for housing and still devoted to agricultural use within other political boundaries, including ''towns'' exceeding 2,500 persons when so designated by the district board and approved by the Farm Credit Administration.

(b) *Eligibility*. To be eligible to borrow as a rural resident, the applicant shall establish as part of his application for credit that he is, or will become, an owner-occupant of the rural residence for which financing is being sought. He shall not have rural home loans on more than one rural residence at any time.

(c) *Scope of financing.* Loans may be made to rural residents for the purpose of buying, building, remodeling, improving, repairing rural residences, and

refinancing existing indebtedness thereon. No loan shall be made to purchase or construct a rural residence for the express purpose of rental or resale. The total amount of credit that may be extended by Farm Credit institutions for eligible purposes shall not exceed 85 percent of the appraised value of the rural residence securing the loan.

(d) *Program limitations.* The rural home lending program shall be operated within the following limitations:

(1) Rural home lending in a district may be implemented only with the approval of the district board. Implementation at the association level is within the discretion of the association board. Upon implementation, such loan service shall be made available to all eligible persons.

(2) No Farm Credit Bank or agricultural credit bank may at any time have outstanding rural residence loans in an amount exceeding 15 percent of the total of all of its outstanding loans. No Federal land bank association shall originate and no Federal land credit association, production credit association, or agricultural credit association may have outstanding, rural residence loans in an amount exceeding 15 percent of such association's total loans outstanding or originated at the end of the preceding fiscal year, without prior approval by its funding bank; nor shall the aggregate of such loans in a Farm Credit district exceed 15 percent of the outstanding loans of all associations in the bank's chartered territory at the end of the bank's preceding fiscal year.

(3) Should circumstances arise which curtail loan funds for the System, agricultural loans shall receive priority to the exclusion of rural home loans.

(e) *Identification.* All loans made under the rural home lending program shall be separately identified.

(1) In making such identification, a rural residence is a property which does not have the capacity to produce farm products for sale on a sustained basis, or if it has that capacity is not intended to be used in that manner.

(2) Housing loans for homes used in farming operations or immediate family needs to farmers and ranchers may be identified as farm loans if the borrower's agricultural operation represents more than 50 percent of his total business. Such loans are not subject to the area and price limitation of §613.3040(a) or the 15-percent limitation of §613.3040(d).

[43 FR 16447, Apr. 19, 1978, as amended at 43 FR 36428, Aug. 17, 1978; 55 FR 24878, June 19, 1990]

§613.3045 Financing of basic processing and marketing activities.

(a) Farm Credit Banks, agricultural credit banks, production credit associations, agricultural credit associations, and Federal land credit associations, are authorized to provide financing for the processing (including storage) and marketing activities of persons eligible to borrow under §613.3020.

(b) Eligibility to obtain loans to finance basic processing and marketing activities is determined as follows:

(1) If the applicant or, as provided for in paragraph (b)(2)(iii) of this section, the applicant processing and/or marketing unit and its owners, produce 50 percent or more of the annual throughput used in the basic processing and/or marketing operation, eligibility is determined in accordance with §613.3020 (a)(1) and (b).

(2) If the applicant, or as provided for in paragraph (b)(2)(iii) of this section, the applicant processing and/or marketing unit and its owners, produce less than 50 percent of the annual throughput, the applicant must meet the following three conditions in addition to the requirements of §613.3020 (a)(1) and (b):

(i) The basic processing and/or marketing activities shall constitute a logical and actual extension of a farmer's, rancher's, or aquatic producer's or harvester's operation for financing vertical integration from the production stage through the basic processing and/or marketing stage.

(ii) The applicant, or as provided for in paragraph (b)(2)(iii) of this section, the applicant processing or marketing unit and its owners, shall produce on a sustained basis some portion of the throughput of the basic processing and/or marketing operation sufficient to demonstrate that such operation constitutes a logical and actual extension of the applicant's agricultural or aquatic operation for financing vertical integration from the production

stage through the basic processing and/or marketing stage. Essentially all of the throughput in excess of such minimum amount that is utilized in the processing and/or marketing stage shall be purchased from or handled for eligible borrowers as described in § 613.3020 (a)(1) and (b).

(iii) Where the ownership of the processing and/or marketing operation differs from that of the basic production operation, all of the ownership of the processing and/or marketing operation shall be vested in persons eligible to borrow under § 613.3020 (a)(1) and (b).

(c) Processing and marketing loans to eligible borrowers, who supply on a sustained basis less than 20 percent of the throughput, are subject to the following restrictions:

(1) The aggregate of such marketing and processing loans provided by the Farm Credit Bank and all direct lender associations in each district shall not exceed 15 percent of the total of all outstanding retail loans in the district at the end of the bank's preceding fiscal year;

(2) The aggregate of such marketing and processing loans provided by any Farm Credit Bank shall not exceed 15 percent of all outstanding retail loans made by such bank as a direct lender at the end of its preceding fiscal year. For the purposes of this paragraph, ''outstanding loans'' may include loan participations bought from or sold to associations in the district, to the extent such participations are not considered as a part of the ''aggregate of outstanding loans of all associations'' for the purposes of determining the limitation under paragraph (c)(3) of this section; and

(3) The aggregate of such marketing and processing loans provided by any association shall not exceed 15 percent of all outstanding loans of all associations in the district at the end of the preceding fiscal year. For the purposes of this paragraph, ''outstanding loans of all associations'' may include, to the extent not considered as a part of the retail loan volume of the bank for the purposes of determining the limitations under paragraph (c)(2) of this section:

(i) All loans that are current as to both principal and interest that are originated by or through associations to which long-term lending authority has been transferred; and

(ii) All loan participations sold by associations to the district bank and all participations purchased by the association from the bank;

(d) Each Farm Credit Bank, in conjunction with all direct lending associations chartered in the district, shall:

(1) Identify and monitor loans subject to the limitations of paragraph (c) of this section sufficiently to ensure that the 15-percent districtwide limit is not exceeded;

(2) Ensure that processing and marketing loans subject to the limitations of paragraph (c) of this section are equitably allocated among all direct lenders in the district; and

(3) Ensure that no retail loan or loan participation is double-counted for the purposes of determining the limitations of paragraph (c) of this section.

(e) Banks and associations shall each develop policies that embody at least the following:

(1) The minimum ''throughput'' requirement;

(2) The method for defining basic processing and/or marketing activities by commodity or groups of commodities;

(3) Limitations on financing extended under the processing and marketing authority to those needs directly associated with the processing and/or marketing operation;

(4) Provision for adequate documentation for and analysis of the ownership and operational features of the borrower sufficient to establish loan eligibility under this section each time a loan is made or renegotiated;

(5) Provision for appropriately designating loans in which less than 50 percent of the throughput is produced by the borrower or owners of the processing and marketing operation, so as to permit segregation of such loans for the purpose of monitoring the number and volume; and

(6) Authorities and limitations applicable to the institution's financing of processing and marketing operations.

[55 FR 24878, June 19, 1990; 55 FR 28511, July 11, 1990, as amended at 56 FR 65989, Dec. 20, 1991; 58 FR 48790, Sept. 20, 1993]

§613.3050 Farm-related business.

(a) *Definition*. A farm-related business is a person engaged in furnishing to farmers or ranchers custom-type farm-related services directly related to their on-farm operating needs.

(b) *Eligibility*. (1) To be eligible to borrow, a person shall establish as part of his application for credit his qualifications as a farm-related business.

(2) Loans shall not be made to commercial businesses which purchase farm products from or sell inputs to farmers or ranchers unless substantially all of such inputs handled are used incident to the services provided.

(c) *Scope of financing*. Farm Credit banks and associations that are direct lenders are authorized to make loans to farm-related businesses as follows:

(1) Farm Credit Banks, agricultural credit banks, agricultural credit associations, and Federal land credit associations, may make long-term real estate mortgage loans to farm-related businesses for necessary sites, capital structures, equipment, and initial working capital for such services, under terms and conditions described in §614.4210.

(2) Production credit associations and agricultural credit associations may make operating and intermediate-term loans to farm-related businesses for necessary sites, capital structures, working capital, equipment, and operating needs incident to the operation of farm-related businesses under terms and conditions described in §614.4220.

[44 FR 69632, Dec. 4, 1979, as amended at 55 FR 24878, June 19, 1990]

Subpart C—Eligibility of Financial Institutions To Borrow From a Farm Credit Bank or Agricultural Credit Bank

§613.3060 Institutions eligible.

The Farm Credit Banks and agricultural credit banks may make loans to and discount loans or other obligations for production credit associations, agricultural credit associations, Federal land credit associations, and other financing institutions in accordance with provisions in part 614 of this chapter.

[55 FR 24879, June 19, 1990]

Subpart D—Eligibility To Borrow From Banks for Cooperatives and Agricultural Credit Banks

§613.3110 Domestic lending.

(a) *Definitions*. For the purpose of this part:

(1) *Cooperative* means any association of farmers, ranchers, producers or harvesters of aquatic products, or any federation of such associations, or a combination of such associations and farmers, ranchers, or producers or harvesters of aquatic products, which is operated on a cooperative basis; is engaged in processing, preparing for market, handling, or marketing farm or aquatic products; or purchasing, testing, grading, processing, distributing, or furnishing farm or aquatic supplies; or furnishes farm or aquatic business or other services to eligible farmers, ranchers, producers or harvesters of aquatic products, or eligible cooperatives.

(2) *Cooperative basis* means the conduct of business for the mutual benefit of the members as patrons.

(3) *Farm or aquatic supplies and farm or aquatic business services* are any goods, business, or services normally used by farmers, ranchers, or producers or harvesters of aquatic products which contribute to their business operations or are in furtherance of the welfare or security of the livelihood of such persons.

(4) *Service cooperative* is a cooperative predominately involved in providing a specialized business service related to the agricultural or aquatic business operations of farmers, ranchers, or producers or harvesters of aquatic products, or cooperatives.

(b) *Eligible cooperatives*. To be eligible to borrow from a bank for cooperatives, a cooperative shall meet the following requirements:

(1) Except as the bank's board may establish pursuant to paragraph (b)(2) of this section, the percentage of voting control of the cooperative held by

farmers, ranchers, producers or harvesters of aquatic products, or cooperatives eligible to borrow from a bank for cooperatives or agricultural credit bank shall be at least 80 percent except:

(i) 60 percent in the case of rural electric, telephone, public utility, and service cooperatives;

(ii) 60 percent in the case of local farm supply cooperatives which have historically served needs of the community that would not adequately be served by other suppliers and have experienced a reduction in the percentage of farmer membership due to circumstances beyond their control such as, but not limited to, urbanization of the community;

(iii) 60 percent in the case of local farm supply cooperatives which provide or will provide needed services to a community and which are or will be in competition with a cooperative specified in § 613.3110(b)(1)(ii).

(2)(i) Requirements for a higher percentage of voting control by farmers, ranchers, producers or harvesters of aquatic products, or eligible cooperatives than required by paragraph (b)(1) of this section may be established by resolution of the bank's board of directors with respect to any type of cooperative. Such higher voting control percentage requirements shall be applied uniformly and consistently to any type of cooperative so designated in the bank board resolution.

(ii) Bank board policies shall ensure that management's procedures require good faith representations on the part of borrowers in applications for loans and in loan covenants to affirm that the minimum farmer, rancher, and aquatic producer or harvester voting control percentage requirements established by the Act are met. The procedures shall require documentation in bank loan files of the basis upon which such representations are made and accepted in the case of those cooperatives whose records do not establish the percentage of voting control held by agricultural or aquatic producers.

(3) The cooperative deals in farm or aquatic products or products therefrom, farm or aquatic supplies, or farm or aquatic business services with or for members in an amount at least equal in value to the total amount of such business transacted by it with or for nonmembers, excluding from the total of member and nonmember business transactions with the United States or any agencies or instrumentalities thereof or services or supplies furnished as a public utility.

(4) No member of the cooperative shall have more than one vote because of the amount of stock or membership capital owned therein; or, the cooperative shall restrict dividends on stock or membership capital to 10 percent per year or the maximum percentage per year permitted by the applicable State statutes, whichever is less.

(5) A cooperative which is not eligible under the foregoing requirements but which was otherwise eligible and was a borrower on May 17, 1972, will continue to be eligible for further borrowing provided it does not materially change its entity structure or ownership and control and continues to meet the eligibility standards under which it was qualified to borrow on May 17, 1972.

(c) *Other eligible entities.* The following entities are eligible to borrow under section 3.7(a) of the Act from banks for cooperatives, notwithstanding their failure to meet the requirements of paragraph (b)(1) of this section:

(1) Cooperatives and other entities that have received a loan, loan commitment, or loan guarantee from the Rural Electrification Administration, or a loan or loan commitment from the Rural Telephone Bank, or that have been certified by the Administrator of the Rural Electrification Administration to be eligible for such a loan, loan commitment, or loan guarantee, and subsidiaries of such cooperatives or other entities.

(2) Any legal entity, more than 50 percent of the voting control of which is held by one or more cooperatives or other entities that are eligible to borrow under paragraph (b) or (c)(1) of this section, provided that any such legal entity, when considered together with one or more such legal entities that hold such control, shall also meet the requirements of paragraph (b)(3) of this section.

(3) Any legal entity that:

(i) Holds more than 50 percent of the voting control of a cooperative or other entity that is eligible to borrow from a bank for cooperatives under paragraph (b) or (c)(1) of this section; and

(ii) Borrows for the purpose of making funds available to that cooperative or entity, under the same terms and conditions as the funds are obtained by such entity from the bank for cooperatives or agricultural credit bank.

(4) Domestic lessors, to finance facilities or equipment leased to eligible cooperatives of other entities eligible to borrow under paragraph (c)(1), (c)(2), or (c)(3) of this section.

(d) *Scope of financing.* A bank for cooperatives may make loans to meet any credit need which will enable a cooperative to perform those functions or powers prescribed in §613.3110(a) which will benefit its members. A bank may also make loans to a cooperative otherwise eligible to borrow for purposes not directly related to such primary functions or powers, so long as a finding is made that the amount to be lent is reasonably modest in relation to the total credit provided and such business purpose(s) will enhance the well-being of the members and patrons.

[47 FR 12143, Mar. 22, 1982, as amended at 55 FR 24879, June 19, 1990; 55 FR 28511, July 11, 1990; 55 FR 28885, July 16, 1990]

§613.3120 International lending.

To be eligible to borrow from a bank for cooperatives under section 3.7(b) of the Act and subpart Q of part 614 of these regulations, a person must be:

(a) An eligible cooperative as defined in §613.3110(b);

(b) A party with respect to a transaction with a voting stockholder of the bank for the import or export of agricultural commodities, farm supplies, or aquatic products through purchases, sales, or exchanges, that substantially benefits the stockholder; or

(c) A party in which an eligible cooperative, as defined in §613.3110(b), has at least a minimum ownership interest, provided the loan is for the purpose of facilitating a transaction of the eligible cooperative for the import or export of agricultural commodities, farm supplies or aquatic products and substantially benefits the eligible cooperative.

[55 FR 24879, June 19, 1990, as amended at 55 FR 28885, July 16, 1990]

Subpart E—Nondiscrimination in Lending

§613.3145 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) *Applicant* means any person who requests or who has received an extension of credit from a creditor and includes any person who is or may become contractually liable regarding an extension of credit.

(b) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(c) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with:

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(d) *Handicap* means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment,

but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

(e) *Residential real estate-related transaction* means any of the following:

(1) The making or purchasing of loans or providing other financial assistance:

(i) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(ii) Secured by residential real estate.

(2) The selling, brokering, or appraising of residential real property.

[57 FR 13637, Apr. 17, 1992]

§ 613.3150 Nondiscrimination in lending and other services.

(a) No Farm Credit institution may discriminate in making credit or other financial assistance available in a residential real estate-related transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

(b) No Farm Credit institution may discriminate in any aspect of a credit transaction or a financial service involving a credit transaction because of:

(1) Race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); or

(2) The fact that all or part of the applicant's income derives from any public assistance program; or

(3) The fact that the applicant has in good faith exercised any right under title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act.

(c) Prohibited practices under this section include, but are not limited to, discrimination in fixing the amount, interest rate, duration, or other terms or conditions of any loan or a financial service involving a credit transaction or in the purchase of loans and securities on the basis of race, color, religion, sex, handicap, familial status (having one or more children under the age of 18), marital status, age (provided the applicant has the capacity to enter into a binding contract), or national origin.

(d) Nothing in this subpart shall be deemed to change the eligibility requirements imposed by the Farm Credit Act of 1971, as amended, or any Farm Credit Administration regulation adopted pursuant thereto.

[57 FR 13638, Apr. 17, 1992]

§ 613.3151 Nondiscrimination in applications.

(a) No Farm Credit institution may discourage or refuse to allow, receive, or consider any application, request, or inquiry regarding an eligible loan or other eligible credit service or discriminate in imposing conditions upon, or in processing, any such application, request, or inquiry on the basis of:

(1) Race, color, religion, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), or national origin, as prescribed under title VII (the Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended by the Equal Credit Opportunity Act Amendments of 1976 (15 U.S.C. 1601 *et seq.*), and the Board of Governors of the Federal Reserve System's implementing regulation (12 CFR part 202); and

(2) Race, color, religion, sex, national origin, handicap, or familial status, as prescribed under title VIII (the Fair Housing Act) of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601 *et seq.*), and the Department of Housing and Urban Development's implementing regulations (24 CFR part 100).

(b) The provisions of paragraph (a) of this section shall apply whenever:

(1) An application is made for any such loan or other credit service; or

(2) A request is made for forms or papers to be used to make application for any such loan or other credit service; or

(3) An inquiry is made about the availability of such loan or other credit service.

[57 FR 13638, Apr. 17, 1992]

§ 613.3152 Nondiscriminatory appraisal.

No Farm Credit institution shall discriminate against any person on the basis of race, color, religion, sex, handicap, familial status, or national origin when conducting, using, or relying upon an appraisal of residential real

property that is subject to sale, rental, or other financing transaction.

[57 FR 13638, Apr. 17, 1992]

§613.3160 Nondiscriminatory advertising.

(a) A Farm Credit institution that directly or through third parties engages in any form of advertising shall not use words, phrases, symbols, directions, forms, or models in such advertising which express, imply or suggest a policy of discrimination or exclusion in violation of the provisions of title VIII (the Fair Housing Act) of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (42 U.S.C. 3601–3631); the Department of Housing and Urban Development's implementing regulations (24 CFR parts 100 and 109), and title VII (the Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended by the Equal Credit Opportunity Act Amendments of 1976 (15 U.S.C. 1691–1691f); and the Board of Governors of the Federal Reserve System's implementing regulation (12 CFR part 202), or this subpart.

(b) Written advertisements relating to dwellings shall include a facsimile of the following logotype and legend:

[37 FR 16932, Aug. 23, 1972, as amended at 57 FR 13638, Apr. 17, 1992]

§613.3170 Equal housing lender poster.

(a) Each Farm Credit institution that makes loans for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling shall post and maintain an Equal Housing Lender Poster in the lobby of each of its offices. The poster shall be in a prominent place readily apparent to all persons seeking such loans.

(b) The Equal Housing Lender Poster shall be at least 11 inches by 14 inches in size, and shall bear the logotype and legend set forth in §613.3160(b) of this subpart and the following text:

WE DO BUSINESS IN ACCORDANCE WITH FEDERAL FAIR LENDING LAWS

(The Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988)

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18), TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or deny any loan secured by a dwelling; or
- Discriminate in fixing the amount, interest rate, duration, application procedures, or other terms or conditions of such a loan, or in appraising property.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410, 1–800–669–9777 (Toll Free), 1–800–927–9275 (TDD), for processing under the Federal Fair Housing Act

AND TO:

Farm Credit Administration, Office of Congressional and Public Affairs, 1501 Farm Credit Drive, McLean, VA 22102–5090, 703–883–4056, 703–883–4444 (TDD), for processing under Farm Credit Administration Regulations

UNDER THE EQUAL CREDIT OPPORTUNITY ACT

(The Consumer Credit Protection Act, as amended by the Equal Credit Opportunity Act Amendments of 1976)

IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

• On the basis of race, color, national origin, religion, sex, marital status, or age,

• Because income is from public assistance, or

• Because a right was exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Farm Credit Administration, Office of Congressional and Public Affairs, 1501 Farm Credit Drive, McLean, VA 22102–5090, 703–883–4056, 703–883–4444 (TDD).

[57 FR 13638, Apr. 17, 1992]

§ 613.3175 Complaints.

(a) Complaints regarding discrimination in lending by a Farm Credit institution under the Fair Housing Act shall be referred to the Assistant Secretary for Fair Housing and Equal Opportunity, United States Department of Housing and Urban Development, Washington, DC 20410, and to the Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virginia 22102–5090.

(b) Complaints regarding discrimination in lending by a Farm Credit institution under the Equal Credit Opportunity Act shall be referred to the Office of Congressional and Public Affairs, Farm Credit Administration, McLean, Virginia 22102–5090.

[57 FR 13639, Apr. 17, 1992]

PART 614—LOAN POLICIES AND OPERATIONS

Subpart A—Lending Authorities

Sec.
614.4000 Farm Credit Banks.
614.4010 Agricultural credit banks.
614.4020 Banks for cooperatives.
614.4030 Federal land credit associations.
614.4040 Production credit associations.
614.4050 Agricultural credit associations.
614.4060 Affiliates established pursuant to section 8.5(e)(1) of the Farm Credit Act of 1971.

Subpart B—Chartered Territories

614.4070 Loans and chartered territory—Farm Credit Banks, agricultural credit banks, Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.
614.4080 Loans and chartered territory—banks for cooperatives.

Subpart C—Bank/Association Lending Relationship

614.4100 Policies governing lending through Federal land bank associations.
614.4110 Transfer of direct lending authority to Federal land bank associations and agricultural credit associations.
614.4120 Policies governing extensions of credit to direct lender associations.
614.4130 Direct loans to associations.
614.4135 Bank supervision of associations.
614.4140 Association responsibilities.
614.4145 Bank guideline responsibilities.

Subpart D—General Loan Policies for Banks and Associations

614.4150 Sound loan.
614.4160 Credit factors.
614.4165 Special credit needs.
614.4170 [Reserved]

Subpart E—Loan Terms and Conditions

614.4200 General requirements.
614.4210 Long-term real estate loans.
614.4220 Short- and intermediate-term loans.
614.4222 Non-farm rural home loans.
614.4230 Loans to eligible cooperatives.
614.4231 Certain seasonal commodity loans to cooperatives.
614.4232 Loans to domestic lessors.
614.4233 International loans.

Subpart F—Collateral Evaluation Requirements

614.4240 Collateral definitions.
614.4245 Collateral evaluation policies.
614.4250 Collateral evaluation standards.
614.4255 Independence requirements.
614.4260 Evaluation requirements.
614.4265 Real property evaluations.
614.4266 Personal and intangible property evaluations.
614.4267 Professional association membership; competency.

Subpart G—Interest Rates and Charges

614.4270 Policy.
614.4280 Interest rates.
614.4281 Discounts and related fees.
614.4290 Interest on past due loans.
614.4300 Other charges and fees.

614.4320 Production credit associations.
614.4321 Differential interest rate programs.

Subpart H—Loan Purchases and Sales

614.4325 Purchase and sale of interests in loans.
614.4330 Loan participations.
614.4335 Borrower stock requirements.
614.4336 Borrower rights.
614.4337 Disclosure to borrowers.

Subpart I—Loss-Sharing Agreements

614.4340 General.
614.4341 Financial assistance.
614.4345 Guaranty agreements.

Subpart J—Lending Limits

614.4350 Definitions.
614.4351 Computation of lending limit base.
614.4352 Farm Credit Banks and agricultural credit banks.
614.4353 Direct lender associations.
614.4354 Federal land bank associations.
614.4355 Banks for cooperatives.
614.4356 Banks for cooperatives look-through notes.
614.4357 Computation of obligations.
614.4358 Attribution rules.
614.4359 Lending limit violations.
614.4360 Transition.

Subpart K—Disclosure of Loan Information

614.4365 Applicability.
614.4366 Definitions.
614.4367 Required disclosures—in general.
614.4368 Disclosure of differential interest rates.

Subpart L—Actions on Applications; Review of Credit Decisions

614.4440 Definitions.
614.4441 Notice of action on loan application.
614.4442 Credit Review Committee.
614.4443 Review process.
614.4444 Records.

Subpart M—Loan Approval Requirements

614.4450 General requirements.
614.4460 Loan approval responsibility.
614.4470 Loans subject to bank approval.

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

614.4510 General.
614.4511 Federal land bank association compensation.
614.4512 Definitions.
614.4513 Uninsured voluntary and involuntary accounts.
614.4514 Protection of borrowers who meet all loan obligations.
614.4515 Restructuring policy and reporting.
614.4516 Restructuring policy and procedures.
614.4517 Restructuring decision.
614.4518 Notice of denial of restructuring and right to review.
614.4519 Notice before foreclosure; limitation on foreclosure.
614.4520 Review of restructuring for certified institutions; reporting.
614.4521 Participation in State agricultural loan mediation programs.
614.4522 Right of first refusal.

Subpart O—Special Lending Programs

614.4525 General.
614.4530 Special loans, production credit associations and agricultural credit associations.

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

614.4540 Definitions.
614.4545 General.
614.4550 Basic eligibility criteria.
614.4555 Review of denial of access based on eligibility.
614.4560 Establishing and maintaining access.
614.4565 Lending limit.
614.4570 General collateral requirements.
614.4580 Use of funds.
614.4590 General financing agreement.
614.4600 Methods of financing.
614.4610 Obligations eligible for discount or purchase.
614.4620 Multiple ownership.
614.4630 Insolvency of another financing institution.
614.4640 Rates and fees.
614.4650 Basis for revocation of access.
614.4660 Place of discount.

Subpart Q—Banks for Cooperatives Financing International Trade

614.4700 Financing foreign trade receivables.
614.4710 Bankers acceptance financing.
614.4720 Letters of credit.
614.4800 Guarantees and contracts of suretyship.
614.4810 Standby letters of credit.
614.4900 Foreign exchange.

Subpart R—Secondary Market Authorities

614.4910 Basic authorities.

Subpart S—Flood Insurance Requirements

614.4920 Purpose and scope.
614.4925 Definitions.

614.4930 Requirement to purchase flood insurance where available.
614.4935 Escrow requirement.
614.4940 Required use of standard flood hazard determination form.
614.4945 Forced placement of flood insurance.
614.4950 Determination fees.
614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.
614.4960 Notice of servicer's identity.
APPENDIX A TO SUBPART S OF PART 614—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE

AUTHORITY: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart A—Lending Authorities

SOURCE: 55 FR 24880, June 19, 1990, unless otherwise noted.

§ 614.4000 Farm Credit Banks.

(a) *Long-term real estate lending.* Except to the extent such authorities are transferred pursuant to section 7.6 of the Act, Farm Credit Banks are authorized to make, subject to the requirements of §§ 614.4200 and 614.4210, real estate mortgage loans of not less than 5 years nor more than 40 years and continuing commitments to make such loans to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible in accordance with § 613.3020;

(2) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(4) Farm-related businesses, in accordance with § 613.3050.

(b) *Extensions of credit to Farm Credit direct lender associations.* Farm Credit Banks are authorized to make loans and extend other similar financial assistance to associations with direct lending authority and discount for or purchase from such associations, with the association's endorsement or guaranty, any note, draft, and other obligations for loans that have been made in accordance with the provisions of subparts D and E of part 614 of these regulations. Such extensions of credit shall be made pursuant to a written financing agreement meeting the requirements of § 614.4130(b).

(c) *Extensions of credit to other financing institutions.* Farm Credit Banks are authorized to make loans and extend other similar financial assistance to any national bank, State bank, trust company, agricultural credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers or any corporation engaged in the making of loans to farmers and ranchers or producers or harvesters of aquatic products (collectively, ''other financing institutions''), for purposes eligible for financing by a production credit association in accordance with § 614.4130 and subpart P of this part. Farm Credit Banks are authorized to discount for or purchase from such institutions, with the institution's endorsement or guaranty, notes, drafts, and other obligations or loans made to persons and for purposes eligible for financing by a production credit association, in accordance with § 614.4130 and subpart P of this part.

(d) *Loan participations.* (1) Subject to the requirements of subpart H of part 614 and paragraph (d)(2) of this section, a Farm Credit Bank may enter into loan participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title I of the Act:

(ii) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock

or participation certificate requirements of the originating institution are met; and

(2) A Farm Credit Bank may participate in loans financing operations outside its chartered territory only if the requirements of §614.4070 are met.

(e) *Other interests in loans.* (1) Subject to the requirements of subpart H of this part, Farm Credit Banks may sell interests in loans only to:

(i) Farm Credit System institutions authorized to purchase such interests;

(ii) Other lenders that are not Farm Credit System institutions; and

(iii) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, Farm Credit Banks may purchase interests other than participation interests in loans and nonvoting stock from other Farm Credit System institutions.

(3) Farm Credit Banks, in their capacity as certified agricultural mortgage marketing facilities under title VIII of the Act, may purchase interests in loans (other than participation interests authorized in paragraph (d) of this section) from institutions other than Farm Credit System institutions only for the purpose of pooling and securitizing such loans under title VIII of the Act.

(4) A Farm Credit Bank may purchase an interest in a pool of subordinated participation interests that contains a subordinated participation interest in a loan it has originated to satisfy the requirements of title VIII of the Act with respect to such loans.

(f) *Residual powers after the transfer of lending authority to an association.* After transferring its authority to make and participate in long-term real estate loans to an agricultural credit association or a Federal land credit association pursuant to section 7.6(a) of the Act and subpart E of part 611 of these regulations, a Farm Credit Bank retains residual authority to:

(1) Enter into loan participation agreements pursuant to paragraph (d) of this section;

(2) Purchase or sell other interests in loans in accordance with paragraph (e) of this section; and

(3) Make long-term real estate loans in accordance with paragraph (a) of this section in areas of its chartered territory where no active association operates.

[55 FR 24880, June 19, 1990, as amended at 57 FR 38246, Aug. 24, 1992; 57 FR 43290, Sept. 18, 1992]

§614.4010 Agricultural credit banks.

(a) *Long-term real estate lending.* Except to the extent such authorities are transferred pursuant to section 7.6 of the Act, agricultural credit banks are authorized to make, subject to the requirements of §§614.4200 and 614.4210, real estate mortgage loans of not less than 5 years nor more than 40 years and continuing commitments to make such loans to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible in accordance with §613.3020;

(2) Persons qualifying under §613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) Residents of rural areas to finance owner-occupant housing, in accordance with §613.3040; and

(4) Farm-related businesses, in accordance with §613.3050.

(b) *Extensions of credit to Farm Credit direct lender associations.* Agricultural credit banks are authorized to make loans and extend other similar financial assistance to associations with direct lending authority and discount for or purchase from such associations, with the association's endorsement or guaranty, any note, draft, and other obligations for loans made by the association in accordance with the provisions of this part. Such extensions of credit shall be made pursuant to a written financing agreement meeting the requirements of §614.4130(b).

(c) *Extensions of credit to other financing institutions.* Agricultural credit banks are authorized to make loans and extend other similar financial assistance to any national bank, State bank, trust company, agricultural

credit corporation, incorporated livestock loan company, savings institution, credit union, or any association of agricultural producers or corporation engaged in the making of loans to farmers, ranchers, or producers or harvesters of aquatic products (collectively, ''other financing institutions''), for purposes eligible for financing by a production credit association, in accordance with § 614.4130 and subpart P of this part. Agricultural credit banks are authorized to discount for or purchase from such other financing institutions, with the institution's endorsement or guaranty, notes, drafts, and other obligations or loans made to persons and for purposes eligible for financing by a production credit association, in accordance with the requirements of § 614.4130 and subpart P of this part.

(d) *Extensions of credit to or on behalf of eligible cooperatives.* Agricultural credit banks are authorized to make loans and commitments and extend other technical and financial assistance, including but not limited to, collateral custody, discounting notes and other obligations, guarantees, and currency exchanges necessary to service transactions financed under paragraphs (d)(4) and (d)(5) of this section, to:

(1) Eligible cooperatives, as defined in § 613.3110, in accordance with §§ 614.4230, 614.4231, 614.4232, 614.4233, and subpart Q of part 614;

(2) Other eligible entities, as defined in § 613.3110(c), in accordance with §§ 614.4230, 614.4231, and 614.4232;

(3) Domestic lessors, for the purpose of providing leased assets to stockholders of the bank eligible to borrow under section 3.7(a) of the Act for use in such stockholders' operations in the United States, in accordance with § 614.4232;

(4) Domestic or foreign parties with respect to a transaction with a voting stockholder of the bank, for the export or import of agricultural commodities, farm supplies, or aquatic products through purchases, sales or exchanges, provided such stockholder substantially benefits as a result of such extension of credit or assistance, in accordance with policies of the bank's board, § 614.4233, and subpart Q of part 614; and

(5) Domestic or foreign parties in which a voting stockholder of the bank has a minimum ownership interest, for the purpose of facilitating such stockholder's export or import operations of the type described in paragraph (d)(3) of this section, provided the stockholder substantially benefits as a result of such extension of credit or assistance, in accordance with policies of the bank's board, § 614.4233, and subpart Q of part 614.

(e) *Loan participations.* (1) Subject to the requirements of subpart H of this part and paragraph (d)(2) of this section, an agricultural credit bank may enter into loan participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under the Act;

(ii) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met; and

(2) An agricultural credit bank may participate in loans under titles I and II financing operations outside its chartered territory only if the requirements of § 614.4070 are met.

(f) *Other interest in loans.* (1) Subject to the requirements of subpart H of this part, agricultural credit banks may sell interests in loans, except those originated under paragraph (d) of this section, only to:

(i) Farm Credit System institutions authorized to purchase such interests;

(ii) Other lenders that are not Farm Credit System institutions; and

(iii) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, agricultural credit banks may purchase interests other than participation interests in loans and nonvoting stock from other Farm Credit System institutions.

(3) Agricultural credit banks, in their capacity as certified agricultural mortgage marketing facilities under title VIII of the Act, may purchase interests in loans (other than participation interests authorized in paragraph (e) of this section) from institutions other than Farm Credit System institutions only for the purpose of pooling and securitizing such loans under title VIII of the Act.

(4) An agricultural credit bank may purchase an interest in a pool of subordinated participation interests that contains a subordinated participation interest in a loan it has originated, to satisfy the requirements of title VIII of the Act with respect to such loans.

(g) *Residual powers after the transfer of lending authority to an association.* After transferring its authority to make and participate in long-term real estate loans to an agricultural credit association or a Federal land credit association pursuant to section 7.6(a) of the Act and subpart E of part 611 of these regulations, an agricultural credit bank retains residual authority to:

(1) Enter into loan participation agreements pursuant to paragraph (e) of this section;

(2) Purchase or sell other interests in loans in accordance with paragraph (f) of this section; and

(3) Make long-term real estate loans in accordance with paragraph (a) of this section in areas of its chartered territory where no active association operates.

[55 FR 24880, June 19, 1990, as amended at 57 FR 38246, Aug. 24, 1992; 57 FR 43290, Sept. 18, 1992]

§614.4020 Banks for cooperatives.

(a) Banks for cooperatives are authorized to make loans and commitments and extend other technical and financial assistance, including but not limited to, collateral custody, discounting notes and other obligations, guarantees, and currency exchanges necessary to service transactions financed under paragraphs (a)(4) and (a)(5) of this section, to:

(1) Eligible cooperatives, as defined in §613.3110, in accordance with §§614.4230, 614.4231, 614.4232, 614.4233, and subpart Q of this part;

(2) Other eligible entities as defined in §613.3110(c), in accordance with §§614.4230, 614.4231, and 614.4232;

(3) Domestic lessors, for the purpose of providing leased assets to stockholders of the bank eligible to borrow under section 3.7(a) of the Act for use in such stockholder's operations in the United States, in accordance with §614.4232;

(4) Domestic or foreign parties with respect to a transaction with a voting stockholder of the bank, for the export or import of agricultural commodities, farm supplies, or aquatic products through purchases, sales or exchanges, provided such stockholder substantially benefits as a result of such extension of credit or assistance, in accordance with policies of the bank's board and subpart Q of this part; and

(5) Domestic or foreign parties in which a voting stockholder of the bank has an ownership interest, for the purpose of facilitating the export or import operations of the type described in paragraph (a)(4) of this section, in accordance with board policy and subpart Q of this part.

(b) *Loan participations.* Subject to the requirements of subpart H of this part, a bank for cooperatives may enter into loan participation agreements with:

(1) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title III of the Act;

(2) Farm Credit banks and associations that are direct lenders on loans of the type it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met.

§614.4030 Federal land credit associations.

(a) *Long-term real estate lending.* Federal land credit associations are authorized to make, subject to the requirements of §§614.4200 and 614.4210, real estate mortgage loans of not less than 5 years nor more than 40 years and continuing commitments to make such loans to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who

are eligible to borrow in accordance with § 613.3020;

(2) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(4) Farm-related businesses, in accordance with § 613.3050.

(b) *Loan participations.* (1) Subject to the requirements of subpart H of this part and paragraph (b)(2) of this section, Federal land credit associations may enter into participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title I of the Act:

(ii) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met;

(2) A Federal land credit association may participate in loans financing operations outside its chartered territory only if the requirements of § 614.4070 are met.

(c) *Other interests in loans.* (1) Subject to the requirements of subpart H of this part and the supervision of their respective funding banks, Federal land credit associations may sell interests in loans made under paragraph (a) of this section only to:

(i) Farm Credit System institutions, as authorized by their respective funding banks;

(ii) Other lenders that are not Farm Credit System institutions, as authorized by their respective funding banks; and

(iii) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, Federal land credit associations may purchase interests in loans that comply with the requirements of paragraph (a) of this section and nonvoting stock from Farm Credit System institutions.

(3) Federal land credit associations, in their capacity as certified agricultural mortgage marketing facilities under title VIII of the Act, may purchase interests in loans (other than participation interests under paragraph (b) of this section) from institutions other than Farm Credit System institutions for the purpose of pooling and securitizing such loans under title VIII of the Act.

(4) A Federal land credit association may purchase an interest in a pool of subordinated participation interests that contains a subordinated participation interest in a loan it has originated, to satisfy the requirements in title VIII of the Act.

[55 FR 24880, June 19, 1990, as amended at 57 FR 38247, Aug. 24, 1992]

§ 614.4040 Production credit associations.

(a) *Short- and intermediate-term lending.* Production credit associations are authorized to make or guarantee, subject to the requirements of §§ 614.4200, 614.4220, and 614.4222, short- and intermediate-term loans and provide other similar financial assistance for a term not more than 7 years, or such longer periods, not to exceed 10 years, as are set forth in policies approved by its funding bank to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible to borrow in accordance with § 613.3020;

(2) Persons qualifying under § 613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products;

(3) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(4) Farm-related businesses, in accordance with § 613.3050.

(b) *Longer intermediate-term lending.* Production credit associations are authorized, subject to the requirements of §§ 614.4200 and 614.4220, to make or guarantee loans with terms of up to 15 years to producers or harvesters of aquatic products for major capital expenditures, including but not limited

to the purchase of vessels, construction or purchase of shore facilities, and similar purposes directly related to the producing or harvesting operation.

(c) *Loan participations.* (1) Subject to the requirements of subpart H of this part and paragraph (c)(2) of this section, a production credit association may enter into participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under title II of the Act; and

(ii) Farm Credit banks and associations that are direct lenders on loans it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met.

(2) A production credit association may participate in loans financing operations outside its chartered territory only if the requirements of §614.4070 are met.

(d) *Other interests in loans.* (1) Subject to the requirements of subpart H of this part and the supervision of their respective funding banks, production credit associations may sell interests in loans that are made under paragraph (a) of this section to:

(i) Banks of the Farm Credit System, as authorized by their respective funding banks; and

(ii) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, production credit associations, as authorized by their respective funding banks, may purchase interests in loans that comply with the requirements of paragraph (a) of this section and nonvoting stock from banks of the Farm Credit System.

(3) Production credit associations, in their capacity as certified mortgage marketing facilities under title VIII of the Act, may purchase from Farm Credit System institutions and institutions that are not Farm Credit System institutions interests in loans (other than participation interests authorized by paragraph (c) of this section) for the purpose of pooling and securitizing such loans under title VIII of the Act.

(4) A production credit association may purchase an interest in a pool of subordinated participation interests that contains a subordinated participation interest in a loan it has originated, to satisfy the requirements of title VIII of the Act.

[55 FR 24880, June 19, 1990; 55 FR 28511, July 11, 1990, as amended at 57 FR 38247, Aug. 24, 1992]

§614.4050 Agricultural credit associations.

(a) *Long-term real estate lending.* Agricultural credit associations are authorized to make, subject to the requirements of §§614.4200 and 614.4210, real estate mortgage loans of not less than 10 nor more than 40 years, and continuing commitments to make such loans to:

(1) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible to borrow in accordance with §613.3020;

(2) Persons qualifying under §613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products.

(3) Residents of rural areas to finance owner-occupant housing, in accordance with §613.3040; and

(4) Farm-related businesses, in accordance with §613.3050.

(b) *Short- and intermediate-term lending.* (1) Agricultural credit associations are authorized to make or guarantee, subject to the requirements of §§614.4200, 614.4220, and 614.4222, short- and intermediate-term loans and provide other similar financial assistance for a term not more than 10 years (15 years for aquatic producers and harvesters) to:

(i) Farmers, ranchers, or producers or harvesters of aquatic products who are eligible to borrow in accordance with §613.3020;

(ii) Persons qualifying under §613.3045 for financing of basic processing and marketing activities of eligible farmers, ranchers, or producers or harvesters of aquatic products.

(iii) Residents of rural areas to finance owner-occupant housing, in accordance with § 613.3040; and

(iv) Farm-related businesses, in accordance with § 613.3050.

(2) Agricultural credit associations are authorized, subject to the requirements of §§ 614.4200 and 614.4220, to make or guarantee loans for terms of up to 15 years to producers or harvesters of aquatic products for major capital expenditures, including, but not limited to, the purchase of vessels, construction or purchase of shore facilities, and similar purposes directly related to the producing or harvesting operation.

(c) *Loan participations.* (1) Subject to the requirements of subpart H of this part and paragraph (c)(2) of this section, agricultural credit associations may enter into participation agreements with:

(i) Farm Credit banks and associations that are direct lenders and lenders that are not Farm Credit institutions on loans of the type it is authorized to make under titles I and II of the Act; and

(ii) Farm Credit banks and associations that are direct lenders on loans of the type it is not authorized to make, provided the borrower eligibility, membership, term, amount, loan security, and stock or participation certificate requirements of the originating institution are met.

(2) Agricultural credit associations may participate in loans financing operations outside its chartered territory only if the requirements of § 614.4070 are met.

(d) *Other interests in loans.* (1) Subject to the requirements of subpart H of this part and the supervision of their respective funding banks, agricultural credit associations may sell:

(i) Interests in loans made under paragraph (a) of this section only to:

(A) Farm Credit System institutions, as authorized by their respective funding banks;

(B) Lenders that are not Farm Credit System institutions, as authorized by their respective funding banks; and

(C) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(ii) Interests in loans made under paragraph (b) of this part only to:

(A) Banks of the Farm Credit System, as authorized by their respective funding banks; and

(B) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, agricultural credit associations may purchase:

(i) Interests in loans that comply with the requirements in paragraph (a) of this section from institutions of the Farm Credit System;

(ii) Interests in loans that comply with the requirements of paragraph (b) of this section from banks of the Farm Credit System; and

(iii) Nonvoting stock from institutions of the Farm Credit System.

(3) Agricultural credit associations, in their capacity as certified agricultural mortgage marketing facilities under title VIII of the Act, may purchase interests in loans, other than participation interests authorized by paragraph (c) of this section, from institutions other than Farm Credit System institutions for the purpose of pooling and securitizing such loans under title VIII of the Act.

(4) An agricultural credit association may purchase an interest in a pool of subordinated participation interests that contains a subordinated participation interest in a loan it has originated, to satisfy the requirements in title VIII of the Act.

[55 FR 24880, June 19, 1990; 55 FR 28511, July 11, 1990, as amended at 57 FR 38247, Aug. 24, 1992]

§ 614.4060 Affiliates established pursuant to section 8.5(e)(1) of the Farm Credit Act of 1971.

An affiliate established by one or more Farm Credit System institutions pursuant to section 8.5(e)(1) of the Act and § 611.1137 of this chapter, as a certified agricultural mortgage marketing facility, may purchase loans from Farm Credit System institutions and institutions other than Farm Credit System institutions in accordance with

title VIII of the Act and any applicable regulation promulgated thereunder.

[57 FR 38247, Aug. 24, 1992]

Subpart B—Chartered Territories

§614.4070 Loans and chartered territory—Farm Credit Banks, agricultural credit banks, Federal land bank associations, Federal land credit associations, production credit associations, and agricultural credit associations.

(a) A bank or association chartered under title I or II of the Act may finance eligible borrower operations conducted wholly within its chartered territory regardless of the residence of the applicant.

(b) A bank or association operating under title I or II of the Act may finance the operations of a borrower headquartered and operating in its territory even though the operation financed is conducted partially outside its territory, provided notice is given to all Farm Credit institutions providing similar credit in the territory(ies) in which the operations being financed are conducted. A bank or association operating under title I or II of the Act may lend to a borrower headquartered outside its territory to finance eligible borrower operations that are conducted partially within its territory and partially outside its territory only if the concurrence of Farm Credit institutions providing similar credit for the territories in which the operations are conducted is obtained.

(c) A bank or association chartered under title I or II of the Act may finance eligible borrower operations conducted wholly outside its chartered territory, provided such loans are authorized by the policies of the bank and/or association involved, do not constitute a significant shift in loan volume away from the bank or association's assigned territory, and are made and administered in accordance with paragraphs (c)(1) and (c)(2) of this section.

(1) If a loan is made to an eligible borrower whose operations are conducted wholly outside the chartered territory of the lending bank or association, the lending institution shall obtain concurrence of all Farm Credit institutions providing similar credit in the territory(ies) in which the operation being financed is conducted.

(2) Loans to finance eligible borrower operations conducted wholly outside a bank's or association's territory shall be appropriately designated by the bank or association to provide adequate identification of the number and volume of such loans, which shall be monitored by the bank or association.

[55 FR 24882, June 19, 1990]

§614.4080 Loans and chartered territory—banks for cooperatives.

Loans made under title III by banks for cooperatives and agricultural credit banks may be made to eligible domestic parties domiciled within any territory that may be served by Farm Credit institutions under section 1.2 of the Act and to eligible foreign parties without regard to domicile.

[55 FR 24882, June 19, 1990]

Subpart C—Bank/Association Lending Relationship

§614.4100 Policies governing lending through Federal land bank associations.

(a) Farm Credit Banks and agricultural credit banks may delegate authority to make credit decisions to Federal land bank associations that demonstrate the ability to extend and administer credit soundly, provided the association develops, implements and maintains adequate credit administration guidelines, standards, and practices.

(b) The board of directors of each Farm Credit Bank and each agricultural credit bank lending through Federal land bank associations shall adopt policies and procedures governing the exercise of statutory and delegated authorities by such associations. Policies governing the delegated authorities shall:

(1) Define authorities to be delegated;

(2) Require the documented evaluation of the capability and responsibility of individuals exercising delegated authorities;

(3) Provide for reporting of actions taken under delegated authority to the delegating bank;

(4) Provide procedures for periodic review and enforcement;

(5) Provide for withdrawal of authority where appropriate; and

(6) Where redelegation from the association's board to association employees is authorized, require similar control measures to be used.

[55 FR 24883, June 19, 1990]

§ 614.4110 Transfer of direct lending authority to Federal land bank associations and agricultural credit associations.

(a) Upon the transfer of authority to make and participate in long-term agricultural real estate mortgage loans by a Farm Credit Bank or agricultural credit bank to a Federal land bank association pursuant to section 7.6(a) of the Act and subpart E of part 611 of these regulations, the association shall be designated a Federal land credit association and shall have the powers set forth in § 614.4030.

(b) Upon the transfer of the authority to make and participate in long-term real estate loans by a Farm Credit Bank or agricultural credit bank to an agricultural credit association pursuant to section 7.6(d) of the Act, the association shall have all of the powers set forth in § 614.4050.

(c) An association to which such long-term lending authority is to be transferred shall have in place, prior to the transfer, policies and procedures guiding the extension and administration of credit within its territory.

[55 FR 24883, June 19, 1990]

§ 614.4120 Policies governing extensions of credit to direct lender associations.

(a) The board of each Farm Credit Bank and each agricultural credit bank shall adopt policies and procedures governing the making of direct loans to and the discounting of loans for direct lender associations and other financing institutions. The policies and procedures may provide for servicing actions, including limiting funding for loans of certain types or amounts, to be taken pursuant to the general financing agreement when associations do not demonstrate the ability to extend and administer credit soundly or pose excessive risk to the bank. The policies shall require that the amount of credit extended at all times be consistent with sound financial and credit practices. The policies shall require an evaluation of the creditworthiness of the association on the basis of the factors set forth in §§614.4150 and 614.4160, and may permit lending to such institutions on an unsecured basis only if the overall condition of the institution warrants.

(b) The policies and procedures required by paragraph (a) of this section, shall require the execution of a financing agreement between the bank and the borrowing institution that meets the requirements of § 614.4130(b).

[55 FR 24883, June 19, 1990]

§ 614.4130 Direct loans to associations.

(a) *Direct loan limitation*. The total credit extended to a direct lender association under a direct loan and by discounting loans may not at any time exceed the total of that portion of the total loans, including participations purchased from other lenders, considered performing loans in accordance with the percentage as classified in the bank's most recent credit review, or such percentages as may equitably represent the same percentages on a current basis, such alternate procedure to be subject to concurrence of the Farm Credit Administration, the total of investments under Commodity Credit Corporation programs, notes insured or guaranteed by Farmers Home Administration, and in farmers' notes to cooperatives and dealers, etc.; and capital and surplus less the total of the amount invested in the bank and any portion of capital and surplus invested in loans to members, and any estimated losses not protected by reserves.

(b) *General Financing Agreement*. Farm Credit Banks and agricultural credit banks shall require execution of a General Financing Agreement, in form approved by the Farm Credit Administration, as a condition to making direct loans to production credit associations and other financing institutions. Direct loans and advances to other financing institutions will be evidenced by a separate promissory note. Direct loans and advances to production credit associations may be evidenced by a separate promissory note

or as provided in the General Financing Agreement.

(c) Securities and other obligations pledged to the bank by an association pursuant to a general pledge and direct loan agreement, shall be held by the bank as collateral for direct loans made by the bank against such securities, as general collateral to secure all paper discounted for the association, and as security for all other obligations of the association to the bank. In the event it is necessary for a bank to realize on such collateral the proceeds therefrom will be applied in that order.

[37 FR 11424, June 7, 1972. Redesignated and amended at 55 FR 24880 and 24883, June 19, 1990; 58 FR 48791, Sept. 20, 1993]

§614.4135 Bank supervision of associations.

Where credit decisions are vested in associations by law or through delegated authority, district policies, and procedures shall be designed to regulate, control, and review the extension of credit. District policies and procedures shall include guidelines with respect to particular enterprise financing, and limitations with respect to lending in specialized or hazardous areas. The banks shall supervise the credit operations, monitor associations performance and take corrective action when deficiencies occur. District banks shall also assist and supervise associations in the credit training of employees and loan committees.

[37 FR 11424, June 7, 1972. Redesignated at 55 FR 24879, June 19, 1990]

§614.4140 Association responsibilities.

Associations shall conduct their credit operations within their vested or delegated authority in compliance with the guidelines of these regulations and procedures of the district bank. Demonstrated capability in extending sound credit, including the extent to which association boards have established policies and procedures with adequate controls and accountability, shall be weighed heavily by the bank in delegating authority and exercising its supervisory responsibility over association credit operations.

[37 FR 11424, June 7, 1972. Redesignated at 55 FR 24879, June 19, 1990]

§614.4145 Bank guideline responsibilities.

Under policies of its board, each bank shall conduct studies and make and adopt standards for lending and develop and issue adequate credit manuals, operating procedures, and control mechanisms for guidance in the extension and administration of sound and constructive credit. The definition of a sound loan, and the five specific credit factors, along with the total provisions of these regulations on loan policies and operations shall constitute the guidelines under which district policies and procedures shall be constructed. The credit manuals setting forth policies and procedures shall prescribe the forms to be used, including a loan application and an adequate credit file; the minimum supporting credit information and verification required in relation to loan size, complexity and risk exposure; the format and procedures to be followed in loan analysis, minimum standards for loan disbursement, servicing and collections; and such other standards as are necessary for the safe and professional conduct of a lending organization.

[37 FR 11424, June 7, 1972. Redesignated at 55 FR 24879, June 19, 1990]

Subpart D—General Loan Policies for Banks and Associations

§614.4150 Sound loan.

A sound loan is one made to a responsible individual or entity of established integrity who has a creditable operating and financial record, or equivalent characteristics if a new business, in an amount sufficient to accomplish a useful purpose. It should be made in an amount and under terms and conditions that will reasonably assure repayment, usually without adversely affecting the borrower's financial position. It should be supported by sufficient equity or collateral, or both, to afford the lender reasonable protection against loss if adverse conditions occur.

[37 FR 11424, June 7, 1972. Redesignated at 55 FR 24880, June 19, 1990]

§ 614.4160 Credit factors.

Each Farm Credit bank and association shall develop policies and procedures that ensure that its lending practices result in sound loans. The policies and procedures shall ensure that the institution, in evaluating the creditworthiness of the application, analyzes and documents its analysis of the following factors:

(a) The integrity and capability of the applicant(s) to manage the enterprise being financed;

(b) The financial condition of the applicant(s);

(c) The repayment capacity of the applicant(s);

(d) The adequacy and appropriateness of the collateral; and

(e) The constructiveness and practicality of the loan amount, purpose, and terms and conditions.

[55 FR 24883, June 19, 1990; 55 FR 28511, July 11, 1990]

§ 614.4165 Special credit needs.

(a) In the formulation of bank lending policies and procedures, consideration shall be given to the special credit needs of young, beginning, or small farmers, ranchers, and producers or harvesters of aquatic products, and the peculiar needs of borrowers engaged in highly specialized, high-risk enterprises.

(b) When used in this section,

(1) The term *young* farmer, rancher, and producer or harvester of aquatic products means one who is under the age of 35;

(2) The term *beginning* farmer, rancher, and producer or harvester of aquatic products means one who is in the process of establishing an agricultural operation and who has not assumed the full control and risk of such an operation for longer than five years; and

(3) The term *small* farmer, rancher, and producer or harvester of aquatic products means one having sustained gross sales from agricultural or aquatic production and a net worth as prescribed by the Farm Credit Administration.

(c) The board of each Farm Credit Bank, agricultural credit bank, and direct lender association shall adopt policies to establish programs to provide credit and related services to young, beginning, or small farmers, ranchers, and producers or harvesters of aquatic products. Such policies shall outline objectives of the programs and shall include, but not be limited to, the following:

(1) Provisions, relating to coordination among units of the Farm Credit System, which recognize the special requirements of such borrowers and assure that credit and related services are made available to them on a joint and cooperative basis. Such provisions should also emphasize coordination or participation with other credit institutions, especially governmental sources of credit or guarantees.

(2) The requirement that each association board adopt policies establishing parameters within which management is directed to operate in this phase of its lending and services. Capital resources with which to withstand risk and staff resources capable of providing specialized servicing shall be major considerations in program development. Association policies shall be subject to prior approval of the supervising bank.

(3) The specific years of experience and amount of gross sales and net worth to be established under the definition of beginning and small farmer, rancher, or producer or harvester of aquatic products.

(4) Bank supervisory requirements which will ensure:

(i) Uniform identification of loans made to borrowers under such programs;

(ii) Monitoring and evaluation of the associations' operations and achievements;

(iii) Periodic reporting of activities under programs developed and progress toward program objectives.

(d) Each Farm Credit Bank and agricultural credit bank shall provide to the Farm Credit Administration an annual report summarizing the operations and achievements in its chartered territory under such programs. Such reports shall be based on the reports from each association providing services under these programs and shall be in a format prescribed by the Farm Credit Administration.

(e) *Specialized enterprises.* Consideration can be given by bank and association boards to organizing groups of similar specialized borrowers engaged in enterprises involving a high degree of risk into pools by which banks or associations may minimize the higher risk occasioned by financing such specialized enterprises. Where such programs are authorized, the bank board shall adopt appropriate policies that: (1) Define criteria for the selection of specialized high risk enterprises and (2) establish requirements for bank supervisory procedures which will give direction, guidance, and control to association programs.

[46 FR 53022, Oct. 28, 1981, as amended at 55 FR 24883, June 19, 1990]

§614.4170 [Reserved]

Subpart E—Loan Terms and Conditions

SOURCE: 55 FR 24884, June 19, 1990, unless otherwise noted.

§614.4200 General requirements.

(a) *Loan agreement.* The terms and conditions of each loan made by a Farm Credit bank or association shall be set forth in a formal written loan agreement between the borrower and the lender and shall be adequately disclosed to the borrower prior to closing. The form and content of loan agreements shall be in accordance with the policies of the institution's board and may vary according to such criteria as borrower type and amount of the credit extension.

(b) *Notice of approval*—(1) *Loans made under titles I and II of the Act.* When the loan closing will occur more than 15 days after notification of the action taken on the loan is mailed or otherwise provided under section 4.13B of the Act, the notice of approval shall set forth the terms and conditions on which credit will be extended.

(2) *Loans made under title III of the Act.* The documents evidencing approval by a bank for cooperatives shall set out the terms and conditions under which a loan is approved.

(c) *Annual borrower financial statements.* As a condition precedent to making a loan, Farm Credit banks operating under title I and associations operating under title II of the Act shall obtain a verifiable balance sheet and income statement from each borrower that has been certified as true and correct by the borrower. The loan agreement shall require that the borrower provide a verifiable balance sheet and income statement at least annually, except that loans that meet the requirements of an institution's minimum information program having a maximum limitation of $100,000 of outstanding loans and commitments per borrower, and loans with regular and frequently scheduled payments, such as rural housing or other similar amortized consumer-type loans, may be excluded from this requirement, provided there is adequate documentation to support repayment capacity.

§614.4210 Long-term real estate loans.

(a) *First lien requirement.* Long-term real estate mortgage loans made by Farm Credit Banks under §614.4000(a), agricultural credit banks under §614.4010(a), Federal land credit associations under §614.4030, and agricultural credit associations under §614.4050(a), must be secured by a first lien on an interest in real estate comprising agricultural property, an eligible farm-related business, an eligible rural residence, or real estate used as an integral part of an eligible aquatic operation. Additional security may be required for such loans, but shall only be considered supplementary protection and may not be included in the value of the security for purposes of applying the loan-to-value limitations set forth in paragraph (b) of this section for real estate mortgage loans. A borrower who has been requested to provide additional collateral shall be accorded the right to an independent appraisal set forth in §614.4443.

(b) *Loan-to-value percentage.* (1) No funds shall be advanced, under a legally binding commitment or otherwise, if the outstanding loan balance after the advance would exceed 85 percent (97 percent if guaranteed by a Federal, State, or other governmental agency) of the appraised value of the real estate taken as primary security,

established by the most recent appraisal report meeting the requirements of subpart F of this part.

(2) The Farm Credit Administration may, through the exercise of its enforcement powers or otherwise, reduce the maximum loan-to-value percentage to 75 percent for a particular institution when the Farm Credit Administration determines that the lending and business practices of the institution are imprudent.

(3) Notwithstanding the limitations of paragraphs (b)(1) and (b)(2) of this section, the lending institution may advance funds for the payment of taxes or insurance premiums with respect to the real estate, reschedule loan payments, grant partial releases of security interests in the real estate, and take other actions necessary to protect the lender's collateral position—

(i) If there is adequate collateral to support the total amount of the outstanding debt and such action will increase the ability of the debtor to repay the debt; or

(ii) If there is inadequate collateral to support the debt, but the actions are considered necessary to protect the financial interest of the lender in the collateral.

(4) All actions taken pursuant to paragraph (b)(3) of this section shall be in accordance with a policy of the institution's board of directors specifically addressing such exceptions and shall be reported to the board on a regular basis.

(c) *Repayment capacity*. The borrower's earnings history, repayment record, and net earnings projections must satisfactorily support the loan and provide assurance for repayment.

§ 614.4220 Short- and intermediate-term loans.

(a) *Maturities.* (1) Short-term operating loans shall be made with maturities that are appropriate for the purpose of the loan and that coincide with the normal business cycle of the enterprises being financed.

(2) Intermediate-term loans shall be made with maturities appropriate for the purpose of the loan, in accordance with policies established by the association's board and its funding bank.

(b) *Security*. (1) Short- and intermediate-term operating loans shall be unsecured only when the creditworthiness of the borrower warrants.

(2) When specific major capital items, such as new equipment, new or remodeled buildings, or facilities are financed, the term of the loan must be shorter than the useful life of the item, and the amount outstanding must at all times be less than the value of the item after normal depreciation. The loan shall be amortized and the purpose of the loan specifically identified.

(c) *Repayment capacity*. The borrower's earnings history, repayment record, and net earnings projections must satisfactorily support the loan and provide assurance for repayment. For loans with maturities in excess of 7 years, the borrower's earnings history, repayment record, and net earnings projections must provide assurance of repayment in a level amortization period that coincides with the term of the loan.

§ 614.4222 Non-farm rural home loans.

Non-farm rural home loans for the purchase, construction or refinancing of rural residences shall be secured by a first lien interest on the residence being constructed, purchased, or refinanced and shall meet the requirements of § 614.4210. Short- and intermediate-term loans for repairs and improvements to rural homes may be secured by a lien on real estate or such other security as is determined necessary to protect the lender.

[55 FR 24884, June 19, 1990; 55 FR 28511, July 11, 1990]

§ 614.4230 Loans to eligible cooperatives.

Except as otherwise provided in this subpart, loans made under the authority of section 3.7(a) of the Act shall be made on the following terms and conditions:

(a) *Maturity and repayment*. The maturities of loans made under the authority of section 3.7(a) of the Act shall be appropriate for the purpose of the loan.

(1) Seasonal loans shall be primarily for financing current assets and shall normally be repaid within 18 months.

(2) Term loans shall be for financing noncurrent assets or working capital and should generally be made on an amortized basis.

(3) The term of a leveraged lease loan shall not be longer than the total period of the lease.

(b) *Security.* Except as provided in §614.4231, loans made under section 3.7(a) of the Act may be secured or unsecured, as appropriate for the purpose of the loan, the repayment period, and credit factors. Loans scheduled for repayment over an extended period should normally be secured.

[55 FR 24884, June 19, 1990; 55 FR 28511, July 11, 1990]

§614.4231 Certain seasonal commodity loans to cooperatives.

(a) *Definitions.* For the purpose of this section, the following definitions shall apply:

(1) *Commodities* means agricultural goods and merchandise, except for live animals, that are transportable; can be accurately classified by standards of quality and quantity; and enjoy broad regional, national, or international markets within which similar items are regularly traded and the value thereof readily and regularly determined.

(2) *Hedge* means an enforceable contract with a reliable third party to deliver at a designated point of delivery, at a designated time or within a designated period of time, commodities of specified quality and quantity at a specified price. Seller options will not generally invalidate the hedge unless they are of such a nature as to invalidate the entire contract. If options are provided to the purchaser under the contract, the hedge value of the contract shall be determined on the basis of the most pessimistic combination of options. The Commodity Credit Corporation's (CCC) general offer to purchase may be accepted as a valid hedge if loan advance, expiration and maturity dates conform with CCC established availability; if maturity dates and loan agreement restrictions insure compliance with CCC quality and crop year standards; and if the following conditions exist:

(i) *Barley, corn, oats, rye, sorghum, wheat, rice, soybeans, and honey.* Borrower must possess a current letter recognizing it has a CCC approved cooperative marketing association and pledged commodity must not have been previously financed by CCC.

(ii) *Cotton.* Borrower must have entered into a current Form G agreement with CCC and pledged cotton must not have been previously financed by CCC.

(iii) *Peanuts.* Borrower must be eligible to offer commodity to CCC and be a current member and signer of an area peanut marketing agreement.

(b) *Requirements.* Seasonal loans to finance commodities that qualify for special interest rate and lending limit consideration shall be secured and subject to the following requirements:

(1) Loans that are secured by a chattel mortgage, factor's lien, security agreement, or security other than warehouse receipts or other title documents shall not exceed 65 percent of the net value of unhedged or 85 percent of the net value of hedged commodities and the borrower must have sufficient working capital to keep the loan properly margined.

(2) Loans secured by warehouse receipts or other title documents shall not exceed 75 percent of the unhedged net value of the commodity or 90 percent of the hedged value and the borrower must have sufficient working capital to keep the loan properly margined.

(3) Loans secured by contract rights under the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture, special program of payment in kind for acreage diversion for 1983 or subsequent crop years of wheat, corn, grain sorghum, upland cotton, and rice (7 CFR part 1470) shall be eligible for the same net value amounts as loans secured by title documents.

(c) Trust receipts, negotiable bills of lading, shipping documents, drafts and acceptances may be accepted in such amounts and for such periods as reasonable prudence permits as necessary to allow the orderly marketing, handling, or processing of the commodities.

(d) Documents required in conjunction with these loans may be held by a custodian selected by the bank. In such

cases the bank shall provide the custodian written instructions outlining procedures and practice to be followed in the acceptance, handling, and release of all related documents. The custodian shall be adequately bonded. The bank shall provide for periodic review of custodial activities by bank officials and shall establish that activities of the custodian are subject to review and examination by the Farm Credit Administration.

[55 FR 24884, June 19, 1990; 55 FR 28511, July 11, 1990, as amended at 55 FR 28885, July 16, 1990]

§ 614.4232 Loans to domestic lessors.

Loans and financial assistance extended by banks for cooperatives and agricultural credit banks to domestic lessors to finance equipment or facilities leased by a voting stockholder of the bank shall be subject to the following terms and conditions:

(a) The term of the loan shall not be longer than the total period of the lease;

(b) The contract between the lessor and lessee shall establish that the leased assets are effectively under the control of the lessee and that such control shall continue in effect for essentially all of the term of the lease;

(c) The lessee must be a voting stockholder of the bank; and

(d) The leased equipment and facilities must be primarily for use in the lessee's operations in the United States.

§ 614.4233 International loans.

Term loans made by banks for cooperatives and agricultural credit banks under the authority of section 3.7(b) of the Act to foreign or domestic parties to finance export or import transactions with a voting stockholder of the bank and loans to a foreign or domestic party in which a voting stockholder of the bank has at least a minimum ownership interest to facilitate such transactions shall be subject to the conditions of paragraphs (a), (b), and (c) of this section.

(a) The loan shall be denominated in a currency to eliminate foreign exchange risk on repayment.

(b) The borrower's obligations shall be guaranteed or insured against default under such policies as are available in the United States and other countries. Exceptions may be made where a prospective borrower has had a longstanding successful business relationship with an eligible cooperative borrower or an eligible cooperative which is not a borrower if the prospective borrower has a high credit rating as determined by the bank.

(c) For a borrower in which a voting stockholder of the bank has a majority ownership interest, financing may be extended for the full value of the transaction; otherwise, financing may be extended only to approximate the percent of ownership.

[55 FR 24884, June 19, 1990, as amended at 55 FR 28886, July 16, 1990; 55 FR 50544, Dec. 7, 1990; 56 FR 5927, Feb. 14, 1991]

Subpart F—Collateral Evaluation Requirements

SOURCE: 59 FR 46730, Sept. 12, 1994, unless otherwise noted.

§ 614.4240 Collateral definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Abundance of caution*, when used to describe decisions to require collateral, means that the collateral is taken in circumstances in which:

(1) It is not required by statute, regulation, or the institution's policies; and

(2) A prudent lender would extend credit based on a borrower's income and/or other collateral, absent the real estate, and the decision to extend credit was, in fact, based on other sources of revenue or collateral.

(b) *Appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

(c) *Appraisal Foundation* means the Appraisal Foundation established on November 30, 1987, by professional appraisal organizations, as a not-for-profit corporation under the laws of Illinois, in order to enhance the quality of professional appraisals.

(d) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(e) *Business loan* means a loan or other extension of credit to any corporation, general or limited partnership, business trust, joint venture, sole proprietorship, or other business entity (including entities and individuals engaged in farming enterprises).

(f) *Cost approach* means the process by which an evaluator establishes an indicated value by measuring the current market cost to construct a reproduction of or replacement for the improvements, minus the amount of depreciation (physical deterioration, or functional and/or external obsolescence) evident in the structure from all causes, plus the market value of the land.

(g) *Evaluation* means a study of the nature, quality, or utility of, interest in, or aspects of, an asset. An evaluation may take the form of a valuation or an appraisal.

(h) *Fee appraiser* means a qualified evaluator who is not an employee of the party contracting for the completion of the evaluation and who performs an evaluation on a fee basis. For purposes of this subpart, a fee appraiser may include a staff evaluator from another Farm Credit System institution only if the employing institution is not operating under joint management with the contracting institution. In addition, for purposes of personal and intangible collateral evaluations, the term ''fee appraiser'' includes, but is not limited to, certified public accountants, equipment dealers, grain buyers, livestock buyers, and auctioneers.

(i) *FIRREA* means the Financial Institutions Recovery, Reform, and Enforcement Act of 1989.

(j) *Highest and best use* means the reasonable and most probable use of the property that would result in the highest market value of vacant land or improved property, as of the date of valuation; or that use, from among reasonably probable and legally alternative uses, found to be physically possible, appropriately supported, financially feasible, and which results in the highest land value.

(k) *Income capitalization approach* means the procedure that values property by measuring the present value of the expected future benefits of property ownership. This value is derived from either:

(1) Capitalizing a single year's income expectancy or an annual average of several years' income expectancies at a market-derived capitalization rate that reflects a specific income pattern, return on investment, and change in the value of the investment; or

(2) Discounting the annual cashflows for the holding period and the reversion at a specified yield rate or specified yield rates which reflect market behavior.

(l) *Market value* means the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably, and assuming neither is under duress. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and acting in what they consider their best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(m) *Personal property*, for purposes of this subpart, means all tangible and movable property not considered real property or fixtures.

(n) *Qualified evaluator* means an individual who is competent, reputable, impartial, and has demonstrated sufficient training and experience to properly evaluate property of the type that is the subject of the evaluation. For the purposes of this definition, the term ''qualified evaluator'' includes an appraiser or valuator.

(o) *Real estate* means an identified parcel or tract of land, including improvements, if any.

(p) *Real estate-related financial transactions* means any transaction involving:

(1) The sale, lease, purchase, investment in, or exchange of real property, including interests in property or the financing thereof; or

(2) The refinancing of real property or interests in real property; or

(3) The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.

(q) *Real property* means all interests, benefits, and rights inherent in the ownership of real estate.

(r) *Sales comparison approach* means the procedure that values property by comparing the subject property to similar properties located in relatively close proximity, having similar size and utility, and having been recently sold in arm's-length transactions (comparable sales). The sales comparison approach requires the evaluator to estimate the degree of similarity and difference between the subject property and comparable sales. Such comparison shall be made on the basis of conditions of sale, financing terms, market conditions, location, physical characteristics, and income characteristics. Appropriate adjustments shall be made to the sales price of the comparable property based on the identified deficiencies or superiorities of the subject property to arrive at a probable price for which the subject property could be sold on the date of the collateral evaluation.

(s) *State certified appraiser* means any individual who has satisfied the requirements for and has been certified as a real estate appraiser by a State or territory whose requirements for certification currently meet or exceed the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation. No individual shall be a State certified appraiser unless such individual has achieved a passing grade on a suitable examination administered by a State or territory that is consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board of the Appraisal Foundation. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA.

(t) *State licensed appraiser* means any individual who has satisfied the requirements for licensing and has been licensed as a real estate appraiser by a State or territory in which the licensing procedures comply with title XI of FIRREA and in which the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI of FIRREA.

(u) *Transaction value* means:

(1) For loans or other extensions of credit, the amount of the loan, loan commitment, or other extensions of credit;

(2) For sales, leases, purchases, investments in, or exchanges of real property, the market value of the property interest involved; and

(3) For the pools of loans or interests in real property, the transaction value of the individual loans or the market value of the real property interests comprising the pool.

(v) *USPAP* means the Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Foundation.

(w) *Valuation* means the process of estimating a defined value of an identified interest or interests in a specific asset or assets as of a given date. A valuation results from the completion of a collateral evaluation that does not require an appraisal.

§ 614.4245 Collateral evaluation policies.

(a) The board of directors of each Farm Credit System institution that engages in lending or leasing secured by collateral shall adopt well-defined and effective collateral evaluation policies and standards, that comply with the regulations in this subpart, to ensure that collateral evaluations are:

(1) Sufficiently descriptive and detailed to provide ample support to the institution's related credit decisions;

(2) Performed based on criteria established for the purpose of determining

the circumstances under which collateral evaluations will be required and when they will be required. Such criteria must, at a minimum:

(i) Establish when an institution will require a collateral appraisal completed under the USPAP rather than a collateral valuation; and

(ii) Take into account such factors as market trends, market volatility, and various types of credit, loan servicing, collection, and liquidation actions; and

(3) Completed by a qualified evaluator in an unbiased manner.

(b) The policies and standards required by this section shall, at a minimum, address the criteria outlined in §§614.4250 through 614.4267 of this subpart.

(c) A Federal land bank association shall, with the approval of its respective Farm Credit bank, adopt collateral evaluation policies that are consistent with the bank's policies and standards.

§614.4250 Collateral evaluation standards.

(a) When real, personal, or intangible property is taken as security for a loan or is the subject of a lease, an evaluation of such property shall be performed in accordance with §614.4260 and the institutions' policies and procedures. Such a collateral evaluation shall be identified as either a collateral valuation or a collateral appraisal. Specifically, all collateral evaluations must:

(1) Value the subject property based upon market value as defined in §614.4240(l);

(2) Be presented in a written format;

(3) Consider the purpose for which the property will be used and the property's highest and best use, if different from the intended use;

(4) Be sufficiently descriptive to enable the reader to ascertain the reasonableness of the estimated market value and the rationale for the estimate;

(5) Provide sufficient detail (including an identification and description of the property) and depth of analysis to reflect the relevant characteristics and complexity of the subject property;

(6) Analyze and report, as appropriate, for real, intangible, and/or personal property, on:

(i) The current income producing capacity of the property;

(ii) A reasonable marketing period for the property;

(iii) The current market conditions and trends that will affect projected income, to the extent such conditions will affect the value of the property;

(iv) The appropriate deductions and discounts as they would apply to the property, including but not limited to, those based on the condition of the property, as well as the specialization of the operation and property; and

(v) Potential liabilities, including those associated with any hazardous waste or other environmental concerns; and

(7) Include in the evaluation report a certification that the evaluation was not based on a requested minimum valuation or specific valuation or approval of a loan.

(b) For purposes of determining appraisal value as required in section 1.10(a) of the Act, the definition of market value and the requirements of this subpart shall apply.

§614.4255 Independence requirements.

(a) *Prohibitions.* For all personal and intangible property, and for all real property exempted under §614.4260(c) of this subpart, no person may:

(1) Perform evaluations in connection with transactions in which such person has a direct or indirect interest, financial or otherwise, in the loan or subject property;

(2) As a director, vote on or approve a loan decision on which such person performed a collateral evaluation; or

(3) As a director, perform a collateral evaluation in connection with any transaction on which such person made or will be required to make a credit decision.

(b) *Officers and employees.* If the institution's internal control procedures required by §618.8430 of this chapter include requirements for either a prior approval or post-review of credit decisions, officers and employees may:

(1) Participate in a vote or approval involving assets on which they performed a collateral evaluation; or

(2) Perform a collateral evaluation in connection with a transaction on

which they have made or will be required to make a credit decision.

(c) *Real estate appraiser.* Except as provided in § 614.4260(c) of this subpart, all evaluations of real property that serve as the primary security for a loan shall be performed by a qualified real estate appraiser who has no direct or indirect interest, financial or otherwise, in the loan or subject property and is not engaged in the marketing, lending, collection, or credit decision processes of any of the following:

(1) A Farm Credit System institution making or originating the loan;

(2) A Farm Credit System institution operating under common management with the institution making or originating the loan; or

(3) A Farm Credit System institution purchasing an interest in the loan.

(d) *Fee appraisers.* Fee appraisers shall be engaged directly by the Farm Credit System institution or its agent, and shall have no direct or indirect interest, financial or otherwise, in the property or transaction. A Farm Credit System institution may accept a real estate appraisal that was prepared by an appraiser engaged directly by another Farm Credit System institution, by a United States Government agency, a Government-Sponsored Enterprise or by a financial institution subject to title XI of FIRREA.

(e) *Loan purchases.* No employee who, acting as a State licensed or State certified appraiser, performed a real estate appraisal on any collateral supporting a loan shall subsequently participate in any decision related to the loan purchase.

§ 614.4260 Evaluation requirements.

(a) *Valuation.* Valuations of personal and intangible property, as well as real property exempted under paragraph (c) of this section, shall be performed by qualified individuals who meet the established standards of this subpart and the Farm Credit System institution obtaining the collateral valuation.

(b) *Appraisal.* (1) Appraisals for real estate-related financial transactions with transaction values of more than $250,000 shall be performed by a qualified appraiser who is a State licensed or a State certified real estate appraiser.

(2) Appraisals for real estate-related financial transactions with transaction values of more than $1,000,000 shall be performed by a qualified appraiser who is a State certified real estate appraiser.

(c) *Appraisals not required.* An appraisal performed by a State certified or State licensed appraiser is not required for any real estate-related financial transaction in which any of the following conditions are met:

(1) The transaction value is $250,000 or less;

(2) The transaction is a ''business loan'' as defined in § 614.4240(e) that:

(i) Has a transaction value of $1,000,000 or less; and

(ii) Is not dependent on income derived from the sale or cash rental of real estate as the primary source of repayment;

(3) A lien on real property has been taken as collateral in an abundance of caution, and the application, when evaluated on the five basic credit factors, without considering the subject real estate, would support the credit decision that was based on other sources of repayment or collateral;

(4) A lien on real estate is not statutorily required and has been taken for purposes other than the real estate's value;

(5) Subsequent loan transactions (which include but are not limited to loan servicing actions, reamortizations, modifications of loan terms, and partial releases), provided that either:

(i) The transaction does not involve the advancement of new loan funds other than funds necessary to cover reasonable closing costs; or

(ii) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the Farm Credit System institution's real estate collateral protection, even with the advancement of new loan funds;

(6) A Farm Credit System institution purchases a loan or an interest in a loan, pool of loans, or interests in real property, including mortgage-backed securities, provided that:

(i) The appraisal prepared for each loan, pooled loan, or real property interest, when originated, met the standards of this subpart, other Federal regulations adopted pursuant to FIRREA, or the requirements of the government-sponsored secondary market intermediaries under whose auspices the interest is sold; and

(ii) There has been no obvious and material change in market conditions or physical aspects of the property that would threaten the Farm Credit System institution's collateral position, or

(7) A Farm Credit System institution makes or purchases a loan secured by real estate, which loan is guaranteed by an agency of the United States Government and is supported by an appraisal that conforms to the requirements of the guaranteeing agency.

To qualify for exceptions in paragraphs (c)(1) through (c)(7) of this section from the requirements of this subpart, the institution must have documentation justifying the use of such exceptions in the applicable loan file(s). In addition, the institution must document that the repayment of a ''business loan'' is not dependent on income derived from the sale or cash rental of real estate.

(d) *FCA-required appraisals*. The FCA reserves the right to require an appraisal under this subpart whenever it believes it is necessary to address safety and soundness issues.

(e) *Reciprocity*. The requirements of this subpart are satisfied by the use of State certified or State licensed appraisers from any State provided that:

(1) The appraiser is qualified to perform such appraisals;

(2) The applicable Farm Credit System institution has established policies providing for such interstate appraisals; and

(3) The applicable State appraiser licensing and certification agency recognizes the certification or license of the appraiser's State of permanent certification or licensure.

[59 FR 46730, Sept. 12, 1994, as amended at 60 FR 2687, Jan. 11, 1995]

§614.4265 Real property evaluations.

(a) Real estate shall be valued on the basis of market value.

(b) Market value shall be determined by a reasonable valuation method that:

(1) Considers the income capitalization approach, the sales comparison approach, and/or the cost approach, as appropriate, to determine market value;

(2) Explains and documents the elimination of any approach not used.

(3) Reconciles the market values of the applicable approaches; and

(c) Where real estate appraisals or real estate collateral valuations for business loans in excess of $250,000 that would not otherwise be exempted under §614.4260(c) are required, such evaluations shall be completed in accordance with the USPAP and shall include a legal description of the subject property.

(d) At a minimum, the institution shall develop and document the evaluation of the income and debt servicing capacity for the property and operation where the transaction value exceeds $250,000 and the real estate taken as collateral:

(1) Is an integral part of and supports the principal source of loan repayment; or

(2) Is not an integral part of and does not support the principal source of loan repayment, but has demonstrable rental market appeal, is statutorily required, and fully or partially constitutes an integral part of an agricultural or aquatic operation.

(e) The income-earning and debt-servicing capacity established under paragraph (d) of this section on such properties shall be documented as part of the credit analysis for any related loan action, whether or not the income capitalization approach value is used as the basis for the market value conclusion stated in the evaluation report.

(f) Collateral closely aligned with, an integral part of, and normally sold with real estate (fixtures) may be included in the value of the real estate. All other collateral associated with the real estate, but designated as personal property, shall be evaluated as personal property in accordance with §§614.4250 and 614.4266.

(g) The evaluation shall properly identify all nonagricultural influences, including, but not limited to, urban development, mineral deposits, and commercial building development value,

and the reasoning supporting the evaluator's highest and best-use conclusion.

(h) Where an evaluation of real property is completed by a fee appraiser, as defined in § 614.4240(g), the institution's standards shall include provisions for periodic collateral inspections performed by the institution's account officer or appropriate designee.

§ 614.4266 Personal and intangible property evaluations.

(a) Personal property and intangibles shall be valued on the basis of market value in accordance with the institution's evaluation standards and policies.

(b) Personal property evaluations shall include a source of comparisons of value (i.e., equipment dealer listings, Blue Book, market sales reports, etc.) and a description of the property being evaluated, including location of the property and, where applicable, quantity, species/variety, measure/weight, value per unit and in total, type of identification (such as brand, bill of lading, or warehouse receipt), quality, condition, and date.

(c) Evaluations of intangibles shall include a review and description of the documents supporting the property interests and the marketability of the intangible property, including applicable terms, conditions, and restrictions contained in the document that would affect the value of the property.

(d) Where an evaluation of personal or intangible property is completed by a fee appraiser, as defined in § 614.4240(g), the institution's standards shall include provisions for periodic collateral inspections and verification by the institution's account officer or appropriate designee.

(e) When a Farm Credit System institution deems an appraisal necessary, personal or intangible property shall be appraised in accordance with procedures and standards established by the institution by individuals deemed qualified by the institution to complete the work under the USPAP Competency and Ethics Provisions.

[59 FR 46730, Sept. 12, 1994, as amended at 59 FR 50964, Oct. 6, 1994]

§ 614.4267 Professional association membership; competency.

(a) *Membership in appraisal organizations.* A State certified appraiser or a State licensed appraiser may not be excluded from consideration for an assignment for a real estate-related transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(b) *Competency.* All staff and fee evaluators, including appraisers, performing evaluations in connection with real, personal, or intangible property taken as collateral in connection with extensions of credit must meet the qualification requirements of this subpart. However, an evaluator (as defined in § 614.4240(n)) may not be considered competent solely by virtue of being certified, licensed, or accredited. Any determination of competency shall be based on the individual's experience and educational background as they relate to the particular evaluation assignment for which such individual is being considered.

Subpart G—Interest Rates and Charges

SOURCE: 37 FR 11424, June 7, 1972. Redesignated at 46 FR 51878, Oct. 22, 1981, unless otherwise noted.

§ 614.4270 Policy.

In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable cost on a sound business basis, taking into account the cost of money, necessary reserves and expenses, capital requirements, and services provided to borrowers and members.

§ 614.4280 Interest rates.

Loans made by each bank shall bear interest at a rate or rates as may be determined by the bank board. A bank board shall set interest rates or approve individual interest rate changes either on a case-by-case basis or pursuant to an interest rate plan within which management may establish rates. Any interest rate plan shall set loan-pricing policies and objectives, provide guidance regarding the circumstances under which management

may adjust rates, and provide the upper and lower limits on management authority. A bank board may not delegate its ultimate responsiblities for setting interest rates, and any interest rate plan adopted shall be reviewed on a continuing basis by the bank board, as well as in conjunction with its review and approval of the bank's annual fiscal plan and long-range financial plan.

[46 FR 51879, Oct. 22, 1981, as amended at 54 FR 1150, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989]

§614.4281 Discounts and related fees.

Banks for cooperatives may discount or rediscount notes, drafts, acceptances, and other negotiable paper at such rates as may be determined by bank management under policies of the bank board as approved by the Farm Credit Administration. Requests of the Farm Credit Administration for approval of such board policies shall include justification for the policy or change in the policy.

[46 FR 51879, Oct. 22, 1981]

§614.4290 Interest on past due loans.

Provisions may be made in the approved interest rate programs of banks and production credit associations for the collection of interest at a higher rate after maturity of a loan or installment if provision is made in the note or loan document.

§614.4300 Other charges and fees.

Banks and associations may impose reasonable charges or fees to members, borrowers, or applicants in connection with loans or other services rendered. Fees charged by the associations shall be subject to bank approval.

§614.4320 Production credit associations.

The rate of interest charged by an association shall be the rate authorized by the bank, within programs prescribed by the bank board. Interest shall be charged on loans for the actual number of days such loans are outstanding unless a different method is authorized by such programs.

[37 FR 11424, June 7, 1972. Redesignated at 46 FR 51878, Oct. 22, 1981, and amended at 54 FR 1150, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989]

§614.4321 Differential interest rate programs.

Pursuant to policies approved by the board of directors, differential interest rates may be established for loans based on a variety of factors that may include type, purpose, amount, quality, funding or operating costs, or similar factors or combinations of factors. Differential interest rate programs should achieve equitable rate treatment within categories of borrowers. In the adoption of differential interest rate programs, institutions may consider, among other things, the effect that such interest rate structures will have on the achievement of objectives relating to the special credit needs of young, beginning or small farmers.

[61 FR 67186, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67186, Dec. 20, 1996, §614.4321 was revised, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

§614.4321 Interest rate programs.

The following types of interest rate programs may be employed by banks and production credit associations.

(a) *Fixed rates.* The rate of interest specified in the note or loan document shall prevail as the maximum rate chargeable to the borrower during the period of the loan.

(b) *Variable rates.* The interest rate(s) on outstanding loan balances may be changed from time to time during the period of the loan, if appropriate provisions are made in the note or loan document.

(c) *Fixed interest spread.* Interest rates shall be expressed in terms of a percentage to be added to the cost of money to the bank or association.

(d) *Differential rates.* Differential interest rates may be established for loans based on type, purpose, amount, quality, funding or operating costs, any combination of these factors, or such other factors as may be approved by the Farm Credit Administration. Differential interest rate programs should achieve equitable rate treatment among categories of borrowers. In the adoption of differential interest rate programs, bank boards

may consider, among other things, the effect that such interest rate structures will have on the achievement of district objectives relating to the special credit needs of young farmers. The Federal intermediate credit banks must provide other financing institutions with the same differential interest rate programs as they provide to production credit associations.

[48 FR 54000, Nov. 30, 1983; 49 FR 2746, Jan. 23, 1984, as amended at 54 FR 1150, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989]

Subpart H—Loan Purchases and Sales

SOURCE: 57 FR 38247, Aug. 24, 1992, unless otherwise noted.

§ 614.4325 Purchase and sale of interests in loans.

(a) *Definitions.* For the purposes of this subpart, the following definitions shall apply:

(1) *Interests in loans* means ownership interests in the principal amount, interest payments, or any aspect of a loan transaction, including servicing rights.

(2) *Lead lender* means a lending institution having a direct contractual relationship with a borrower to advance funds, which institution sells or assigns an interest or interests in such loan to one or more other lenders.

(3) *Loan* means any extension of credit or similar financial assistance of the type authorized under the Act, such as leases, guarantees, letters of credit, and other similar transactions.

(4) *Loan participation* means a fractional undivided interest in the principal amount of a loan that is sold by a lead lender to a participating institution in accordance with the requirements of § 614.4330 of this subpart. The term ''loan participation'' does not include a subordinated participation interest.

(5) *Participating institution* means an institution that purchases a fractional undivided interest in the principal amount of a loan originated by another lender.

(6) *Sale with recourse* means a sale of a loan or an interest in a loan in which the seller:

(i) Retains some risk of loss from the transferred asset for any cause except the seller's breach of usual and customary warranties or representations designed to protect the purchaser against fraud or misrepresentation; or

(ii) Has an obligation to make payments of principal or interest to any party resulting from:

(A) Default on the payment of principal or interest on the loan by the borrower or guarantor or any other deficiencies in the obligor's performance;

(B) Changes in the market value of the assets after transfer;

(C) Any contractual relationship between the seller and purchaser incident to the transfer that, by its terms, could continue even after final payment, default, or other termination of the assets transferred; or

(D) Any other cause, except the retention at servicing rights alone shall not constitute recourse.

(7) *Subordinated participation interest* means an interest in a loan that bears the first risk of loss, including the retention of such an interest when a loan is sold to a pooler certified by the Federal Agricultural Mortgage Corporation pursuant to title VIII of the Act, or an interest in a pool of subordinated participation interests purchased to satisfy the requirements of title VIII of the Act with respect to a loan sold to such a certified pooler.

(b) *Authority to purchase and sell interests in loans.* Loans and interests in loans may only be sold in accordance with each institution's lending authorities, as set forth in subpart A of this part. No Farm Credit System institution may purchase from an institution that is not a Farm Credit System institution any interest in a loan, except for the purpose of pooling and securitizing such loans under title VIII of the Act, unless such an interest is a participation interest that qualifies under the institution's lending authority, as set forth in subpart A of this part, and meets the requirements of § 614.4330 of this subpart.

(c) *Policies.* Each Farm Credit System institution that is authorized to sell or purchase interests in loans under subpart A of this part shall exercise that authority in accordance with a policy adopted by its board of directors that addresses the following matters:

(1) The types of purchasers to which the institution is authorized to sell interests in loans;

(2) The types of loans in which the institution may purchase or sell an interest and the types of interests which may be purchased or sold;

(3) The underwriting standards to be applied in the purchase of interests in loans:

(4) Such limitations on the aggregate principal amount of interests in loans that the institution may purchase from a single institution as are necessary to diversify risk, and such limitations on the aggregate amount the institution may purchase from all institutions as are necessary to assure that service to the territory is not impeded;

(5) Provision for the identification and reporting of loans in which interests are sold or purchased;

(6) Requirements for providing and securing in a timely manner adequate credit and other information needed to make an independent credit judgment; and

(7) Any limitations or conditions to which sales or purchases are subject that the board deems appropriate, including arbitration.

(d) *Purchase and sale agreements.* Agreements to purchase or sell an interest in a loan shall, at a minimum:

(1) Identify the particular loan(s) to be covered by the agreement;

(2) Provide for the transfer of credit and other borrower information on a timely and continuing basis;

(3) Provide for sharing, dividing, or assigning collateral;

(4) Identify the nature of the interest(s) sold or purchased;

(5) Set forth the rights and obligations of the parties and the terms and conditions of the sale; and

(6) Contain any terms necessary for the appropriate administration of the loan and the protection of the interests of the Farm Credit System institution.

(e) *Independent credit judgment.* Each institution that purchases an interest in a loan shall make a judgment on the creditworthiness of the borrower that is independent of the originating or lead lender and any intermediary seller or broker prior to the purchase of the interest and prior to any servicing action that alters the terms of the original agreement, which judgment shall not be delegated to any person(s) not employed by the institution. A Farm Credit System institution that purchases a loan or any interest therein may use information, such as appraisals or collateral inspections, furnished by the originating or lead lender, or any intermediary seller or broker; however, the purchasing Farm Credit System institution shall independently evaluate such information when exercising its independent credit judgment. No employee who performed a real estate appraisal on any collateral supporting a loan shall participate in the decision to purchase that loan. The independent credit judgment shall be documented by a credit analysis that considers factors set forth in § 614.4160 of this part and is independent of the originating institution and any intermediary seller or broker. The credit analysis shall consider such credit and other borrower information as would be required by a prudent lender and shall include an evaluation of the capacity and reliability of the servicer. Boards of directors of jointly managed institutions shall adopt procedures to ensure that the interests of their respective shareholders are protected in participation between such institutions.

(f) *Limitations.* The aggregate principal amount of interests in loans purchased from a single lead lender and the aggregate principal amount of interests in loans purchased from other institutions shall not exceed the limits set in the institution's policy.

(g) *Sales with recourse.* When a loan or interest in a loan is sold with recourse, it shall be accorded the following treatment:

(1) The loan shall be considered, to the extent of the recourse, an extension of credit by the purchaser to the seller, as well as an extension of credit from the seller to the borrower(s), for the purpose of determining whether credit extensions to a borrower are within the lending limits established in subpart J of this part.

(2) The amount of the loan subject to the recourse agreement shall be considered a loan sold with recourse for the

purpose of computing permanent capital ratios.

[57 FR 38247, Aug. 24, 1992, as amended at 58 FR 40321, July 28, 1993]

§ 614.4330 Loan participations.

Agreements to purchase or sell a participation interest shall be subject to the provisions of § 614.4325 of this subpart, and, in addition, shall satisfy the requirements of this section.

(a) *Participation agreements.* Agreements to purchase or sell a participation interest in a loan shall, in addition to meeting the requirements of § 614.4325(d) of this subpart, at a minimum:

(1) Define the duties and responsibilities of the participating institution and the lead lender, and/or the servicing institution, if different from the lead lender.

(2) Provide for loan servicing and monitoring of the servicer;

(3) Set forth authorization and conditions for action in the event of borrower distress or default;

(4) Provide for sharing of risk;

(5) Set forth conditions for the offering and acceptance of the loan participation and termination of the agreement;

(6) Provide for sharing of fees, interest charges, and costs between participating institutions;

(7) Provide for a method of resolution of disagreements arising under the agreement between two or more institutions;

(8) Specify whether the contract is assignable by either party; and

(9) Provide for the issuance of certificates evidencing an undivided interest in a loan.

(b) *Retention requirement.* No participation interest may be purchased from an institution that is not a Farm Credit System institution unless the servicing institution has an ownership interest in the principal amount equal to the lesser of 10 percent of the principal amount or such lesser amount as represents the servicing institution's lending limit, which ownership interest cannot be assigned separately from the servicing rights.

(c) *Intrasystem participations.* Loans participated between or among Farm Credit System institutions shall meet the borrower eligibility, membership, loan term, loan amount, loan security, and stock purchase requirements of the originating lender.

§ 614.4335 Borrower stock requirements.

(a) As a condition of obtaining a loan from or through a Farm Credit System institution, including loans originated for sale to other lenders, a borrower shall meet the institution's minimum stock purchase requirements.

(b) Borrower stock may be retired only if the institution meets its minimum permanent capital standards and only in accordance with paragraphs (b)(1) or (b)(2) of this section.

(1) When a loan is sold to a party that is not a certified agricultural mortgage marketing facility under title VIII of the Act:

(i) Subject to the requirements of paragraph (d) of this section, borrower stock may be retired if the entire loan is sold without recourse.

(ii) Borrower stock may not be retired when the entire loan is sold with recourse.

(iii) When an interest in a loan is sold without recourse, or an interest is retained that is not a subordinated interest, a proportionate amount of borrower stock may be retired, but in no event may stock be retired below the institution's minimum stock purchase requirement for the interest retained.

(2) When a loan or an interest therein is sold to a certified agricultural mortgage marketing facility under title VIII of the Act, the stock may be retired; but, in no event may stock be retired below the institution's minimum stock purchase requirement for the portion retained.

(c) If an institution repurchases a loan on which the stock has been retired, the borrower shall be required to repurchase stock in the amount of the minimum stock purchase requirement.

(d) When the loan is sold without recourse to another Farm Credit System institution pursuant to paragraph (b)(1)(i) of this section, the borrower may elect to hold stock in either the selling or purchasing institution.

§614.4336 Borrower rights.

(a) Each institution that contemplates selling a loan or an interest therein that is subject to the borrower rights provisions of title IV of the Act shall either:

(1) For loans intended for sale to a certified agricultural mortgage marketing facility pursuant to title VIII of the Act, comply with the requirements of §614.4367(b) of this part; or

(2) For loans intended for sale to institutions that are neither Farm Credit System institutions nor certified agricultural mortgage marketing facilities under title VIII of the Act, comply with one of the following two requirements:

(i) Include provisions in the contract with the borrower, or a written modification thereto, that ensure that the purchaser of the loan will be obligated to accord the borrower the same rights ''qualified lenders'' must provide under the Act; or

(ii) Obtain from the borrower a signed written consent to the sale which explicitly states that the borrower relinquishes the statutory borrower rights. The consent to the loan sale and the relinquishment of the borrower rights shall have no effect until the loan is actually sold and shall be ineffective in the event that lender or any other Farm Credit System institution repurchases the loan or any interest therein.

(b) Before obtaining the borrower's consent to the sale of the loan and the relinquishment of borrower rights pursuant to paragraph (a)(2)(ii) of this section, the lending institution shall disclose in writing to the borrower:

(1) A full and complete description of the statutory rights that the borrower is asked to relinquish;

(2) Any changes in the loan terms or conditions that will occur if the loan is not sold;

(3) The fact that the relinquishment of the statutory borrower rights will not become effective unless the loan is actually sold and shall become ineffective in the event that the lender or any other Farm Credit System institution repurchases the loan or any interest therein.

(c) The making of a loan may not be conditioned on the borrower's consent to its sale and relinquishment of statutory borrower rights.

§614.4337 Disclosure to borrowers.

When a loan or an interest in a loan other than a participation interest is sold with servicing rights, the disclosure shall be made to the borrower in accordance with this section:

(a) The selling institution shall disclose to the borrower at least 10 days prior to the borrower's next payment date;

(1) The name, address, and telephone number of the purchasing institution;

(2) The name and address of the party to whom payment is to be made;

(3) A description of the impact of the sale on statutory borrower rights after the sale;

(4) Any terms in the agreement that would permit a purchaser to change the terms or conditions of the loan.

(b) A Farm Credit System institution that purchases a loan or a non-participation interest therein shall not take any servicing action that adversely affects the borrower until it ensures that disclosure has been made to the borrower of:

(1) The name, address, and telephone number of the purchasing institution; and

(2) The address where the payment should be sent.

Subpart I—Loss-Sharing Agreements

§614.4340 General.

(a) Upon the approval of the board of directors of the respective Farm Credit System institutions, any System bank, association, or service corporation or service association may enter into an agreement to share loan and other losses with any other institution(s) of the System. As appropriate, a loss-sharing agreement may contain provisions relating to definitions of terms, terms and conditions for activation, determinations of assessment formulas, limitations on assessments, reimbursements, administration, arbitration, and provisions for amendment and termination.

(b) System institutions may agree among themselves to share losses for the purpose of protecting against the

impairment of capital stock or participation certificates, or for any other purpose. Agreements may provide for sharing losses that arise in the future or that were recognized by one or more of the signatory institutions before the date of the agreement. Agreements may contain provisions that are not entirely reciprocal among the signatories to the agreement. Loss-sharing agreements can provide for the sharing of loan losses, operating losses, casualty losses, losses on high risk assets, or any other losses.

[49 FR 48910, Dec. 17, 1984, as amended at 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989]

§ 614.4341 Financial assistance.

No institution shall reverse any financial assistance provided under the 37-Bank Capital Preservation Agreement, or any other capital preservation/loss-sharing program that was received or accrued prior to July 1, 1986.

[53 FR 3191, Feb. 4, 1988]

§ 614.4345 Guaranty Agreements.

Guaranty agreements under which a percentage of the risk associated with specific loans is assumed may be entered into by or among System banks and associations.

[49 FR 48910, Dec. 17, 1984, as amended at 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989]

Subpart J—Lending Limits

SOURCE: 58 FR 40321, July 28, 1993, unless otherwise noted.

§ 614.4350 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Borrower* means an individual, partnership, joint venture, trust, corporation, or other business entity (except a Farm Credit System association or other financing institution, as defined in § 614.4540 of this part) to which an institution has made a loan or a commitment to make a loan either directly or indirectly.

(b) *Commitment* means a legally binding obligation to extend credit, enter into lease financing, purchase or participate in loans or leases, or pay the obligation of another, which becomes effective at the time such commitment is made.

(c) *Loan* means any extension of, or commitment to extend, credit authorized under the Act whether it results from direct negotiations between a lender and a borrower or is purchased from or discounted for another lender, including participation interests. The term ''loan'' includes loans outstanding, obligated but undisbursed commitments, contracts of sale, notes receivable, other similar obligations, guarantees, and lease financing. An institution ''makes a loan'' when it enters into a commitment to lend, advances new funds, substitutes a different borrower for a borrower who is released, or where any other person's liability is added to the outstanding loan or commitment.

(d) *Primary liability* means an obligation to repay that is not conditioned upon an unsuccessful prior demand on another party.

(e) *Secondary liability* means an obligation to repay that only arises after an unsuccessful demand on another party.

§ 614.4351 Computation of lending limit base.

(a) *Lending limit base.* An institution's lending limit base is composed of the permanent capital of the institution, as defined in § 615.5201(j) of this chapter, with adjustments provided for in § 615.5210(d), (e)(1), (e)(2), (e)(3), (e)(4), and (e)(6) of this chapter, and with the following further adjustments:

(1) Where one institution invests in another institution in connection with the sale of a loan participation interest, the amount of investment in the institution purchasing this participation interest that is owned by the institution originating the loan shall be counted in the lending limit base of the originating institution and shall not be counted in the lending limit base of the purchasing institution.

(2) Stock protected under section 4.9A of the Act may be included in the lending limit base until January 1, 1998.

(b) *Timing of calculation.* The lending limit base will be calculated on a

monthly basis as of the preceding month end.

[58 FR 40321, July 28, 1993, as amended at 59 FR 37403, July 22, 1994]

§614.4352 Farm Credit Banks and agricultural credit banks.

(a) *Farm Credit Banks.* No Farm Credit Bank may make or discount a loan to a borrower, if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceed 25 percent of the bank's lending limit base.

(b) *Agricultural credit banks.* (1) No agricultural credit bank may make or discount a loan to a borrower under the authority of title I of the Act, if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceeds 25 percent of the bank's lending limit base.

(2) No agricultural credit bank may make or discount a loan to a borrower under the authority of title III of the Act, if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceeds the lending limits prescribed in §614.4355 of this subpart.

§614.4353 Direct lender associations.

No association may make a loan to a borrower, if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceeds 25 percent of the association's lending limit base.

§614.4354 Federal land bank associations.

No Federal land bank association may assume endorsement liability on any loan if the total amount of the association's endorsement liability on loans outstanding and undisbursed commitments to that borrower would exceed 25 percent of the association's lending limit base.

§614.4355 Banks for cooperatives.

No bank for cooperatives may make a loan if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceeds the following percentages of the lending limit base of the bank:

(a) *Basic lending limit.* (1) Term loans to eligible cooperatives: 25 percent.

(2) Term loans to foreign and domestic parties: 10 percent.

(3) Lease loans qualifying under §614.4020(a)(3) and applying to the lessee: 25 percent.

(4) Standby letters of credit qualifying under §614.4810: 35 percent.

(5) Guarantees qualifying under §614.4800: 35 percent.

(6) Seasonal loans exclusive of seasonal loans qualifying under §614.4231: 35 percent.

(7) Foreign trade receivables qualifying under §614.4700: 50 percent.

(8) Bankers' acceptances held qualifying under §614.4710 and seasonal loans qualifying under §614.4231: 50 percent.

(9) Export and import letters of credit qualifying under §614.4321: 50 percent.

(b) *Total lending limit.* (1) The sum of term and seasonal loans exclusive of seasonal loans qualifying under §614.4231: 35 percent.

(2) The sum of paragraphs (a)(1) through (a)(9) of this section: 50 percent.

§614.4356 Banks for cooperatives look-through notes.

Where a bank for cooperatives makes a loan to an eligible borrower that is secured by notes of individuals or business entities, the basic lending limits provided in §614.4355 may be applied to each original notemaker rather than to the loan to the eligible borrower, if:

(a) Each note is current and carries a full recourse endorsement or unconditional guarantee by the borrower;

(b) The bank determines the financial condition, repayment capacity, and other credit factors of the loan to the original maker reasonably justify the credit granted by the endorser; and

(c) The loans are fully supported by documented loan files, which include, at a minimum:

(1) A credit report supporting the bank's finding that the financial condition, repayment capacity, and other factors of the maker of the notes being pledged justify the credit extended by the bank and/or endorser;

(2) A certification by a bank officer designated for that purpose by the loan or executive committee that the financial responsibility of the original

notemaker has been evaluated by the loan committee and the bank is relying primarily on each such maker for the payment of the obligation; and

(3) Other credit information normally required of a borrower when making and administering a loan.

§ 614.4357 Computation of obligations.

(a) *Inclusions.* The computation of total loans to each borrower for the purpose of computing their lending limit shall include:

(1) The total unpaid principal of all loans and the total amount of undisbursed commitments except as excluded by paragraph (b) of this section. This amount shall include loans that have been charged off on the books of the institution in whole or in part but have not been collected, except to the extent that such amounts are not legally collectible;

(2) Purchased interests in loans, including participation interests, to the extent of the amount of the purchased interest, including any undisbursed commitment;

(3) Loans attributed to a borrower in accordance with § 614.4358.

(b) *Exclusions.* The following loans when adequately documented in the loan file, may be excluded from loans to a borrower subject to the lending limit:

(1) Any loan or portion of a loan that carries a full faith and credit performance guaranty or surety of any department, agency, bureau, board, commission, or establishment of the United States government, provided there is no evidence to suggest that the guaranty has become unenforceable and the institution can demonstrate that it is in compliance with the terms and conditions of the guaranty.

(2) Any loan or portion of a loan guaranteed by a Farm Credit System institution, pursuant to the provisions of § 614.4345 on guaranty agreements. This exclusion does not apply to the institution providing the guaranty.

(3) Any loan or portion of a loan that is secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other obligations guaranteed as to principal and interest by the United States government, provided the loans are fully secured by the current market value of such obligations. If the market value of the collateral declines to below the balance of the loan, and the entire loan, individually, or when combined with other loans and undisbursed commitments to or attributed to the borrower, causes the borrower's total indebtedness to exceed the institution's lending limit, the institution shall have 5 business days to bring the loan into conformance before it shall be deemed to be in violation of the lending limit.

(4) Interests in loans sold, including participation interests, when the sale agreement meets the following requirements:

(i) The interest sold must be an undivided interest in the principal amount of the loan and in the collateral securing the loan; and

(ii) The interest must be sold without recourse; and

(iii) The agreement under which the interest is sold must provide for the sharing of all payments of principal, collection expenses, collateral proceeds, and risk of loss on a pro rata basis according to the percentage interest in the principal amount of the loan. Agreements that provide for the pro rata sharing to commence at the time of default or similar event, as defined in the agreement under which the interest is sold, shall be considered to be pro rata agreements, notwithstanding the fact that advances are made and payments are distributed on a basis other than pro rata prior to that time.

(5) Loans sold in their entirety to a pooler certified by the Federal Agricultural Mortgage Corporation, if an interest in a pool of subordinated participation interests is purchased to satisfy the requirements of title VIII of the Act.

§ 614.4358 Attribution rules.

(a) For the purpose of applying the lending limit to the indebtedness of a borrower, loans to a related borrower shall be combined with loans outstanding to the borrower and attributed to the borrower when any one of the following three conditions exist:

(1) *Liability.* (i) The borrower has primary or secondary liability on a loan

made to the related borrower. The amount of such loan attributable to the borrower is limited to the amount of the borrower's liability.

(ii) This section does not require attribution of a guarantee taken out of an abundance of caution. To qualify for the abundance of caution exception to the requirements of this subpart, the institution must document in the loan file that the loan, when evaluated on the credit factors set forth in § 614.4160 of this part without considering the guarantee, would support the credit decision under the same basic terms and conditions.

(iii) For the banks for cooperatives and agricultural credit banks operating under title III authorities of the Act, look-through notes are exempt from the lending limit provisions provided they meet the criteria of § 614.4356.

(2) *Financial interdependence.* The operations of a borrower and related borrower are financially interdependent. Financial interdependence exists if the borrower is the primary source of repayment for a related borrower's loan, or if the operations of the borrower and the related borrower are commingled.

(i) The borrower shall be considered the primary source of repayment on the loan to the related borrower if the borrower is obligated to supply 50 percent or more of the related borrower's annual gross receipts, *and* reliance on the income from one another is such that, regardless of the solvency and liquidity of the borrower's operations, the debt service obligation of the related borrower could not be met if income flow from the borrower is interrupted or terminated. For the purpose of this paragraph, gross receipts include, but are not limited to, revenues, intercompany loans, dividends and capital contributions.

(ii) The assets or operations of the borrower and related borrower are considered to be commingled if they cannot be separated without materially impacting the economic survival of the individual operations and their ability to repay their loans.

(3) *Control.* The borrower directly or indirectly controls the related borrower. A borrower is deemed to control a related borrower if either paragraph (a)(3)(i) or (a)(3)(ii) of this section exist:

(i) The borrower, directly or acting through one or more other persons, owns 50 percent or more of the stock of the related borrower; or

(ii) The borrower, directly or acting through one or more other persons, owns or has the power to vote 25 percent or more of the voting stock of a related borrower, and meets at least one of the following three conditions:

(A) The borrower shares a common directorate or management with a related borrower. A common directorate is deemed to exist when a majority of the directors, trustees, or other persons performing similar functions of one borrower also serves the other borrower in a like capacity. A common management is deemed to exist if any employee of the borrower holds the position of chief executive officer, chief operating officer, chief financial officer, or an equivalent position in the related borrower's organization.

(B) The borrower controls in any manner the election of a majority of directors of a related borrower.

(C) The borrower exercises or has the power to exercise a controlling influence over management of a related borrower's operations through the provisions of management placement or marketing agreements, or providing services such as insurance carrier or bookkeeping.

(b) Each institution shall make provisions for appropriately designating loans to a related borrower that are combined with the borrower's loan and attributed to the borrower to ensure that loans to the borrower are within the lending limits.

(c) *Attribution rules table.* For the purposes of applying the lending limit to the indebtedness of a borrower, loans to a related borrower shall be combined with loans outstanding to the borrower and attributed to the borrower when any one of three attribution rules are met as outlined in Table 1.

TABLE 1

Attribution rule	Criteria per § 614.4358	Attribute
(A) Liability	Borrower has primary or secondary liability	Yes.*
*to the extent of the borrower's liability.	Borrower's liability is taken out of an abundance of caution	No.*
	Look-through notes (BC only)	No.
(B) Financial Interdependence	Source of Repayment:	
(Economic survival of the borrower's operation will materially impact economic survival of the related borrowers operation).	Borrower is obligated to supply 50 percent or more of related borrower's annual gross receipts, *and* reliance on the income from one another is such that the debt service of the related borrower could not be met if income flow from the borrower is interrupted or terminated.	Yes.
	Commingled Operations:	
	Assets or operations of the borrowers are commingled and cannot be separated without materially impacting the borrowers' repayment capacity	Yes.
(C) Control	The borrower owns 50 percent or more of the stock of the related borrower.	Yes.
(The borrower, directly or indirectly, controls the related borrower).	The borrower owns or has the power to vote 25 percent or more of the voting stock of a related borrower, and (1) Shares a common directorate or management with a related borrower, or (2) Controls the election of a majority of directors of a related borrower, or (3) Exercises a controlling influence over management of a related borrower's operations through the provisions of management placement or marketing agreements, or providing services such as insurance carrier or bookkeeping.	Yes.

§ 614.4359 Lending limit violations.

(a) Each loan, except loans that are grandfathered under the provisions of § 614.4360, shall be in compliance with the lending limit on the date the loan is made, and at all times thereafter. Except as provided for in paragraph (b) of this section, loans which are in violation of the lending limit shall comply with the provisions of § 615.5090 of this chapter.

(b) Under the following conditions a loan that violates the lending limit shall be exempt from the provisions of § 615.5090 of this chapter:

(1) A loan in which the total amount of principal outstanding and undisbursed commitments exceed the lending limit because of a decline in permanent capital after the loan was made.

(2) Loans on which funds are advanced pursuant to a commitment that was within the lending limit at the time the commitment was made, even if the lending limit subsequently declines.

(3) A loan that exceeds the lending limit as a result of the consolidation of the debt of two or more borrowers as a consequence of a merger or the acquisition of one borrower's operations by another borrower. Such a loan may be extended or renewed, for a period not to exceed 1 year from the date of such merger or acquisition, during which period the institution may advance and/or readvance funds not to exceed the greater of:

(i) 110 percent of the advances to the borrower in the prior calendar year; or

(ii) 110 percent of the average of the advances to the borrower in the past 3 calendar years.

(c) For all lending limit violations except those exempted under § 614.4359(b)(3), within 90 days of the identification of the violation, the institution must develop a written plan prescribing the specific actions that will be taken by the institution to bring the total amount of loans and commitments outstanding or attributed to that borrower within the new lending limit, and must document the plan in the loan file.

(d) Nothing in this section limits the authority of the FCA to take administrative action, including, but not limited to, monetary penalties, as a result of lending limit violations.

§ 614.4360 Transition.

(a) A loan (not including a commitment) made or attributed to a borrower prior to the effective date of this subpart, which does not comply with the

limits contained in this subpart, will not be considered a violation of the lending limits during the existing contract terms of such loans. A new loan must conform with the rules set forth in this subpart. A new loan includes but is not limited to:

(1) Funds advanced in excess of existing commitment;

(2) A different borrower is substituted for a borrower who is subsequently released; or

(3) An additional person becomes an obligor on the loan.

(b) A commitment made prior to the effective date of these regulations which exceeds the lending limit may be funded to the full extent of the legal commitment. Any advances that exceed the lending limit are subject to the provisions prescribed in §614.4359.

Subpart K—Disclosure of Loan Information

SOURCE: 53 FR 35451, Sept. 14, 1988, unless otherwise noted.

§614.4365 Applicability.

This subpart applies only to loans from qualified lenders if the loans are not subject to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

§614.4366 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Adjustable rate loan* means a loan on which the interest rate payable over the term of the loan may be changed by a qualified lender. The term includes loans which are titled *adjustable rate* or *variable rate* or any other similar designation.

(b) *Effective interest rate* means the interest rate applicable to the loan at a point in time, adjusted to take into consideration the amount of any stock or participation certificates which the borrower must purchase pursuant to bylaw, policy or regulation in order to obtain the loan, and any loan origination charges.

(c) *Fixed rate loan* means any loan on which the interest rate is not subject to adjustment or variation over the term of the loan, even though the effective interest rate on the loan may be so subject.

(d) *Interest rate* means the stated contract rate of interest applicable to the loan at a point in time, excluding any charges payable by the borrower in obtaining the loan.

(e) *Loan* means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(f) *Loan origination charges* mean initial one-time transaction charges or fees, which may or may not be computed as a percentage of the transaction amount, and which are imposed on a borrower by a qualified lender to obtain a loan, but do not include charges imposed by someone other than the lender for services that are not required by the lender.

(g) *Qualified lender* means:

(1) A System institution that makes loans (as defined in paragraph (e) of this section) except a bank for cooperatives; and

(2) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act but only with respect to loans discounted or pledged under section 1.7(b)(1) of the Act.

(h) *Standard adjustments factors* means those financial elements, including but not limited to, a qualified lender's cost of funds, operating expenses, provision for loan losses, and changes in retained earnings, which are typically taken into consideration by a qualified lender in adjusting the interest rate on loans.

§614.4367 Required disclosures—in general.

(a) Each qualified lender shall furnish the following information in writing to a prospective borrower not later than the time of the loan closing:

(1) The current rate of interest on the loan;

(2) In the case of an adjustable rate loan:

(i) The amount and frequency by which the interest rate can be adjusted during the term of the loan or, if there are no limitations on the amount or

frequency of such adjustments, a statement to that effect; and

(ii) An identification of the specific standard adjustment factors that are taken into account in making adjustments to the interest rate on the loan;

(3) The current effective interest rate on the loan with one or more representative examples of the impact of stock or participation certificate ownership and applicable loan origination charges on the current interest rate computed on an annualized basis;

(4) A statement indicating that stock that is purchased is at risk;

(5) A statement indicating the various types of loan options available to borrowers, with an explanation of the terms and borrower's rights that apply to each type of loan.

(b) For loans that will or may be pooled for sale on the secondary market created under section 8.9 of the Act, in addition to the loan disclosure in paragraph (a) of this section, at the time of application for a loan, a qualified lender shall provide the following:

(1) Notification that the loan will or may be pooled;

(2) Notification that, if the loan will be pooled, the borrower will be required to execute, within 3 days of commitment, a waiver of his right to have the loan considered for restructuring under title IV of the Act and 12 CFR part 614, with a statement that rights, if any, under applicable State laws are not waived; the notification shall state that the rights prescribed by sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D and 4.36 will not apply if the loan is pooled;

(3) Notification that the borrower has the right not to have his loan pooled;

(4) Notification that, within 3 days of commitment, the applicant has the right to refuse to allow the loan to be pooled, thereby retaining any restructuring rights later applicable to his loan; and

(5) Notification of any other terms and conditions that may apply to a loan which will or may be pooled that differ from a loan which is not pooled.

(c) Each qualified lender that adjusts the interest rate on an outstanding loan shall furnish the following information in writing to the borrower:

(1) The new interest rate on the loan;

(2) The date on which the new rate is effective; and

(3) A statement of any factors other than standard adjustment factors which were taken into account in establishing the new interest rate. The notice required by this paragraph shall be made not later than 10 days after the effective date of a change in the interest rate. However, if the interest rate is directly tied to an external index that is widely publicized, the notice of change must be made promptly but not later than 30 days after the change in interest rate.

(d) Each qualified lender that takes any action which changes the amount of stock or participation certificates which borrowers are required to own and that modifies the effective interest rate on a loan shall furnish the following information in writing to the borrower at least 10 days before the date on which such action takes effect:

(1) The impact on the effective interest rate by disclosing the new effective interest rate or by a representative example;

(2) The date on which the new rate is effective; and

(3) A statement of the action(s) taken by the qualified lender that have resulted in the new effective interest rate.

(e) In the case of a loan involving more than one primary obligor, the requirements of paragraphs (a) through (d) of this section will be satisfied by providing the disclosure to any one of such parties.

APPENDIX TO 12 CFR 614.4367—REQUIRED DISCLOSURE

MODEL DISCLOSURE FORMS

GENERAL

The following are model disclosure forms which qualified lenders may use to satisfy the notification requirements of section 4.13(a) of the Act and of 12 CFR 614.4367. The forms have been developed in order to give qualified lenders an idea of the type and extent of information that should be contained therein. Qualified lenders are not required to follow the format of the sample forms. Qualified lenders may develop and use other forms provided the statements contain comparable disclosures in clear, understandable English and otherwise meet the requirements of the Act and regulations.

Form 1

This loan is *NOT* subject to the Truth in Lending Act, 15 U.S.C. 1601, *et seq.* The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

INTEREST RATE DISCLOSURE

Date: _____

Lender: _____
(Name)

Borrower: _____
(Name)

STATED INTEREST RATE

The rate of interest currently applicable to your loan

_____
(Percentage)

EFFECTIVE INTEREST RATE[1]

The stated rate of interest adjusted to take into account loan origination charges and purchase of stock

_____
(Percentage)

Check Applicable Box

☐ This is a FIXED RATE LOAN—the stated rate of interest is not subject to change during the life of the loan.

☐ This is an ADJUSTABLE RATE LOAN—the stated rate of interest is subject to change during the life of the loan.

If an Adjustable Rate Loan—

The interest rate on the loan may be changed *(Period).*

The interest rate may be changed a maximum ± *(Percentage).*

You will be notified 10 days prior to any increase in the effective rate or simultaneously with any decrease in the effective rate.

The Standard Adjustment Factor(s) which the institution takes into account in making adjustments to the interest rate is (are) *(list the factors).*

The Standard Adjustment Factors may ☐ or may not ☐ be changed during the life of the loan.

Except with respect to eligible borrower stock under section 4.9A of the Farm Credit Act of 1971, stock that is purchased in this institution is at risk.

See your contract documents for further information on loan terms and conditions.

[1] This is a projection subject to change should particular loan provisions be modified during the term of the loan, such as the amount of stock or participation certificates held or the timing of repayment. For example, if the amount of stock or participation certificates held is increased to ____, the effective interest rate will be ____.

Should you have any questions concerning the information contained in this form please contact us at *(Telephone Number).*

Form 2

This loan is not subject to the Truth in Lending Act, 15 U.S.C. 1601, *et seq.* The following disclosure is made in accordance with section 4.13(a) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2199.

DISCLOSURE OF A CHANGE IN THE EFFECTIVE INTEREST RATE

Date: _____

Lender: _____
(Name)

Borrower: _____
(Name)

This is to inform you that on *(loan and loan number),*

☐ The effective rate of interest will be adjusted effective *(Date).*

The effective rate of interest on your loan is changed to *(Percentage)* from *(Percentage).*

This change resulted from a:

☐ 1. Change in the amount of stock borrowers are required to hold in the lender to *(Percentage)* from *(Percentage).*

☐ 2. Change in the stated rate of interest on your loan effective *(Date).*

The stated rate of interest on your loan changed to *(Percentage)* from *(Percentage).*

The change was computed based on the:

☐ Standard adjustment factors—factors mentioned on the initial interest rate disclosure.

☐ Other—describe.

☐ 3. Change for other reasons—describe.

Should you have any questions concerning the information contained herein, please contact us at *(Telephone Number).*

[53 FR 35451, Sept. 14, 1988, as amended at 54 FR 1153, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989; 61 FR 11304, Mar. 20, 1996]

§ 614.4368 Disclosure of differential interest rates.

(a) A qualified lender offering more than one rate of interest to borrowers shall, at the request of a borrower:

(1) Provide a review of the loan to determine if the proper interest rate has been established;

(2) Explain to the borrower in writing the basis for the interest rate charged; and

(3) Explain to the borrower in writing how the credit status of the borrower may be improved to receive a lower interest rate on the loan.

(b) A qualified lender offering more than one rate of interest as described

in paragraph (a) of this section, shall notify prospective borrowers not later than the time of loan closing of their right to request a review under paragraph (a) of this section.

Subpart L—Actions on Applications; Review of Credit Decisions

SOURCE: 53 FR 35452, Sept. 14, 1988, unless otherwise noted.

§ 614.4440 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Adverse credit decision* means a decision to deny the credit applied for, or approve an extension of credit in an amount less than the amount applied for; to deny an application for restructuring;

(b) *Applicant* means any person who completes and executes a formal application for an extension of credit from a qualified lender, or a borrower who completes an application for restructuring;

(c) *Application for restructuring* means a written request—

(1) From a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as a part of the application;

(2) Submitted on the appropriate forms prescribed by the qualified lender; and

(3) Accompanied by sufficient financial information and repayment projections, where appropriate, as required by the qualified lender to support a sound credit decision.

(d) *Application for a loan* or *loan application* means a formal application for an extension of credit from a qualified lender;

(e) *Distressed loan* means a loan for which the borrower does not have the financial capacity, as determined by the lender, to pay according to its terms and which exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends;

(2) The loan is delinquent or past due under the terms of the loan contract; and

(3) One or both of the factors listed in paragraphs (e) (1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the lender.

(f) *Independent evaluator,* for the purposes of this subpart, means an individual who is a qualified evaluator and who satisfies the standards established by § 614.4260 of subpart F of this part and by the Farm Credit System institution for the type of property to be evaluated. The independent evaluator may not be a Farm Credit System institution employee or have a relationship with the institution or any of its officers or directors that contravenes the provisions of part 612, subpart B of this chapter.

(g) *Loan* means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(h) *Qualified lender* means:

(1) A System institution that makes loans (as defined in paragraph (g) of this section) except a bank for cooperatives; and

(2) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act, but only with respect to loans discounted or pledged under section 1.7(b)(1).

(i) *Restructure* and *restructuring* means rescheduling, reamortization, renewal, deferral of principa1 or interest, monetary concessions, or the taking of any other action to modify the terms of, or forbear on, a loan in any way that will make it probable that the operations of the borrower will become financially viable.

[53 FR 35452, Sept. 14, 1988, as amended at 57 FR 54699, Nov. 20, 1992; 57 FR 58860, Dec. 11, 1992; 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, in § 614.4440, paragraph (h)(1) was amended by removing the reference to ''paragraph (f)''and adding in its place the reference ''paragraph (g)'', effective upon the expiration of 30 days after publication in the

Federal Register during which either or both houses of Congress are in session.

§614.4441 Notice of action on loan application.

Each qualified lender shall render its decision on a loan application in as expeditious a manner as is practicable. Upon reaching a decision on a loan application, the qualified lender shall provide prompt written notice of its decision to the applicant. In the case of a loan application involving more than one primary obligor, the notice may be provided to any one of such parties. Where the qualified lender makes an adverse credit decision on a loan application, the notice shall include:

(a) The specific reasons for the qualified lender's action;

(b) Notification that the applicant can request a review of the decision;

(c) Notification that any request for review must be made in writing within 30 days after the applicant's receipt of the qualified lender's notice; and

(d) A brief explanation of the process for seeking review of the decision, including the appraisal process, whom to contact at the lender for access to the relevant information, and the right to appear before the credit review committee.

§614.4442 Credit Review Committee.

The board of directors of each qualified lender shall establish one or more credit review committees to review adverse credit decisions made by the lender with ultimate decision-making authority on the loan. The membership of each committee shall include at least one member from the lender's board. In no case shall a loan officer involved in the adverse credit decision on the loan being reviewed serve on the credit review committee when the committee reviews such loan. The duties of the members of the credit review committee may not be delegated to any other person, except that the credit review committee duties of the board member may be performed from time to time by an alternate designated by the board who shall also be a board member.

§614.4443 Review process.

(a) *Personal appearance.* Each applicant or borrower who is entitled to and has requested a review may appear in person before the credit review committee. The applicant or borrower may be accompanied by counsel or by any other representative of such person's choice, to seek a reversal of the decision on the application under review.

(b) *Documentation.* An applicant may submit any documents or other evidence to support the information contained in the unsuccessful loan or restructuring application which the applicant believes will demonstrate that the loan or restructuring applied for is an eligible loan or eligible restructuring plan that satisfies the credit standards of the lender.

(c) *Independent collateral evaluations.* (1) An applicant for a loan that has been denied may, as part of the request for a review, request an independent collateral evaluation by an independent evaluator, as defined in §614.4440 of this subpart, of any interests in property securing the loan (other than the stock or participation certificates of the lender held by the borrower).

(2) Within 30 days after a request for a collateral evaluation, the credit review committee shall present the applicant or borrower with a list of three independent evaluators approved by the qualified lender. The borrower shall select and engage the services of an evaluator from the list to perform the collateral evaluation. The collateral evaluation must be completed within a reasonable period of time. The cost of the evaluation shall be borne by the applicant or borrower.

(3) The credit review committee shall consider the results of any such collateral evaluation in any final determination with respect to the loan or restructuring, provided the applicant's or borrower's evaluator has provided a copy of the evaluation report to the lender not less than 15 business days prior to any scheduled meeting of the credit review committee.

(4) Any such collateral evaluations that are not completed in conformance with the collateral evaluation requirements described in subpart F of this part, relative to collateral evaluation standards, independence requirements,

and qualification requirements, need not be considered by the credit review committee. To facilitate the proper completion of such collateral evaluations, a copy of part 614, subpart F, shall be provided to the borrower for presentation to the borrower's evaluator, and a copy signed by the borrower's evaluator shall be a required exhibit in the subsequent evaluation report.

(d) *Decision*. The credit review committee shall reach a decision on the application in its sole discretion, and such decision shall be the final decision of the lender. The credit review committee shall make every reasonable effort to conduct reviews and render decisions in as expeditious a manner as possible. Promptly after a review by the credit review committee, the committee shall notify the applicant or borrower in writing of the decision of the committee and the reasons for the decision.

[53 FR 35452, Sept. 14, 1988, as amended at 59 FR 46734, Sept. 12, 1994]

§ 614.4444 Records.

A qualified lender shall maintain a complete file of all requests for reviews by the credit review committee, including participation in State mediation programs, and the disposition of each review by the committee. The file shall include minutes of each credit review committee meeting, and sufficient documentation of the basis for each determination not to restructure a loan to permit the institution or the FCA to review each determination.

[53 FR 35452, Sept. 14, 1988, as amended at 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, § 614.4444 was amended by revising the last two sentences, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

§ 614.4444 Records.

* * * The file shall include minutes of each credit review committee meeting. A qualified lender shall also maintain sufficient materials to permit the Special Asset Group in its district, if any, under § 614.4520 to review each determination not to restructure a loan and to permit the National Special Asset Council to review any loan for which it requests information.

Subpart M—Loan Approval Requirements

§ 614.4450 General requirements.

Authority for loan approval is vested in the Farm Credit banks and associations.

[51 FR 41947, Nov. 20, 1986]

§ 614.4460 Loan approval responsibility.

Approval of the following loans is the responsibility of each district board of directors. The responsibility may be discharged by prior approval of such loans by the appropriate bank board, or establishment of a policy under which the authority to approve such loans is delegated to bank management (except paragraphs (d) and (e) of this section which cannot be delegated to management). If the approval of such loans is to be delegated to bank management, the loans are to be submitted promptly for post review by the bank board and a report disclosing all material facts relating to the credit relationship involved shall be submitted annually by bank management to the district board.

(a) Loans to a member of the Farm Credit Administration Board.

(b) Loans to a member of the district board.

(c) Loans to a cooperative of which a member of a bank board of directors is a member of the board of directors, an officer, or employee.

(d) Loans to the president of a Farm Credit bank.

(e) Loans to employees of the Farm Credit Administration.

(f) Loans where directors, officers or employees designated above:

(1) Are to receive proceeds of the loan in excess of an amount prescribed by an appropriate bank board, or

(2) Are stockholders or owners of equity in a legal entity to which the loan is to be made wherein they have a significant personal or beneficial interest in the loan proceeds thereof or the security, or

(3) Are endorsers, guarantors or comakers in excess of an amount prescribed by an appropriate bank board.

[38 FR 27837, Oct. 9, 1973, as amended at 39 FR 29585, Aug. 16, 1974. Redesignated at 46 FR 51878, Oct. 22, 1981, and amended at 51 FR 41947, Nov. 20, 1986; 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989; 56 FR 2674, Jan. 24, 1991]

§614.4470 Loans subject to bank approval.

(a) The following loans (unless such loans are of a type prohibited under part 612) shall be subject to prior approval of the bank supervising the association in which the loan application originates:

(1) Loans to a director of the association.

(2) Loans to a director of an association which is under joint management when the application originates in one of the associations.

(3) Loans to an employee of the association.

(4) Loans to an employee of an association which is under joint management when the application originates in one of the associations.

(5) Loans to bank employees when the application originates in one of the associations supervised by the employing bank.

(b) Loans to any borrower shall be subject to the prior approval of the bank supervising the association in which the loan application originates whenever a director or an employee of the association or an employee of the bank supervising the association:

(1) Will receive proceeds of the loan in excess of the amount prescribed by the supervising bank board, or

(2) Has a significant personal or beneficial interest in the loan, the proceeds, or the security, or controls the borrower, or

(3) Is an endorser, guarantor, or comaker with respect to the loan in excess of an amount prescribed by the supervising bank board.

(c) Any loan which will result in any one borrower being obligated (as defined in subpart J of this part) in excess of an amount established by the supervising bank under its policies for delegation of authority to associations shall be subject to prior approval of the supervising bank.

[47 FR 49832, Nov. 3, 1982, as amended at 58 FR 40324, July 28, 1993; 60 FR 20010, Apr. 24, 1995]

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

§614.4510 General.

Direct lenders shall be responsible for the servicing of the loans that they make. However, loan participation agreements may designate specific loan servicing efforts to be accomplished by a participating institution. Each direct lender shall adopt loan servicing policies and procedures to assure that loans will be serviced fairly and equitably for the borrower while minimizing the risk for the lender. Procedures shall include specific plans that help preserve the quality of sound loans and that help correct credit deficiencies as they develop.

(a) The Farm Credit Bank shall provide guidelines for the servicing of loans by the Federal land bank associations. The servicing may be accomplished either under the direct supervision of the bank or under delegated authority.

(b) The servicing of loans which are participated in by Farm Credit System institutions shall be in accordance with 614.4325.

(c) In the development of loan servicing policies and procedures, the following criteria shall be included:

(1) *Term loans.* The objective shall be to provide borrowers with prompt and efficient service with respect to actions in such areas as personal liability, partial release of security, insurance requirements or adjustments, loan divisions or transfers, or conditional payments. Procedures shall provide for adequate inspections, reanalyses, reappraisals, controls on payment of insurance and taxes (and for payment when necessary), and prompt exercise of legal options to preserve the lender's collateral position or guard against loss. Loan servicing policies for rural

home loans shall recognize the inherent differences between agricultural and rural home lending.

(2) *Operating loans.* The objective shall be to service such loans to assure disbursement in accordance with the basis of approval, repayment from the sources obligated or pledged, and to minimize risk exposure to the lender. Procedures shall require:

(i) The procurement of periodic operating data essential for maintaining control, for the proper analysis of such data, and prompt action as needed;

(ii) Inspections, reappraisals, and borrower visits appropriate to the nature and quality of the loan; and

(iii) Controls on insurance, margin requirements, warehousing, and the prompt exercise of legal options to preserve the lender's collateral position and guard against loss.

(3) *Legal entity loans.* In addition to the foregoing servicing objectives for term and operating loans, procedures for servicing these loans shall require procurement of data on changes in ownership, control, and management; review of business objectives, financing programs, organizational structure, and operating methods, and appropriate analysis of such changes with provision for action as needed.

[37 FR 11424, June 7, 1972, as amended at 40 FR 17745, Apr. 22, 1975. Redesignated at 46 FR 51878, Oct. 22, 1981 and amended at 48 FR 54475, Dec. 5, 1983; 51 FR 39502, Oct. 28, 1986; 57 FR 38250, Aug. 24, 1992; 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, § 614.4510 was amended by removing paragraphs (b) and (d)(4), by redesignating paragraphs (c) and (d) as (b) and (c), and by revising the introductory text, (a), and the introductory text of newly redesignated (c), effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

§ 614.4510 General.

The bank and associations that are originating lenders shall be responsible for the servicing of the loans which they make. However, loan participation agreements may designate specific loan servicing efforts to be accomplished by a participating institution. The bank board of directors shall direct the bank and associations to adopt loan servicing policies and procedures to assure that loans will be serviced fairly and equitably for the borrower while minimizing the risk for the bank and associations. Procedures shall include specific plans which help preserve the quality of sound loans and which help credit deficiencies as they develop.

(a) The Federal land bank shall provide guidelines for the servicing of loans by the Federal land bank associations. The servicing may be accomplished either under the direct supervision of the banks or under delegated authority.

(b) The supervisory Federal intermediate credit bank shall provide guidelines for the production credit associations to use in establishing their loan servicing policies and procedures plus any limitations requiring the approval of the bank.

(c) In the development of bank and association loan servicing policies and procedures, the following criteria shall be included:

* * * * *

(d) * * *

(4) *Approved policies.* Copies of the bank loan servicing policies required under this subpart N and all subsequent revisions shall be furnished to the Farm Credit Administration.

§ 614.4511 Federal land bank association compensation.

Bank financial policies on Federal land bank association compensation are subject to the approval of the bank board. Compensation may be paid to associations in an amount which reflects the value of the services being rendered for the bank and other financial policies and objectives. Compensation plans and changes thereto shall be approved by the bank board.

[47 FR 12146, Mar. 22, 1982, as amended at 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989]

§ 614.4512 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Application for restructuring* means a written request—

(1) From a borrower for the restructuring of a distressed loan in accordance with a preliminary restructuring plan proposed by the borrower as a part of the application;

(2) Submitted on the appropriate forms prescribed by the qualified lender; and

(3) Accompanied by sufficient financial information and repayment projections, where appropriate, as required by the qualified lender to support a sound credit decision.

(b) *Certified lender* means a qualified lender that has been certified for financial assistance under section 6.4 of the Act.

(c) *Cost of foreclosure* means:

(1) The difference between the outstanding balance due as provided by the loan documents on a loan made by a qualified lender and the liquidation value of the loan, taking into consideration the borrower's repayment capacity and the liquidation value of the collateral used to secure the loan;

(2) The estimated cost of maintaining a loan classified as a high-risk asset;

(3) The estimated cost of administrative and legal actions necessary to foreclose a loan and dispose of property acquired as the result of the foreclosure, including attorneys' fees and court costs;

(4) The estimated cost of changes in the value of collateral used to secure a loan during the period beginning on the date of the initiation of an action to foreclose or liquidate the loan and ending on the date of the disposition of the collateral; and

(5) All other costs incurred as the result of the foreclosure or liquidation of a loan.

(d) *Distressed loan* means a loan for which the borrower does not have the financial capacity, as determined by the lender, to pay according to its terms and which exhibits one or more of the following characteristics:

(1) The borrower is demonstrating adverse financial and repayment trends;

(2) The loan is delinquent or past due under the terms of the loan contract;

(3) One or both of the factors listed in paragraphs (d) (1) and (2) of this section, together with inadequate collateralization, present a high probability of loss to the lender.

(e) *Foreclosure proceeding* means:

(1) A foreclosure or similar legal proceeding to enforce a lien on property, whether real or personal, that secures a noninterest-earning asset or distressed loan; or

(2) The seizing of and realizing on non-real property collateral, other than collateral subject to a statutory lien arising under title I or II of the Act to effect collection of a nonaccrual or distressed loan.

(f) *Loan* means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(g) *Qualified lender* means:

(1) A System institution that makes loans (as defined in paragraph (f) of this section) except a bank for cooperatives; and

(2) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act, but only with respect to loans discounted or pledged under section 1.7(b)(1) of the Act.

(h) *Restructure* or *restructuring* means rescheduling, reamortization, renewal, deferral of principal or interest, monetary concessions, and the taking of any other action to modify the terms of, or forbear on, a loan in any way that will make it probable that the operations of the borrower will become financially viable.

[53 FR 35454, Sept. 14, 1988, as amended at 58 FR 48791, Sept. 20, 1993]

§614.4513 Uninsured voluntary and involuntary accounts.

(a) Borrowers may make voluntary advance payments on their loans or, under agreement with a System institution, may make voluntary advance conditional payments intended to be applied to future maturities. The monies in the advance conditional payment accounts may be available for return to the borrower in lieu of increasing his loan. System institutions may pay interest on advance conditional payments for the time the funds are held unapplied at a rate not to exceed the rate charged on the related loan(s). System institutions shall hold any advance conditional payments received in accordance with this section in voluntary advance payment accounts.

(b) System institutions may establish involuntary payment accounts including, but not limited to, funds held for the borrower, such as loan proceeds to be disbursed for which the borrower is obligated; the unapplied insurance proceeds arising from any insured loss; and total insurance premiums and applicable taxes collected in advance in connection with any loan.

[53 FR 35454, Sept. 14, 1988]

§ 614.4514 Protection of borrowers who meet all loan obligations.

(a) A qualified lender may not foreclose on any loan because of the failure of the borrower to post additional collateral, if the borrower has made all accrued payments of principal, interest, and penalties with respect to the loan.

(b) A qualified lender may not require any borrower to reduce the outstanding principal balance of any loan made to the borrower by any amount that exceeds the regularly scheduled principal installment payment (when due and payable), unless:

(1) The borrower sells or otherwise disposes of part or all of the collateral and the proceeds from the sale or disposition are not applied to the loan; or

(2) The parties agree otherwise in a written agreement entered into by the parties.

(c) After a borrower has made all accrued payments of principal, interest, and penalties with respect to a loan made by a qualified lender, the lender shall not enforce acceleration of the borrower's repayment schedule due to the borrower having not timely made one or more principal and/or interest payments.

(d) If a qualified lender places any loan in a noninterest-earning status *and* such action results in an adverse action being taken against the borrower, such as revocation of any undisbursed loan commitment, the lender shall document such change of status and promptly notify the borrower in writing of such action and the reasons therefore. If the borrower was not delinquent in any principal or interest payment under the loan at the time of such action and the borrower's request to have the loan placed back into accrual status is denied, the borrower may obtain a review of such denial before the appropriate credit review committee pursuant to §§ 614.4441 and 614.4443. The borrower must request such a review within 30 days after receipt of the notice.

[53 FR 35454, Sept. 14, 1988, as amended at 58 FR 48791, Sept. 20, 1993]

§ 614.4515 Restructuring policy and reporting.

(a) Loan restructurings are to be accomplished in accordance with:

(1) The policy adopted by the bank board of directors under section 4.14A(g) of the Act;

(2) Any restructuring plan required by the Special Asset Group under section 4.14C(b)(2) of the Act, if applicable.

(b) Until January 6, 1993, each qualified lender shall submit semiannual reports containing information for each 6-month period, starting from January 6, 1988, to the Farm Credit Administration. The reports shall contain:

(1) The results of its review of its distressed loans, conducted in order to determine which loans are suitable for restructuring; and

(2) The financial effect of loan restructurings and liquidations on the lender.

[53 FR 35455, Sept. 14, 1988]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, § 614.4515 was removed and reserved, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§ 614.4516 Restructuring policy and procedures.

Loan restructurings are to be accomplished with the policy adopted by the bank board of directors under section 4.14A(g) of the Act.

(a) *Notice*. When a qualified lender determines that a loan is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring. The qualified lender shall include with such notice:

(1) A copy of the policy of the lender established under section 4.14A(g) of the Act that governs the treatment of distressed loans; and

(2) All materials necessary to enable the borrower to submit an application

for restructuring on the loan. Such notice shall be provided not later than 45 days before a qualified lender begins foreclosure proceedings with respect to any such loan outstanding to the borrower. In the case of a loan involving more than one primary obligor, the requirements of this section will be satisfied by providing the notice to any one of such parties.

(b) *Opportunity for meeting.* The lender shall provide any borrower to whom a notice has been sent with a reasonable opportunity to meet personally with a representative of the lender:

(1) To review the status of the loan, the financial condition of the borrower, and the suitability of the loan for restructuring;

(2) With respect to a loan that is in a noninterest-earning status, to develop a plan for restructuring the loan if the loan is suitable for restructuring as determined by the qualified lender.

(c) *Voluntary consideration of restructuring.* A qualified lender may, in the absence of an application for restructuring from a borrower, propose a restructuring plan for an individual borrower.

[53 FR 35455, Sept. 14, 1988, as amended at 58 FR 48791, Sept. 20, 1993; 58 FR 62514, Nov. 29, 1993; 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, §614.4516 was amended by revising the heading and adding an introductory paragraph, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§614.4517 Restructuring decision.

(a) *Consideration of application.* When a qualified lender receives an application for restructuring from a borrower, the lender shall determine whether or not to restructure the loan, taking into consideration:

(1) Whether the cost to the lender of restructuring the loan is equal to or less than the cost of foreclosure considering all relevant factors including:

(i) The present value of interest and principal foregone by the lender in carrying out the restructuring plan;

(ii) Reasonable and necessary administrative expenses involved in working with the borrower to finalize and implement the restructuring plan;

(iii) Whether the borrower has presented a preliminary restructuring plan and cash-flow analysis taking into account income from all sources to be applied to the debt and all assets to be pledged, showing a reasonable probability that orderly debt retirement will occur as a result of the proposed restructuring; and

(iv) Whether the borrower has furnished or is willing to furnish complete and current financial statements in a form acceptable to the institution;

(2) Whether the borrower is applying all income over and above necessary and reasonable living and operating expenses to the payment of primary obligations;

(3) Whether the borrower has the financial capacity and the management skills to protect the collateral from diversion, dissipation, or deterioration;

(4) Whether the borrower is capable of working out existing financial difficulties, taking into consideration any prior restructurings on the loan, reestablishing a viable operation, and repaying the loan on a rescheduled basis; and

(5) In the case of a distressed loan that is not delinquent, whether restructuring consistent with sound lending practices may be taken to reasonably ensure that the loan will not become a loan that it is necessary to place in a noninterest-earning status.

(b) *Required restructuring.* If a qualified lender determines that the potential cost to such qualified lender of restructuring the loan in accordance with a proposed restructuring plan is less than or equal to the potential cost of foreclosure, the qualified lender shall restructure the loan in accordance with the plan. If two or more restructuring alternatives are available to a qualified lender with respect to a distressed loan, the lender shall restructure the loan in conformity with the alternative that results in the least cost to the lender.

(c) *Documentation.* In the event that an application for restructuring is denied, a qualified lender shall maintain

sufficient documentation to demonstrate its compliance with paragraphs (a) and (b) of this section, as applicable.

[53 FR 35455, Sept. 14, 1988, as amended at 58 FR 48791, Sept. 20, 1993; 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, § 614.4517 was amended by adding (c), effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§ 614.4518 Notice of denial of restructuring and right to review.

Each qualified lender shall render its decision on an application for restructuring in as expeditious a manner as is practicable. Upon reaching a decision on a restructuring application, the lender shall provide prompt written notice, by certified mail or in any manner that requires a primary obligor to acknowledge receipt of the lender's decision. In the case of a loan involving one or more primary obligors, the notice may be provided to any one of such parties. Where an application for restructuring is denied, the notice shall include:

(a) The reason(s) for the denial, and any critical assumptions and relevant information upon which the reasons are based, except that any confidential information shall not be disclosed;

(b) Notification that the borrower may request a review of the denial;

(c) Notification that any request for such review must be made in writing within 7 days after receiving such notice;

(d) A brief explanation of the process for seeking review of the denial, including the appraisal process; and the right to appear before the credit review committee, pursuant to §§ 614.4442 and 614.4443 accompanied by counsel or by any other representative, if the borrower so chooses.

[53 FR 35455, Sept. 14, 1988]

§ 614.4519 Notice before foreclosure; limitation on foreclosure.

(a) Not later than 45 days before any qualified lender begins foreclosure proceedings with respect to a loan outstanding to any borrower, the lender shall notify the borrower that the loan may be suitable for restructuring and that the lender will review any such suitable loan for possible restructuring, and shall include with such notice a copy of the policy and the materials described in § 614.4516(a)(2). The notice shall also inform the borrower that the alternative to restructuring may be foreclosure.

(b) No qualified lender may foreclose or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any pending consideration of the loan for restructuring under this subpart, and completion of credit review committee consideration, if applicable. This section shall not prevent a lender from taking any action necessary to avoid the dissipation of assets, or the destruction, diversion or deterioration of collateral if the lender has reasonable grounds to believe that such dissipation, destruction, diversion or deterioration may occur.

(c) Any foreclosure proceeding which is commenced by a certified lender after the lender's credit review committee has rejected a borrower's appeal on a restructuring application must be terminated if the Special Asset Group in its district prescribes a restructuring plan to the lender which the borrower accepts.

[53 FR 35455, Sept. 14, 1988]

§ 614.4520 Review of restructurings for certified institutions; reporting.

(a) Within 9 months after a qualified lender is certified under section 6.4 of the Act, such lender shall review each loan that has not been previously restructured and that is a noninterest-earning asset on the date the lender is certified, and shall determine whether to restructure the loan. Within 6 months after a loan made by a certified lender is placed in nonaccrual status, the lender shall determine whether to restructure the loan.

(b) Within 30 days after a qualified lender is certified to issue preferred stock under section 6.27 of the Act, the board of directors of the Farm Credit Bank shall establish a Special Asset Group that shall review each determination by the lender not to restructure a loan. If a Special Asset Group determines that a loan under review

should be restructured, the group shall prescribe a restructuring plan for the loan that the qualified lender shall implement if the borrower agrees.

(c) The National Special Asset Council, established by the Farm Credit System Assistance Board, will:

(1) Under section 4.14C(c) of the Act monitor compliance with the restructuring requirements of this subpart by qualified lenders certified to issue preferred stock under section 6.27 of the Act, and by Special Asset Groups established under paragraph (b) of this section; and

(2) Review a sample of determinations made by each Special Asset Group that a loan will not be restructured.

(d) With respect to determinations by a Special Asset Group that a loan will not be restructured, the Special Asset Group shall submit to the National Special Asset Council a report evaluating the loan and the basis for the determination that the loan should not be restructured.

(e) The National Special Asset Council will review a sufficient number of determinations made by each Special Asset Group to foreclose on any loan to assure the Council that such group is complying with this subpart. With regard to each determination reviewed, the Council shall make an independent judgment on the merits of the decision to foreclose rather than restructure the loan.

(f) If the National Special Asset Council determines that any Special Asset Group is not in substantial compliance with this subpart, the Council will notify the group of the determination, and take such other action as the Council considers necessary to ensure that such group complies with this subpart.

(g) In determining whether a loan is to be restructured, each qualified lender certified under section 6.4 of the Act, and each Special Asset Group, shall take into consideration the factors specified in §614.4517(a). The National Special Asset Council is required by statute to consider these same factors.

[53 FR 35456, Sept. 14, 1988, as amended at 58 FR 48791, Sept. 20, 1993]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, §614.4520 was removed and reserved, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§614.4521 Participation in State agricultural loan mediation programs.

(a) If initiated by a borrower, System institutions shall, either concurrently with consideration of loan restructuring under §614.4517 or at any other appropriate time, participate in State mediation programs certified under section 501 of the Agricultural Credit Act of 1987, and shall present and explore debt restructuring proposals advanced in the course of such mediation. If provided in the certified program, System institutions may initiate mediation at any time.

(b) System institutions shall cooperate in good faith with requests for information or analysis of information made in the course of mediation under any such loan mediation program.

(c) No System institution may make a loan secured by a mortgage or lien on agricultural property to a borrower on the condition that the borrower waive any right under the agricultural loan mediation program of any State.

[53 FR 35456, Sept. 14, 1988]

§614.4522 Right of first refusal.

(a) For purposes of this section, in addition to the definitions in §614.4512, the following definitions shall apply:

(1) *Acquired real estate* means agricultural real estate acquired by an institution of the System as a result of a loan foreclosure or a voluntary conveyance by a borrower who, as determined by the institution does not have the financial resources to avoid foreclosure;

(2) *Previous owner* means the prior record owner who was a borrower from a System institution who did not have the financial resources, as determined by the institution, to avoid foreclosure on agricultural real estate; where the borrower is not the prior record owner, *previous owner* means the prior record owner where that owner's land was used as collateral for a loan to a System borrower; and

(3) *System institution* or *institution of the System* means all System institutions, except banks for cooperatives.

(b) Upon acquiring agricultural real estate as a result of a loan foreclosure or voluntary conveyance by a borrower, the System institution shall determine whether the borrower had the financial resources to avoid foreclosure and document this determination in the file for the acquired real estate.

(c) Except as provided in paragraph (e) of this section, System institutions electing to sell acquired real estate, or any portion of such property, of a previous owner, as defined in this section:

(1) Shall notify the previous owner by certified mail, within 15 days of the decision to sell the property, of the appraised fair market value of the property as established by an accredited appraiser and of the right:

(i) To purchase the property at the appraised fair market value, or

(ii) To offer to purchase the property at a price less than the appraised value.

The notice shall inform the previous owner that any offer must be received within 30 days of receipt of the notification.

(2) Shall accept an offer from the previous owner to purchase the property at the appraised value, within 15 days after the receipt of such offer, and sell the property to the previous owner, if the offer was received within 30 days of the notification required in paragraph (c)(1) of this section.

(3) Shall consider an offer from a previous owner to purchase the acquired real estate at a price less than the appraised value, if the offer was received within 30 days of the notification required in paragraph (c)(1) of this section. Notice of the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of such offer. If the institution rejects such an offer, the institution may not sell the property to any other person:

(i) At a price equal to, or less than, that offered by the previous owner; or

(ii) On different terms or conditions than those that were extended to the previous owner; without first notifying the previous owner by certified mail and providing an opportunity to purchase the property at such price or under such terms and conditions.

The previous owner shall have 15 days from receipt of the notification to submit an offer to purchase at such price or under such terms and conditions.

(4) For purposes of this section, financing by the System institution shall not be considered a term or condition of the sale of acquired real estate. A System institution shall not be required to provide financing to the previous owner in connection with the sale of acquired real estate.

(d) Except as provided in paragraph (e) of this section, System institutions electing to lease acquired real estate, or any portion of such property, of a previous owner, as defined in this section:

(1) Shall notify the previous owner by certified mail, within 15 days of the decision to lease, of the appraised rental value of the property, as established by an accredited appraiser, and of the right to:

(i) Lease the property at a rate equivalent to the appraised rental value of the property, or

(ii) To offer to lease the property at rate that is less than the appraised rental value of the property.

The notice shall inform the previous owner that any offer must be received within 15 days of receipt of the notification.

(2) Shall accept an offer from a previous owner to lease the property at the appraised rental value, within 15 days after the receipt of such offer, and lease the property to the previous owner, unless the institution determines that the previous owner:

(i) Does not have the resources available to conduct a successful farming or ranching operation; or

(ii) Cannot meet all of the payments, terms and conditions of such lease.

(3) Shall consider an offer from a previous owner to lease the property at a rate that is less than the appraised rental value of the property. Notice of the decision to accept or reject such offer must be provided to the previous owner within 15 days of receipt of such offer. If the institution rejects such an offer, the institution may not lease the property to any other person:

(i) At a rate equal to or less than that offered by the previous owner; or

(ii) On different terms and conditions than those that were extended to the previous owner, without first notifying the previous owner by certified mail and providing an opportunity to lease the property at such rate or under such terms and conditions.

The previous owner shall have 15 days after receipt of the notification in which to agree to lease the property at such rate or under such terms and conditions.

(e) System institutions electing to sell or lease acquired real estate or a portion thereof through a public auction, competitive bidding process, or other similar public offering:

(1) Shall notify the previous owner, by certified mail, of the availability of such property. Such notice shall contain the minimum amount, if any, required to qualify a bid as acceptable to the institution and any terms or conditions to which such sale or lease will be subject;

(2) If two or more qualified bids in the same amount are received by the institution, such bids are the highest received, and one of the qualified bids is from the previous owner, the institution shall accept the offer by the previous owner; and

(3) Shall not discriminate against a previous owner.

(f) Each certified mail notice requirement in this section shall be fully satisfied by mailing one certified mail notice to the last known address of the former borrower.

(g) The rights provided under section 4.36 of the Act, and this section, shall not diminish any right of first refusal under the law of the State in which the property is located.

[53 FR 35456, Sept. 14, 1988, as amended at 53 FR 52401, Dec. 28, 1988; 58 FR 48791, Sept. 20, 1993]

Subpart O—Special Lending Programs

§614.4525 General.

(a) To provide the best possible credit service to farmers, ranchers, and producers or harvesters of aquatic products, bank and association boards may adopt policies permitting the bank or association to enter into agreements with agents, dealers, cooperatives, other lenders, and individuals to facilitate its making of loans to eligible farmers, ranchers, and producers or harvesters of aquatic products.

(b) A bank or association, pursuant to its board policies, may enter into an agreement with third parties that will accrue to the benefit of the borrower and the lender to perform functions in the making or servicing of loans other than the evaluation and approval of loans. When such an agreement is developed, and the territory covered by the agreement extends outside the territorial limits of the originating association or bank, the written consent of all affected banks or associations is required. Reasonable compensation may be paid for services rendered.

(c) Production credit associations and agricultural credit associations may enter into agreements with private dealers or cooperatives permitting them to take applications for loans from the association to purchase farm or aquatic equipment, supplies, and machinery. Such agreements shall normally be limited to persons or businesses selling to farmers, ranchers, or producers or harvesters of aquatic products and shall contain credit limits consistent with sound credit standards. When the sales territory of a dealer or cooperative extends outside the territory of the originating association or the Farm Credit district, written consent of each bank and association affected shall be obtained before making such loans. Reasonable compensation may be paid or charged to a dealer or cooperative for services rendered in connection with such programs.

(d) Farm Credit System institutions that are direct lenders may enter into memoranda of understanding among themselves or with other lenders for the simultaneous processing and closing of loans to a mutual borrower. The basic policies and principles of each System lender shall apply.

[47 FR 12146, Mar. 22, 1982. Redesignated at 53 FR 35454, Sept. 14, 1988, and amended at 55 FR 24886, June 19, 1990; 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, §614.4525 was amended by adding the words ''and agricultural credit associations''

after the words ''Production credit associations.'' in paragraph (c), and removing the words ''Subject to the approval of the respective banks board of directors, Federal land banks, Federal intermediate credit banks, for cooperatives, and production credit associations'' and adding in their place the words ''Farm Credit System institutions that are direct lenders'' in the first sentence of paragraph (d), effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§ 614.4530 Special loans, production credit associations and agricultural credit associations.

Under policies approved by the bank board and procedures developed by the bank, production credit associations and agricultural credit associations may make the following special types of loans on commodities covered by price support programs. Notwithstanding the regulations covering other loans made by an association, loans may be made to members on any commodity for which a Commodity Credit Corporation price support program is in effect, at such rate of interest and upon such terms as the bank board may prescribe subject to the following conditions:

(a) The commodity offered as security for the loan shall be eligible for price support under a Commodity Credit Corporation price support program and shall be stored in a bonded public warehouse, holding storage agreement for such commodity approved by Commodity Credit Corporation.

(b) The member shall have complied with all Commodity Credit Corporation eligibility requirements.

(c) The loan shall mature not later than 30 days prior to the expiration of the period during which the Commodity Credit Corporation loan or other price support may be obtained on the commodity and shall be secured by pledge of negotiable warehouse receipts covering the commodity.

(d) The borrower shall appoint the association as his attorney-in-fact to obtain a Commodity Credit Corporation loan (or other such price support as is available) in the event that the borrower fails to do so prior to maturity or repayment of the loan.

[37 FR 11424, June 7, 1972. Redesignated at 46 FR 51878, Oct. 22, 1981, and amended at 55 FR 24886, June 19, 1990]

Subpart P—Farm Credit Bank and Agricultural Credit Bank Financing of Other Financing Institutions

§ 614.4540 Definitions.

When used in this subpart:

(a) The term *person* means an individual, corporation, partnership, association, joint stock company, trust, fund, or any organized group of individuals or entities whether incorporated or unincorporated.

(b) The term *affiliate* of another person means a person that directly, or indirectly through one or more intermediaries,

(1) Owns, controls, or has the power to vote shares of any class of voting securities of such person; or

(2) Controls in any manner the election of a majority of directors of such person; or

(3) Exercises or has the power to exercise a controlling influence over the management of such person.

(c) The term *subsidiary* of another person means any person 10 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by such other person.

(d) The term *depository institution* means any national bank, State bank, trust company, savings institution, or credit union.

(e) The term *other financing institution (OFI)* means any person enumerated in section 1.7(b)(1)(B) of the Act, except to the extent that depository institutions, as defined herein, are specifically excluded from the term.

(f) The term *national money markets* means those money markets serviced by the largest banks in the United States which operate on a national level and conduct international operations as well.

(g) The term *regional money markets* means those money markets generally served by intermediate size banks which do not ordinarily operate on a

national level but which may trade funds among themselves and provide services to community banks.

(h) The term *bank(s)* refers collectively to Farm Credit Banks, as defined in section 1.3 of the Act, and agricultural credit bank(s) as defined in part 619.

(i) The term *association(s)* refers collectively to production credit associations, and agricultural credit associations.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§614.4545 General.

(a) The banks have a responsibility to make loans and extend other financial assistance to, and discount for or purchase from, any OFI which meets the criteria set forth in §614.4550 and complies with the various other requirements of this subpart.

(b) An OFI meeting the basic eligibility criteria in §614.4550 of this subpart shall have its request for access evaluated on the basis of its ability to make and service a sound loan portfolio and its managerial and financial strength. The presence of two or more OFI's serving the same territory or the failure of an OFI to enter into loan participations with production credit associations or agricultural credit associations shall not be considered in evaluating the request for access. Financial assistance may be provided through a direct loan to the OFI, or by purchasing or discounting individual loans made by the OFI.

(c) A bank shall determine, in considering a request to establish an access relationship, whether the OFI should be considered by itself, or together with its affiliates or subsidiaries as a combined entity, for the purpose of determining eligibility in applying the criteria set forth in §614.4550 of this subpart. A determination to consider an OFI together with its affiliates as a combined entity shall require the consistent application of each of the eligibility criteria to the combined entity on a consolidated basis. In making its determination, the bank shall give due regard to the total relationship between the various parties, including but not necessarily limited to the following factors:

(1) Ownership of voting stock;

(2) Common management and employees;

(3) Common directors;

(4) Contractual and correspondent relationships;

(5) Prior business dealings; and

(6) Liability interrelationships, including but not limited to fund flows.

(d) Where a bank makes a determination to consider an OFI together with its affiliates as a combined entity, the OFI must demonstrate that the larger organization of which it is considered a part will continue to use the same proportion of its resources for agricultural or aquatic lending. The OFI must also demonstrate that all resources available to the consolidated entity are being used to alleviate the shortage of funds for agriculture.

(e) In dealing with an OFI affiliated with a cooperative, the bank shall consider the possible effects of such relationship on the operations and credit policies of the cooperative. Such OFI which is an otherwise eligible entity may discount or borrow on the security of notes of farmers, ranchers, or producers or harvesters of aquatic products (as distinguished from notes of cooperatives), evidencing loans to finance the cost of supplies, equipment, or services obtained from such affiliated cooperative, if the bank board finds that an additional source of credit is needed to facilitate financing of such transactions and the primary benefits of such credit will inure to the borrowing farmers, ranchers, or producers or harvesters of aquatic products.

[46 FR 51886, Oct. 22, 1981; 46 FR 54726, Nov. 4, 1981, as amended at 55 FR 24886, June 19, 1990]

§614.4550 Basic eligibility criteria.

(a) An OFI shall be afforded access on a reasonable basis to a bank as a source of funds if it meets all of the eligibility criteria set forth below:

(1) The OFI is duly organized and qualified to make loans under the laws of each jurisdiction in which it operates. The OFI shall be a person primarily engaged in the business of extending short- and intermediate-term credit to farmers, ranchers, and/or producers or harvesters of aquatic products. A person engaged in other business activities shall not be eligible to

obtain credit from a bank merely because it has the power to make loans to farmers, ranchers, and/or producers or harvesters of aquatic products. The fact that an OFI has powers not related to such credit activities or receives income from other sources shall not in and of itself render it ineligible. A person whose primary function is to finance the sale of products by its affiliates shall not be eligible for access.

(2) The OFI is significantly involved in lending for agricultural or aquatic purposes. The OFI has at least 15 percent of its loan volume at the seasonal peak in agricultural and/or aquatic loans. The bank shall consider requests with a lesser percent if the OFI demonstrates that it is making a special and sustained effort to serve agricultural or aquatic producers and the 15 percent will be attained in a reasonably short period. Only obligations under section 2.15(a) (1), (2), and (3) of the Farm Credit Act of 1971, as amended, as well as eligible agricultural or aquatic real estate loans to eligible borrowers and leasing obligations to eligible borrowers originated through the OFI's own leasing program, shall be considered in determining that this 15-percent requirement has been met.

(3) Where the OFI seeking access is a depository institution, or where the OFI is affiliated with one or more depository institutions and considered a combined entity in accordance with § 614.4545(c) of this subpart, the OFI must demonstrate a continuing need for supplementary sources of funds to meet the credit requirements of its agricultural or aquatic borrowers. The OFI's gross loan-to-deposit ratio shall be not less than 60 percent at the seasonal peak for the last 3 consecutive years. Where failure to meet this criterion in one of the last 3 consecutive years is the result of a general decrease in borrowings caused by an economic decline, the bank may make an exception in applying this criterion to a request for access where the OFI has otherwise maintained ratios equivalent to depository institutions of comparable size in the district. For purposes of this paragraph, gross loans shall include all direct credit extended by the OFI in its trade area. Such items as loans purchased from or participated in with other OFIs shall be excluded.

(4) The OFI has limited access to national or regional money markets as an alternate source of funds and is fully utilizing locally generated funds to finance local needs. Evidence of money market access shall be determined by the extent to which the OFI, or persons of similar size and circumstances, have the ability to utilize, on a regular basis, bankers acceptances, commercial paper, or negotiable certificates of deposit, or other similar liability instruments as a source of funds.

(5) The OFI would continue to use at least the same proportion of its resources for agricultural or aquatic lending.

(b) An OFI eligible under previous regulations which cannot meet the basic eligibility requirements of these regulations and is discounting with a bank on the effective date of these revisions shall not become ineligible provided it does not make material changes in operations or ownership.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§ 614.4555 Review of denial of access based on eligibility.

A bank which proposes to reject a request by an OFI for access to the bank as a source of funds on the basis of eligibility as set forth in § 614.4550 of this subpart shall promptly notify the Farm Credit Administration of such decision and the reasons therefor. The Farm Credit Administration shall review each such negative decision on a case-by-case basis, taking into consideration all relevant factors, and advise the bank of its final determination. Thereafter, the bank shall promptly notify the OFI of the determination as to the request for access and, if rejected, the reasons therefor.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§ 614.4560 Establishing and maintaining access.

(a) An OFI seeking access to a bank as a supplemental source of funds shall demonstrate that it is able to establish and maintain a sound lending program. Each bank shall develop standards to evaluate an OFI relative to:

(1) A capital structure adequate to support an economically feasible lending operation;

(2) The amount of collateral required to be deposited with or invested in the bank to support the extension of credit to the OFI; and

(3) The ability of the OFI to extend and administer the anticipated loan portfolio on a sound basis.

(b) The standards set forth in paragraph (a) shall be subject to the following limitations:

(1) The amount required to capitalize an OFI shall be determined by an analysis of the economic feasibility of the proposal presented in the request, the credit risk involved, and the servicing cost to the bank. Any uniform minimum capital requirement based on the bank's administrative costs shall be supported by documented costs which clearly demonstrate the need for the minimum requirement.

(2) The initial capital required to be invested in the bank by an OFI shall be no greater than the actual average investment required of associations in the district. OFIs with established access relationships may be assessed for additional capital if the contract is renegotiated to permit a larger volume of loans or when a general capital equalization or assessment is made. Capital invested in the bank by an OFI shall be retired in accordance with bank policy.

(3) No obligation shall be purchased from or discounted for, and no loans shall be made or other similar financial assistance extended by a bank to an OFI if the amount of such obligation added to the aggregate liabilities of such OFI, whether direct or contingent (other than bona fide deposit liabilities), exceeds 10 times the paid-in and unimpaired capital and surplus of such OFI or the amount of such liabilities permitted under the laws of the jurisdiction creating such OFI, whichever is less. It shall be unlawful for any national bank which is indebted to any bank upon obligation discounted or purchased to incur any additional indebtedness, if by virtue of such additional indebtedness its aggregate liabilities, direct or contingent, will exceed the limitation contained herein. A debt-to-capital ratio less than that permitted by statute may be imposed to assure that the OFI maintains its eligibility to borrow and provides adequate capital from a credit standpoint. Any lesser ratio imposed initially shall not be less than one ratio point below the district average for associations. Once the OFI has established and maintained a satisfactory access relationship with a bank, the debt-to-capital standard shall be the same as that used in evaluating associations.

(4) General collateral securing the entire credit line from a bank may be required in accordance with § 614.4570 of this subpart. The amount to be required shall be based on the credit risk presented by the OFI and shall not be proportionally greater than is required of a association under similar circumstances.

(5) Credit lines with a bank shall be established based solely on the management ability, financial condition, and needs of the OFI. The line shall be renegotiated based on these same criteria when the needs of the OFI increase. A credit line shall be established for at least a 2-year term in support of the OFI's continuing need for access. The OFI shall provide the bank a 2-year projected average daily loan balance. Failure to maintain an annual average daily balance of loans discounted to at least 70 percent of the projected average daily balance shall subject the OFI to payment of an annual loan commitment fee. The fee shall be equal to 1 percent of the difference between the projected and approved average daily balance and the actual average daily balance of loans outstanding or discounted. The bank must make exceptions when failure to comply with this requirement is caused by a general decrease in agricultural borrowings caused by an economic decline, but no exception shall be made when failure to comply with this requirement is due to borrowings obtained from other sources or repurchase of loans by an affiliate. Repeated failure to utilize the line of credit at an acceptable level may result in loss of access. No fee shall be assessed if the relationship is terminated by the bank for reasons other than those stated in this section. OFIs with inactive access relationships on the effective date of

these regulations shall be notified and given a reasonable opportunity to activate or cancel the relationship.

[46 FR 51886, Oct. 22, 1981, as amended at 46 FR 59960, Dec. 8, 1981; 55 FR 24886, June 19, 1990]

§ 614.4565 Lending limit.

An OFI having access to a bank shall not accept liability on any loan or other obligation, or obtain any endorsement or guarantee from a borrower where the aggregate of such liabilities or indebtedness to the OFI would exceed 50 percent of its capital and surplus or such lesser amount as may be established by other State or Federal statute. OFIs which have loans in excess of this limitation shall have 2 years from the effective date of these regulations to reduce individual risk exposure to within this limitation.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§ 614.4570 General collateral requirements.

As a condition precedent to establishing a credit line with a bank, OFIs (except depository institutions) shall pledge as collateral for any and all obligations to the bank, cash, or readily marketable securities of high rating, in an amount to be determined by the bank. At the discretion of the bank, depository institutions may be required (unless prohibited by law or by supervisory authority) to deposit acceptable collateral. Securities and obligations pledged with the bank shall be deposited under a collateral pledge agreement pursuant to which all securities and obligations so pledged, including all substitutions and additions and the proceeds of any such collateral, including all income derived, shall be available to secure any and all obligations to the bank, whether direct or contingent, present or future.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§ 614.4580 Use of funds.

Funds obtained from the bank may not be used by an OFI to expand lending activity in loans which would be ineligible for discount.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§ 614.4590 General financing agreement.

An OFI desiring to access a bank shall execute a general financing agreement. The agreement shall state the general terms and conditions under which loans will be discounted or made or credit otherwise extended and shall provide for the OFI to periodically furnish the bank acceptable financial reports and any data necessary to assure that the OFI remains in compliance with these regulations. The agreement shall further provide that the OFI, other than a State bank, trust company, or savings association, agrees to examination by the Farm Credit Administration if such examination is requested by the Chairman. With respect to an OFI which is a State bank, trust company, or savings association, the agreement shall provide that such OFI, at the request of the Chairman, consents that reports of its examination by constituted State authorities may be furnished by such authorities to the Farm Credit Administration.

[51 FR 41947, Nov. 20, 1986, as amended at 55 FR 24886, June 19, 1990]

§ 614.4600 Methods of financing.

(a) A bank may provide funds to OFIs by discounting or purchasing individual loans or by direct loan to the OFI, all subject to the following:

(1) Direct discount or purchase is normally made at full face value of the individual loan of acceptable quality. At the option of the bank, a loan of less than acceptable quality may be discounted or purchased at less than the full amount of such loans. In such transactions, the OFI shall be required to apply all repayments toward repayment of the amount of the less than acceptable loan discounted or purchased by the bank.

(2) A bank is authorized to make loans and advances to OFIs secured by notes or other such obligations of eligible borrowers defined in part 613 of these regulations; however, such loans or advances may be made to enable the

OFI to make or carry loans to such bona fide farmers and ranchers or to producers or harvesters of aquatic products.

(b) The following classes of obligations are authorized for discount or purchase or as collateral for direct loans and advances to OFIs, subject to approval of the bank to which such securities are to be pledged:

(1) Obligations of eligible borrowers defined in part 613 of these regulations arising from direct credit extension by the OFI.

(2) Loan participations purchased.

(3) Obligations set forth in §615.5140(a) which have been approved by the Farm Credit Administration for investment by institutions of the Farm Credit System.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§614.4610 Obligations eligible for discount or purchase.

Any obligation the proceeds of which could have been advanced to an eligible borrower by an association in the district shall be eligible for discount by or purchase from an OFI, as set forth in part 613 of these regulations and the limitations contained therein, including §613.3040(d)(2). Loan participations purchased by an OFI shall be eligible for discount by or purchase from an OFI. The bank is authorized to take corrective measures if this authority is being used to circumvent the intent of these regulations. The banks shall be responsible for providing OFIs with any additional lending and borrower eligibility guidelines which may be provided to associations.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§614.4620 Multiple ownership.

Where two or more entities combine resources to form an OFI to apply for access to a bank, the request for access shall be evaluated according to the criteria set forth in §§614.4545 and 614.4550 of this subpart. The bank shall in no event be required to discount for, purchase from, or extend credit to such an OFI with respect to any obligation originated by one of its affiliates which is itself ineligible under the criteria set forth in §614.4550 of this subpart.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§614.4630 Insolvency of an other financing institution.

(a) If an OFI having access to a bank becomes insolvent or is in process of liquidation, or if it fails to service its loans properly, and where supervision or orderly liquidation will be facilitated by direct handling of the obligations of the note makers, the bank may, with the consent of the Farm Credit Administration, take over such obligations for orderly liquidation. Obligations pledged with the bank by an OFI, either as collateral for a direct loan or as additional security for any and all indebtedness of the institution to the bank, also may be taken over and handled directly with the makers after a title has been acquired in accordance with the provisions of applicable laws and the terms of the pledge agreements executed by the OFI involved. The bank's authority to handle obligations directly includes the authority to make additional advances, to grant renewals and extensions, and to take such other actions as may be necessary to collect the loans. Direct liquidation of obligations carried for an OFI should be resorted to only in cases where other measures have failed, and it is apparent that direct liquidation is the only practicable means available to the bank for protection of its interest.

(b) Obligations handled for an insolvent OFI as provided in this section shall not be assigned as collateral for bonds without the approval of the Farm Credit Administration.

(c) As to obligations which a bank has taken over from a defaulting OFI for liquidation, interest shall be collected according to the terms. Renewals of such obligations, when directly payable to the bank, shall bear interest at a rate not to exceed the maximum rate that may be charged by OFIs on obligations eligible for discount by the banks at the time of renewal.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§ 614.4640 Rates and fees.

Interest on loans to OFIs shall be charged and collected at same rate and on the same basis as to associations. Except as provided in § 614.4560(b) of this subpart, a bank may charge servicing fees in connection with credit extended to financing institutions provided comparable fees are charged to associations.

[56 FR 2674, Jan. 24, 1991]

§ 614.4650 Basis for revocation of access.

(a) A bank may revoke or suspend the credit line of an OFI for cause. The following may be cause for revocation.

(1) Failure to comply with this subpart or the terms of the agreement between the bank and the OFI.

(2) Failure to correct violation of State or Federal statutes brought to the attention of the OFI, where the nature of the violation calls into question the safety of the loan or discount relationship or the integrity of the OFI's management.

(3) Failure to maintain management, credit practices, or credit quality satisfactory to the bank.

(4) Failure to use the established credit line to the extent contemplated in § 614.4560(b)(5) of this subpart.

(5) Changes in the operation of the institution which render it ineligible under § 614.4550 of this subpart.

(b) During any period of suspension the bank shall not be required to purchase from or discount for the OFI any new obligations and no further advances shall be required pending correction of a default. The bank may make advances to cover commitments on obligations held by the bank or to preserve the security and protect the interest of the bank in obligations held by it. Before making additional advances to an OFI whose right to borrow or discount has been suspended because the ratio of its total liabilities to unimpaired capital and surplus equals or exceeds the maximum permitted under law, the bank shall satisfy itself that the OFI will not violate any applicable law by assuming liability for such additional advances.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§ 614.4660 Place of discount.

When an OFI has loans outstanding to borrowers in more than one Farm Credit district, it shall establish its eligibility with the bank in whose territory the OFI has its principal place of business. However, if more than 50 percent of the OFI's loans outstanding to borrowers are located in a single Farm Credit district other than that in which the OFI is headquartered, it shall establish its eligibility and discount relationship with the bank in whose territory the loan volume is concentrated. No OFI having access to a bank on the effective date of these regulations shall be required to change its relationship to another bank unless the OFI changes its headquarters location or its lending territory.

[46 FR 51886, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

Subpart Q—Banks for Cooperatives Financing International Trade

§ 614.4700 Financing foreign trade receivables.

(a) Banks for cooperatives, under policies adopted by their boards of directors, are authorized to finance foreign trade receivables on behalf of eligible cooperatives to include the following:

(1) Advances against collections;

(2) Trade acceptances;

(3) Factoring; and

(4) Open accounts.

(b) To reduce credit, political, and other risks associated with foreign trade receivable financing, the banks for cooperatives shall avail themselves of such guarantee and insurance plans as are available in the United States and other countries, such as the Foreign Credit Insurance Association and the Export-Import Bank of the United States. Exceptions may be made where a prospective borrower has had a long-standing successful business relationship with the eligible cooperative borrower or an eligible cooperative which is not a borrower if the prospective borrower has a high credit rating as determined by the bank.

(c) When financing a draft drawn on a foreign importer, the banks should retain recourse to the exporter unless their credit evaluation of and experience with the importer indicate recourse is not necessary or unless appropriate guarantees or insurance plans are used.

(d) The financing of foreign trade receivables shall be limited by the policies of each bank's board of directors. The policies shall provide a method of determining the maximum amount in dollars, by country, to be financed and establishing a maximum percentage of the amount of a draft drawn on a foreign party against which the bank may advance funds. The banks shall take into consideration the following factors:

(1) The reputation and financial strength of the foreign importer.

(2) The reputation and payment record of the class of importers in the same country as the subject importer in regard to prompt payment of drafts drawn upon them.

(3) The quality of the supporting documents offered with the draft.

(4) The degree of ease with which necessary foreign exchange conversion can be made, or the extent to which foreign currency exposure may be hedged by forward or future contracts.

(5) The reputation and financial strength of the exporter.

(e) The banks may establish foreign trade receivable financing programs by which eligible parties pledge collections to the bank, and then may borrow from the bank up to a stated maximum percentage of the total amount of receivables pledged at any one time.

(f) When financing foreign trade receivables, the banks shall take such precautions and obtain such credit information as necessary to ascertain that all parties to the transaction(s) being financed are reputable and capable of performing their responsibilities under the contract of sale.

(g) When financing foreign trade receivables, the banks shall determine that all shipments are covered by maritime insurance while on the high seas.

(h) Countries where credit is to be extended will be analyzed periodically and systematically on a centralized basis. The resulting country studies will be disseminated to all banks for cooperatives to be used as inputs in credit grading decisions.

[46 FR 51879, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990]

§614.4710 Bankers acceptance financing.

The Funding Corporation is authorized to accept drafts or bills of exchange drawn upon banks for cooperatives. With the exception of acceptances eligible for purchase by the Federal Reserve Banks under the direction and regulation of the Federal Open Market Committee and rediscounted, acceptances shall be subject to the provisions of subpart J of this part and must be combined with any other loan to the account party by the banks for cooperatives for the purpose of applying the lending limits of §614.4355 of this part.

(a) *Limitations.* (1) The Funding Corporation is authorized to accept drafts or bills of exchange drawn upon a bank for cooperatives having not more than 6 months' sight to run, exclusive of days of grace, that are derived from transactions involving the importation or exportation of agricultural commodities, farm supplies, or aquatic products into or out of the United States; or are derived from transactions involving the domestic shipment of goods that were produced from agriculture or commerical fishing or that have an agriculturally or aquatically related purpose; or are secured at the time of acceptance by title covering readily marketable staples.

(i) The dollar amount of such acceptances outstanding at any one time to any one borrower, exclusive of participations sold to others, shall be limited to 10 percent of the net worth of a bank for cooperatives as calculated on a monthly basis after eliminating from its net worth an amount equal to the total of the bank's investments made to capitalize participation interests purchased by other institutions. However, if such acceptances are secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance, the 10-percent limit shall not apply.

(ii) The sum of all acceptance liabilities outstanding described in paragraph (a)(1) of this section, exclusive of participations sold to others, issued to all borrowers shall not exceed 150 percent of the bank for cooperatives' net worth, but the aggregate of acceptances growing out of domestic transactions shall not exceed 50 percent of net worth calculated on a monthly basis.

(2) The limit specified in paragraph (a)(1)(i) of this section is separate from and in addition to the lending limits of § 614.4355 of this part if the acceptances are rediscounted.

(3) During any period within which a bank for cooperatives holds its own acceptance, having given value therefor, the amount thereof shall be included against the lending limits set forth in § 614.4355 of this part of the customer for whom the acceptance was made.

(4) The terms and requirements for the offering and purchase of participations in acceptance financing shall be the same as those for loans made under § 614.4020(b) of this part.

(5) When acceptances denominated in foreign currencies are not funded in the same currency, the bank for cooperatives shall take corresponding action to minimize foreign exchange risk.

(b) *Purchases of participations in bankers acceptances.* (1) A bank for cooperatives shall determine limits on purchasing participations in discounted acceptances of another bank for cooperatives on the same basis as prescribed in § 614.4355 of this part for purchasing participations in loans of another bank for cooperatives.

(2) Participations in discounted acceptances shall be offered in accordance with § 614.4020(b) of this part.

(c) *Funding Corporation.* All acceptances created by the banks for cooperatives shall be physically accepted by the Funding Corporation when intended for rediscount.

[55 FR 24886, June 19, 1990, as amended at 57 FR 38250, Aug. 24, 1992; 58 FR 40324, July 28, 1993; 59 FR 37404, July 22, 1994]

§ 614.4720 Letters of credit.

Banks for cooperatives, under policies adopted by their boards of directors, may issue, advise, or confirm import or export letters of credit in accordance with the Uniform Commercial Code, or the Uniform Customs and Practice for Documentary Credits, to or on behalf of its customers. In addition, as a matter of sound banking practice, letters of credit shall be issued in conformity with the list which follows.

(a) Each letter of credit shall be in writing and shall conspicuously state that it is a letter of credit, or be conspicuously entitled as such.

(b) The letter of credit shall contain a specified expiration date or be for a definite term.

(c) The letter of credit shall contain a sum certain.

(d) The bank's obligation to pay should arise only upon fulfilling the terms and conditions as specified in the letter of credit. The bank must not be called upon to determine questions of fact or law at issue between the account party and the beneficiary.

(e) The bank's customer should have an unqualified obligation to reimburse the bank for payments made under the letter of credit.

(f) All letters of credit shall be irrevocable.

(g) The bank shall charge a fee for either issuing or confirming a letter of credit.

[46 FR 51879, Oct. 22, 1981, as amended at 55 FR 24887, June 19, 1990]

§ 614.4800 Guarantees and contracts of suretyship.

A bank for cooperatives, under a policy approved by the bank's board of directors, may lend its credit, be itself a surety to indemnify another, or otherwise become a guarantor if an eligible cooperative substantially benefits from the performance of the transaction involved. A bank may guarantee the debt of eligible cooperatives and foreign parties or otherwise agree to make payments on the occurrence of readily ascertainable events if the guarantee or agreement specifies a maximum monetary liability. Guarantees may be secured or unsecured, and can include, but are not limited to, such events as nonpayment of taxes, rentals, customs duties, costs of transport, and loss of or nonconformance of shipping documents. The bank's customer shall have an unqualified obligation to reimburse

the bank for payments made under a guarantee or surety.

[55 FR 24887, June 19, 1990]

§614.4810 Standby letters of credit.

(a) The banks for cooperatives are authorized to issue on behalf of parties eligible for financing under regulations §614.4010(d) or §614.4020 standby letters of credit that represent an obligation to the beneficiary on the part of the issuer:

(1) To repay money borrowed by, advanced to, or for the account of the account party, or

(2) To make payment on account of any indebtedness undertaken by the account party, or

(3) To make payment on account of any default by the account party in the performance of an obligation.

(b) As a matter of sound banking practice, banks for cooperatives shall evaluate applications for standby letters of credit on the basis of credit factors listed in §614.4160 of the regulations.

[46 FR 51879, Oct. 22, 1981, as amended at 55 FR 24887, June 19, 1990]

§614.4900 Foreign exchange.

(a) Before a bank for cooperatives may engage in any financial transaction which transports monetary instruments from any place within the United States to or through any place outside the United States or to any place within the United States, the bank must have policies adopted by the bank's board of directors governing such transactions and must have established bank procedures to safeguard the interests of the stockholders of the bank in regard to such transactions.

(b) Under policies adopted by the bank's board of directors, a bank for cooperatives may engage in currency exchange activities necessary to service individual transactions that may be financed under the regulations authorizing export, import, and other internationally related credit and financial services. These currency exchange activities shall not include any loans or commitments intended to finance speculative futures transactions by eligible borrowers in foreign currencies. The bank may engage, on behalf of the eligible borrowers or on its own behalf, in bona fide hedging transactions and positions, where such transactions or positions normally reduce risks in the conduct and management of international financial activities. The bank's policies should include established guidelines for:

(1) Net overnight positions, by currency.

(2) Maturity distribution, by currency, of foreign currency assets, liabilities, and foreign exchange contracts.

(3) Outstanding contracts with individual customers and banks.

(4) Credit approval procedures safeguarding against delivery or settlement risk.

(5) Total value of outstanding contracts—spot and forward.

(c) A bank for cooperatives is responsible for its compliance with the laws of the United States in regard to reporting requirements of the Department of the Treasury pertaining to currency exchange activities and international transfers of monetary instruments.

(d) A bank for cooperatives engaged in foreign exchange trading shall have written policies describing the scope of trading activity authorized, delegation of authority, types of services offered, trading limits, reporting requirements, and internal accounting controls.

(e) The bank's trading guideline policies should provide for reporting procedures adequate to inform management properly of trading activities and to facilitate detection of lack of compliance with policy directives.

(f) The bank's policies shall establish foreign exchange delivery limits for eligible customers with relationship to the customer's financial capability to bear the financial risks assumed. The bank will be expected to maintain documentary evidence that a customer's delivery exposure is reasonable, and that responsible bank officers routinely review outstanding delivery exposure of individual customers.

(g) The bank's personnel policies shall include written standards of conduct for those involved with foreign exchange activities, including the following which should be prohibited:

(1) Trading with entities affiliated with the bank or with members of the board of directors.

(2) Foreign exchange and deposit transactions with other bank employees.

(3) Personal business relationships with foreign exchange and money brokers with whom the bank deals.

(h) The bank's policies should provide detailed instructions regarding the need for bank officers to disclose the limits of responsibility and liability of the bank when it holds positions or executes contracts for the account of eligible parties. The bank's policies regarding the respective procedures should provide reasonable assurance that reports on trading activities are current and complete, and that the opportunity for concealment of unauthorized transactions is kept at the absolute minimum.

(i) The banks for cooperatives shall use the Funding Corporation for purposes of trading foreign exchange. All foreign exchange transactions shall be made by the Funding Corporation on behalf of the banks consistent with instructions received from the respective banks.

(j) Guidelines (b) through (i) of this section will not apply if a bank purchases or sells foreign exchange through a commercial bank and has no foreign exchange risk exposure.

[46 FR 51879, Oct. 22, 1981, as amended at 55 FR 24887, June 19, 1990]

Subpart R—Secondary Market Authorities

§ 614.4910 Basic authorities.

(a) Any bank or association of the Farm Credit System, except a bank for cooperatives, with direct lending authority may originate agricultural real estate loans for sale to one or more certified agricultural mortgage marketing facilities under title VIII of the Act.

(b) Any bank or association of the Farm Credit System, except a bank for cooperatives, may operate as an agricultural mortgage marketing facility under title VIII of the Act, either acting alone or jointly with other banks and/or associations, if so certified by the Federal Agricultural Mortgage Corporation.

[54 FR 1155, Jan. 12, 1989]

Subpart S—Flood Insurance Requirements

SOURCE: 61 FR 45711, Aug. 29, 1996, unless otherwise noted.

§ 614.4920 Purpose and scope.

(a) *Purpose.* This subpart implements the requirements of the National Flood Insurance Act of 1968 (1968 Act), as amended, and the Flood Disaster Protection Act of 1973 (1973 Act), as amended (42 U.S.C. 4001–4129).

(b) *Scope.* This subpart, except for §§ 614.4940 and 614.4950, applies to loans of Farm Credit System (System) institutions that are secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 614.4940 and 614.4950 apply to loans secured by buildings or mobile homes, regardless of location.

§ 614.4925 Definitions.

(a) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(b) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(c) *Designated loan* means a loan secured by a building or a mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the 1968 Act.

(d) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(e) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached

to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this subpart, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* includes a manufactured home as that term is used in the NFIP.

(f) *NFIP* means the National Flood Insurance Program authorized under the 1968 Act.

(g) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(h) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(i) *Special flood hazard area* means the land in the flood plain within a community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(j) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

§614.4930 Requirement to purchase flood insurance where available.

(a) *In general.* A System institution shall not make, increase, extend or renew any designated loan unless the building or mobile home and any personal property securing the loan are covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the 1968 Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(b) *Table funded loans.* A System institution that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for purposes of this part.

(c) *Exemptions.* The flood insurance requirement of paragraph (a) of this section does not apply with respect to:

(1) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(2) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

§614.4935 Escrow requirement.

If a System institution requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended or renewed on or after October 4, 1996, the institution shall also require the escrow of all premiums and fees for any flood insurance required under §614.4930. The institution, or a servicer acting on behalf of the institution, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the institution, or a servicer acting on behalf of the institution, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

§ 614.4940 Required use of standard flood hazard determination form.

(a) *Use of form.* System institutions shall use the standard flood hazard determination form developed by the Director of FEMA (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the 1968 Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form.* System institutions shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the institution owns the loan.

§ 614.4945 Forced placement of flood insurance.

If a System institution, or a servicer acting on behalf of the institution, determines at any time during the term of a designated loan, that the building or mobile home and any personal property securing the designated loan are not covered by flood insurance or are covered by flood insurance in an amount less than the amount required under § 614.4930(a), then the institution or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 614.4930(a), for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the institution or its servicer shall purchase insurance on the borrower's behalf. The institution or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 614.4950 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the 1973 Act, any System institution, or a servicer acting on behalf of the institution, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage under § 614.4945.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 614.4955 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a System institution makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the institution shall mail or deliver a written notice containing the information specified in paragraph (b) of this section to the borrower and to the servicer of the loan. Notice is required whether or not flood insurance is available under the 1968 Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth

in section 102(b) of the 1973 Act (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and also may be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or the mobile home caused by flooding in a Federally declared disaster.

(c) *Timing of notice.* The institution shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction, and to the servicer as promptly as practicable after the institution provides notice to the borrower and in any event no later than the time the institution provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* Each institution shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the institution owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, an institution may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The institution shall retain a record of the written assurance from the seller or lessor for the period of time the institution owns the loan.

(f) *Use of prescribed form of notice.* An institution will be considered to be in compliance with the requirements of this section for notice to the borrower by providing written notice to the borrower containing the language presented in appendix A to this subpart within a reasonable time before the completion of the transaction. The notice presented in appendix A to this subpart satisfies the borrower notice requirements of the 1968 Act.

§ 614.4960 Notice of servicer's identity.

(a) *Notice requirement.* When a System institution makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the institution shall notify the Director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the institution's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(b) *Transfer of servicing rights.* The institution shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

APPENDIX A TO SUBPART S OF PART 614—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like

to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

• Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

• At a minimum, flood insurance purchased must cover *the lesser of*:

(1) The outstanding principal balance of the loan; *or*

(2) The maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

• Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the nonparticipating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

Subpart A—Funding

Sec.
615.5000 General responsibilities.
615.5010 Funding Corporation.
615.5030 Borrowings from commercial banks.
615.5040 Borrowings from financial institutions other than commercial banks.

Subpart B—Collateral

615.5045 Definitions.
615.5050 Collateral requirements.
615.5060 Special collateral requirement.
615.5090 Reduction in carrying value of collateral.

Subpart C—Issuance of Bonds, Notes, Debentures and Similar Obligations

615.5100 Authority to issue.
615.5101 Requirements for issuance.
615.5102 Issuance of debt obligations through the Funding Corporation.
615.5103—615.5104 [Reserved]
615.5105 Consolidated Systemwide notes.

Subpart D—Other Funding

615.5110 Authority to issue (other funding).
615.5120 Purchase eligibility requirement.
615.5130 Procedures.

Subpart E—Investment Management

615.5131 Definitions.
615.5132 Investment purposes.
615.5133 Investment management.
615.5134 Liquidity reserve requirement.
615.5135 Management of interest rate risk.
615.5136 Emergencies impeding normal access of Farm Credit banks to capital markets.
615.5140 Eligible investments and risk diversification.
615.5141 Association investment portfolios.
615.5142 Disposal of ineligible investments.
615.5143 Banks for cooperatives and agricultural credit banks.

Subpart F—Property and Other Investments

615.5170 Real and personal property.
615.5171 Additional investments of Farm Credit Banks.
615.5172 Production credit association and agricultural credit association investment in farmers' notes given to cooperatives and dealers.
615.5173 Stock of the Federal Agricultural Mortgage Corporation.
615.5174 Mortgage-related securities issued or guaranteed by the Federal Agricultural Mortgage Corporation.

Subpart G—[Reserved]

Subpart H—Capital Adequacy

615.5200 General.
615.5201 Definitions.
615.5205 Minimum permanent capital standards.
615.5210 Computation of the permanent capital ratio.
615.5215 Distribution of earnings.
615.5216 Regulatory forbearance.

Subpart I—Issuance of Equities

615.5220 Capitalization bylaws.
615.5230 Implementation of cooperative principles.
615.5240 Permanent capital requirements.
615.5250 Disclosure requirements.

Subpart J—Retirement of Equities

615.5260 Retirement of eligible borrower stock.
615.5270 Retirement of other equities.
615.5280 Retirement in event of default.
615.5290 Retirement of capital stock and participation certificates in event of restructuring.

Subpart K—Surplus and Reserves

615.5330 Banks for cooperatives.

Subparts L–N—[Reserved]

Subpart O—Book-Entry Procedures for Farm Credit Securities

615.5450 Definitions.
615.5451 Book-entry and definitive securities.
615.5452 Law governing rights and obligations of United States, Federal Reserve Banks, Farm Credit banks, and Funding Corporation; rights of any person against United States, Federal Reserve Banks, Farm Credit banks, and Funding Corporation.
615.5453 Law governing other interests.
615.5454 Creation of participant's security entitlement; security interests.
615.5455 Obligations of the Farm Credit banks and the Funding Corporation; no adverse claims.
615.5456 Authority of Federal Reserve Banks.
615.5457 Withdrawal of eligible book-entry securities for conversion to definitive form.
615.5458 Waiver of regulations.
615.5459 Liability of Farm Credit banks, Funding Corporation and Federal Reserve Banks.
615.5460 Additional provisions.
615.5461 Lost, stolen, destroyed, mutilated or defaced Farm Credit securities, including coupons.
615.5462 Restrictive endorsement of bearer securities.

Subpart P—Global Debt Securities

615.5500 Definitions.
615.5502 Issuance of global debt securities.

Subpart Q—Bankers Acceptances

615.5550 Bankers acceptances.

Subpart R—Farm Credit System Financial Assistance Corporation Securities

615.5560 Book-entry Procedure for Farm Credit System Financial Assistance Corporation Securities.

Subpart S—Federal Agricultural Mortgage Corporation Securities

615.5570 Book-entry procedures for Federal Agricultural Mortgage Corporation securities.

AUTHORITY: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-3, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608; sec. 105 of Pub. L. 104–105, 110 Stat. 162, 163–64.

Subpart A—Funding

§615.5000 General responsibilities.

(a) The System banks, acting through the Federal Farm Credit Banks Funding Corporation (Funding Corporation), have the primary responsibility for obtaining funds for the lending operations of the System institutions.

(b) The System's funding operations have a significant impact upon the investment community, the general public, and the national economy in both the volume and the manner by which funds are raised. The Farm Credit Administration supervises compliance with the statutory collateral requirements for the debt obligations issued. The Chairman of the Farm Credit Administration, under policies adopted by the Board, consults with the Secretary of the Treasury concerning the System's funding activities, pursuant to section 5.10 of the Act.

[54 FR 1158, Jan. 12, 1989]

§615.5010 Funding Corporation.

(a) The Funding Corporation shall issue, market, and handle the obligations of the banks issued under section 4.2(b) through (d) of the Act and interbank or intersystem flow of funds as may from time to time be required, and, upon request of the banks, shall

handle investment portfolios. The Funding Corporation shall maintain accurate and timely records. The System banks shall provide for the sale of such obligations through the Funding Corporation by negotiation, offer, bid, or syndicate sale, and for the delivery of such obligations by book entry, wire transfer, or such other means as may be appropriate.

(b) The interaction of the System with the financial community shall be conducted principally through the Funding Corporation. The Funding Corporation shall be subject to regulation and examination by the Farm Credit Administration.

[54 FR 1158, Jan. 12, 1989]

§ 615.5030 Borrowings from commercial banks.

(a) Each System bank board, by resolution, shall authorize all commercial bank borrowings by that System bank.

(b) The Financial Assistance Corporation may borrow from commercial banks with the approval of the Farm Credit Administration.

[54 FR 1159, Jan. 12, 1989]

§ 615.5040 Borrowings from financial institutions other than commercial banks.

The Farm Credit banks may borrow from other financial institutions, such as insurance companies, Federal agencies, or Federal reserve banks.

[37 FR 11434, June 7, 1972, as amended at 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989]

Subpart B—Collateral

SOURCE: 54 FR 1159, Jan. 12, 1989, unless otherwise noted.

§ 615.5045 Definitions.

(a) *Cost* means the actual amount paid for any asset.

(b) *Market value* means the price at which a willing seller would sell to a willing buyer, neither under any compulsion to buy or sell.

(c) *Unpaid balance* means total principal and accrued interest owed.

(d) *Secured interbank loan* means a loan from one Farm Credit System bank to another Farm Credit System bank, secured by assets of the borrowing Farm Credit System bank.

§ 615.5050 Collateral requirements.

(a) Each bank shall have on hand at the time of issuance of any notes, bonds, debentures, or other similar obligations, and at all times thereafter maintain, free from any lien or other pledge, assets consisting of notes and other obligations representing loans made under the authority of the Act, real or personal property acquired in connection with loans made under the Act, obligations of the United States or any agency thereof direct or fully guaranteed, other bank assets (including marketable securities) approved by the Farm Credit Administration, cash, or cash equivalents approved by the Farm Credit Administration, in an aggregate value equal to the total amount of notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

(b) The collateral value of eligible investments (as defined in § 615.5140) shall be the lower of cost or market value.

(c)(1) Except as otherwise provided in this paragraph, the collateral value of notes and other obligations representing loans made under the authority of any Farm Credit Act shall be the unpaid balance of such loans adjusted for any allowance for loan losses (except as provided for in § 615.5090).

(2) The collateral value of loans in process of liquidation or foreclosure, judgments, and sales contracts shall be the unpaid balance of such loans, judgments, and contracts adjusted for any allowance for losses.

(3) The collateral value of loans which have been restructured by any action, such as an extension, deferment, or partial release, shall be the new unpaid balance of the loans adjusted for any allowance for losses.

(4) The collateral value of property acquired in the liquidation of loans shall be the book value of such property adjusted for any allowance for losses.

(5) Collateral shall not include the amount of any loan that exceeds the maximum amount authorized under the Act or part 614 of these regulations.

(6) Collateral may include the collateral value of secured interbank loans,

computed as provided in §615.5050(c)(1), provided that the assets securing the loan could serve as collateral supporting the issuance of obligations under §615.5050(a). In computing its eligible collateral, the borrowing bank shall not count the assets securing such loan.

(d) Each bank shall have procedures which will ensure that the bank is in compliance with the statutory requirements for maintenance of collateral. Such procedures shall include provisions for:

(1) Adequate safekeeping facilities;

(2) Methods to determine that debt instruments meet all requirements of law and regulations;

(3) A report signed by an authorized bank officer at each regular meeting of the board of directors certifying the eligibility and the adequacy of collateral. Items to be reported will include but not be limited to the total amount of eligible collateral, amount of ineligible loans, amount of deductions, and the amount of excess collateral; and

(4) Written procedures and practices to ensure that there will be a high degree of accuracy in protecting and accounting for the collateral.

§615.5060 Special collateral requirement.

(a) An attorney lien certification need not be obtained at the time a note is accepted as collateral if the counsel for the bank or association has determined, in writing, that the bank or association procedures provide sufficient safeguards to ensure that a real estate mortgage loan, within the meaning of section 1.7(a) of the Act, made by the bank or association will be secured by a first lien or its equivalent on the borrower's interest in the primary real estate security. However, the note shall be withdrawn from collateral upon the expiration of 1 year from the date of the loan closing, unless, before the end of such period:

(1) An attorney has certified that the bank or association has a first lien or its equivalent from a security standpoint in the primary real estate security for the loan; or

(2) The bank or association has obtained a title insurance policy insuring that it has a first lien or its equivalent from a security standpoint in the primary real estate security for the loan, and all of the following requirements are satisfied:

(i) The final policy was issued by a title insurance company that has been licensed to issue such policies by the appropriate state insurance regulatory body or bodies, has not been barred or suspended, and has been approved by the lending institution;

(ii) The standard form on which the final policy was issued has been approved by the counsel for the lending institution;

(iii) The final policy was issued for an amount at least equal to the balance outstanding on the real estate mortgage loan or, if separate policies are issued to insure separate tracts, the minimum amount insured by each policy shall bear the same ratio to the outstanding balance of the loan that the appraised value of the tract insured by that policy bears to the appraised value of all the real estate security for the loan; and

(iv) Personnel meeting written standards of training and experience in real estate title matters prescribed by the counsel for the lending institution certified in writing that:

(A) They reviewed the final policy and that the policy complies with standards prescribed by such counsel; and

(B) The final policy insures that a first lien or its equivalent from a security standpoint has been obtained on the primary real estate security for the loan.

(b) A loan participation agreement to which a System bank or association is a participant and involving a loan originated by another lender shall constitute an obligation meeting the collateral requirements of §615.5050(a).

[54 FR 1159, Jan. 12, 1989, as amended at 59 FR 3787, Jan. 27, 1994]

§615.5090 Reduction in carrying value of collateral.

When the bank or Farm Credit Administration determines that a loan did not conform to the requirements of the law or regulations at the time the loan was closed, such loan shall be withdrawn from collateral until the cause of ineligibility is remedied. When

a loan has been classified as a loss loan, the bank shall adjust the collateral value of the loan accordingly.

Subpart C—Issuance of Bonds, Notes, Debentures and Similar Obligations

§ 615.5100 Authority to issue.

The Act authorizes each bank of the System, subject to the collateral requirements of section 4.3(c) of the Act, to issue:

(a) Notes, bonds, debentures, or other similar obligations;

(b) Consolidated obligations, together with any or all banks organized and operating under the same title of the Act;

(c) Systemwide obligations, together with other banks of the System; and

(d) Investment bonds to the authorized purchasers subject to the limitations contained in the regulations set forth in subpart D.

[54 FR 1160, Jan. 12, 1989]

§ 615.5101 Requirements for issuance.

Except as provided in section 4.2(e) of the Act, each debt obligation shall meet the following requirements:

(a) Each debt obligation shall be issued through the Federal Farm Credit Banks Funding Corporation acting for System banks.

(b) Each debt obligation shall be authorized by resolution of the board(s) of directors of the issuer(s). Each participating bank shall provide, in its authorizing resolution, for its primary liability on the portion of any consolidated or Systemwide obligation issued on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration, in accordance with section 4.4 of the Act, in the event any bank primarily liable therefor is unable to pay.

(c) Each issuance of debt obligations shall meet the collateral requirements set forth in subpart B.

(d) Each issuance of debt obligations shall be approved by the Farm Credit Administration.

(e)(1) Consultation with the Secretary of the Treasury required by 31 U.S.C. 9108 shall be conducted by System representatives and shall have occurred prior to each debt issuance.

(2) Under policies adopted by the Board of the Farm Credit Administration, the Chairman will consult with the Secretary of the Treasury on a regular basis concerning the exercise by the System of the powers conferred under section 4.2 of the Act.

[54 FR 1160, Jan. 12, 1989]

§ 615.5102 Issuance of debt obligations through the Funding Corporation.

(a) The amount, maturities, rates or interest, terms and conditions of participation by the System banks in each issue of joint, consolidated or Systemwide obligations shall be determined by the Funding Corporation established pursuant to section 4.9 of the Act, acting for the banks of the System, subject to the approval of the Farm Credit Administration in accordance with § 615.5102.

(b) The Funding Corporation shall plan and develop funding guidelines, priorities, and objectives based upon the asset/liability management policies of the System institutions and the requirements of the market. The guidelines, priorities, and objectives shall be designed to ensure that the debt marketing responsibilities of the Funding Corporation will continue to provide flexibility for the banks and are fiscally sound.

(c) For all debt issuances conducted by the Funding Corporation, the specific prior approval of the Farm Credit Administration must be obtained prior to the distribution and sale of the obligation pursuant to section 4.9 of the Act.

[54 FR 1160, Jan. 12, 1989]

§§ 615.5103—615.5104 [Reserved]

§ 615.5105 Consolidated Systemwide notes.

Consolidated Systemwide notes authorized under § 615.5100(b) shall be subject to the following provisions unless otherwise approved by the Farm Credit Administration:

(a) Maturities shall be not less than five days nor more than 365 days.

(b) Prices shall be on a discount yield basis or as determined by the Funding Corporation.

[42 FR 32227, June 24, 1977, as amended at 47 FR 28609, July 1, 1982; 54 FR 1160, Jan. 12, 1989; 60 FR 20011, Apr. 24, 1995]

Subpart D—Other Funding

§615.5110 Authority to issue (other funding).

Any Farm Credit bank may issue Farm Credit Investment Bonds directly to those eligible as set forth in §615.5120(a). The bonds are subject to the limitations contained in the Federal Reserve Board's Regulation Q.

[43 FR 47489, Oct. 16, 1978; 43 FR 55239, Nov. 27, 1978]

§615.5120 Purchase eligibility requirement.

(a) *Limitations.* Eligibility to purchase Farm Credit Investment Bonds shall be limited to members and employees of the Farm Credit banks and associations, except any bank officers, directors, and employees who are involved in setting the term or rate, to retired employees who are beneficiaries of a pension or retirement program of the Farm Credit banks or associations, and to retired employees of the Farm Credit Administration. A member of a Farm Credit association or a bank for cooperatives need not be an active borrower to be eligible. A member of any Farm Credit institution may purchase investment bonds from any of the institutions in the district which offer the purchase program. Patrons, members, employees, or stockholder of other financing institutions discounting loans with a Farm Credit Bank or agricultural credit bank or of any legal entity which is a borrower from any Farm Credit institution as such are ineligible as they are not members of a Farm Credit institution. Stock or participation certificates shall not be sold merely to qualify a party for the purchase of Farm Credit Investment Bonds. For purposes of this section ''member'' means a stockholder or participation certificate holder who acquired stock or participation certificates to obtain a loan, to purchase stock for investment or to qualify for other services of the association or bank. A person who assumes a loan is not a member unless he becomes a stockholder or participation certificate holder in connection with that loan. Employee means a regular full-time employee of a Farm Credit bank or association. Retired employee means a retiree who is a direct beneficiary of a pension or retirement program of a Farm Credit bank or association or the Farm Credit Administration under civil service retirement.

(b) *Form and ownership.* Farm Credit Investment Bonds are registered bonds issued in definitive or book-entry form depending on investor preference. The registration used must express the actual ownership of an interest in the bond and will be considered by the issuing institution as conclusive of such ownership and interest. No designation of an attorney, agent, or other representative to request or receive payment on behalf of the owner or coowner, nor any restriction on the right of the owner or coowner to receive payment of the bond or interest, except as provided in this section may be made in the registration or otherwise. Registrations requested in applications for the purchase shall be clear, accurate, complete, and conform with one of the registration provisions set forth in this section, and include the appropriate taxpayer identifying number. Registrations requested will be inscribed on the face of the bond if in definitive form or on the confirmation of investment if in book-entry form. The following provisions shall apply for registration of Farm Credit Investment Bonds:

(1) In all cases the member's name (whether a natural person, fiduciary, or legal entity) or employee's name must appear as owner of the bond.

(2) A bond may be registered in the name of a fiduciary only if the fiduciary is in fact the member.

(3) A member or employee may not use a form of registration (such as a gift to a minor, irrevocable trust, etc.) which would divest himself of ownership. However, a minor may be named as coowner or beneficiary.

(4) If a member is a natural person, a second natural person, member or nonmember, may be named as coowner or

beneficiary. Coownership may not involve a fiduciary or private organization.

(5) In the coownership form the connective ''or'' shall serve the same purpose as ''joint tenants with right of survivorship.''

[43 FR 47489, Oct. 16, 1978; 43 FR 55239, Nov. 27, 1978, as amended at 56 FR 2675, Jan. 24, 1991; 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, in §615.5120, paragraph (a) was amended by adding the words ''or agricultural credit bank'' after the words ''Farm Credit Bank'' in the fourth sentence, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§ 615.5130 Procedures.

Procedures relating to issuance, pricing, payment of interest, redemption, replacement of lost or stolen bonds and other matters shall be promulgated under the authority of this regulation as operating instructions to banks and associations.

[37 FR 11434, June 7, 1972]

Subpart E—Investment Management

§ 615.5131 Definitions.

(a) *Absolute final maturity* means the date on which the remaining principal amount of a mortgage-backed security or asset-backed security is due and payable (matures) to the registered owner. It shall not mean the average life, the expected average life, the duration, or the weighted average maturity.

(b) *Adjustable rate mortgage (ARM)* means a mortgage-backed security that features a predetermined adjustment of the interest rate at regular intervals tied to an index.

(c) *Asset-backed security (ABS)* means investment securities that provide for ownership of a fractional undivided interest, or collateral interests, in a specific asset of a trust that are sold and traded in the capital markets. For the purposes of this subpart, all eligible ABSs shall be collateralized with either loans for the sale of automobiles (CARs) or credit card receivables (CARDs).

(d) *Asset/liability management* means the process used to plan, acquire, and direct the flow of funds through a Farm Credit bank in order to generate adequate and stable earnings and to steadily build equity, while taking reasonable and measured business risks.

(e) *Collateralized mortgage obligation (CMO)* means a multi-class, pay-through bond representing a general obligation of the issuer backed by mortgage collateral. Each CMO consists of a set of, at least, four tranches of bonds with different maturities and cashflow patterns. An accrual bond is last tranche. *Floating Rate CMO* means a CMO or REMIC tranche that pays an adjustable rate of interest that is tied to a representative interest rate index.

(f) *Federal funds* means funds sold to or bought from a federally insured depository institution or government-sponsored enterprise for 1 business day which increases or decreases that institution's reserve account of immediately available funds with a Federal Reserve Bank. *Term Federal funds* means funds sold to or bought from a federally insured depository institution or government-sponsored enterprise under a callable contract with a term to maturity of 100 days or less.

(g) *Interest rate risk* means the risk of loss resulting from the impact of interest rate fluctuations upon the net interest income and market value of equity of a bank.

(h) *Liquid investments* are assets that can be promptly converted into cash without significant loss to the investor. In the money market, a security is liquid if the spread between bid and ask prices is narrow, and a reasonable amount can be sold at those prices.

(i) *Loans* is defined as in §621.2(a)(13) of this chapter, and is calculated quarterly (as the last day of March, June, September, and December) by using the average daily balance of loans for the quarter then ended.

(j) *Marketable investment* is an asset that can be sold with reasonable promptness at a price that reasonably reflects its fair value in an active and universally recognized secondary market.

(k) *Market value of equity* measures the impact that interest rate changes have upon the market value of the

bank's assets, liabilities and off-balance-sheet items.

(l) *Mortgage-backed securities (MBSs)* means investment securities collateralized with mortgage loans. MBSs provide for ownership of a fractional undivided interest in a specific pool of mortgages. Each MBS has a stated maturity, weighted average maturity, and coupon rate.

(m) *Negotiable certificates of deposit* means a negotiable large-denomination time deposit with a specific maturity, as evidenced by definitive or book-entry form. *Yankee certificate of deposit* means a certificate of deposit issued in the United States by the American branch of a foreign bank. *Eurodollar certificate of deposit* means a certificate of deposit denominated in United States dollars and issued by an overseas branch of a United States bank or by a foreign bank outside the United States.

(n) *Net interest income* means the difference between interest income and interest expense.

(o) *Prime commercial paper* means a secured or unsecured promissory note of a corporation with a fixed maturity of no more than 270 days that is rated A–1 or P–1 or an equivalent rating by a nationally recognized credit rating service.

(p) *Real estate mortgage investment conduit (REMIC)* means a nontaxable entity (created under the Tax Reform Act of 1986) formed for the sole purpose of holding a fixed pool of mortgages (both residential and commercial) secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(q) *Repurchase agreement* means a transaction where any Farm Credit Bank, bank for cooperatives, or agricultural credit bank agrees to purchase a security from a counterparty and to subsequently sell the same or identical security back to that counterparty for a specified price with a term to maturity of 100 days or less.

(r) *Stripped mortgage-backed securities* means securities created by segregating the cashflows from the underlying mortgages or mortgage securities to create two or more new securities, each with a specified percentage of the underlying security's principal payments, interest payments, or combination of the two. In their purest form, stripped mortgage-backed securities represent mortgage-backed securities that have been converted into interest-only (IO) securities, where the investor receives 100 percent of the interest flows, and principal-only (PO) securities, where the investor receives 100 percent of the principal cashflows.

(s) *Residual* means a ''residual'' interest tranche from a CMO or REMIC security that collects any cashflows remaining from the collateral after the obligations to the other tranches have been met.

(t) *Total capital* is defined as in Subpart H—Capital Adequacy, §615.5201(n) of this chapter.

(u) *Weighted average maturity (WAM)* means the weighted average number of months to the final payment of each loan backing a mortgage security, weighted by the size of the principal loan balances.

(v) *Weighted average life (WAL)* means the average time to receipt of principal, weighted by the size of each principal payment. Weighted average life for CMOs and mortgage-backed securities is calculated under some specific prepayment assumptions.

[58 FR 63055, Nov. 30, 1993, as amended at 59 FR 37404, July 22, 1994]

§615.5132 Investment purposes.

Farm Credit Banks, banks for cooperatives and agricultural credit banks are authorized to hold eligible investments, listed under §615.5140, in an amount not to exceed 30 percent of the total outstanding loans of such banks, for the purposes of complying with the liquidity reserve requirement of §615.5134, managing surplus short-term funds, and for managing interest rate risk under §615.5135.

[58 FR 63056, Nov. 30, 1993]

§615.5133 Investment management.

The board of directors of each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall adopt written policies regarding the management of the bank's investments that are consistent with the Farm Credit

Act of 1971, Farm Credit Administration regulations, and all other applicable statutes and regulations. The board of directors shall also ensure that the bank's investments are safely and soundly managed in accordance with these written policies, and that appropriate internal controls are in place to preclude investment actions that undermine the solvency and liquidity of the bank. The board of directors shall not delegate its responsibility to oversee and review the investment practices of the bank. The board of directors of each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall, on an annual basis, review these policies, as well as the objectives and performance of the investment portfolio. At a minimum, the written policy should address:

(a) The purpose and objectives of the bank's investment portfolio;

(b) The liquidity needs of the bank pursuant to the requirements of § 615.5134;

(c) Interest rate risk management pursuant to § 615.5135;

(d) Permissible brokers, dealers, and institutions for investing bank funds and limitations consistent with § 615.5140 of this subpart, and the amount of funds that shall be invested or placed with any broker, dealer or institution;

(e) The size and quality of the investment portfolio;

(f) Risk diversification of the investment portfolio;

(g) Delegation of authority to manage bank investments to specific personnel or committees and a statement about the extent of their authority and responsibilities;

(h) Controls to monitor the performance of the bank's investments and to prevent loss, fraud, embezzlement, and unauthorized investments. Quarterly reports about the performance of all investments in the portfolio shall be made to the board of directors.

(i) Controls on investments in MBSs, CMOs, REMICs, and ABSs that are consistent with either §§ 615.5140(a)(2) or 615.5140(a)(8)(ii) of this subpart, as applicable, including parameters concerning the maximum amount of exposure to each category in the investment portfolio, minimum pool sizes, minimum number of loans in a pool, geographic diversification of loans in a pool, maximum allowable premiums (particularly as related to CMOs, REMICs, and ARMs).

[58 FR 63056, Nov. 30, 1993]

§ 615.5134 Liquidity reserve requirement.

(a) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall use cash and the eligible investments under § 615.5140 of this subpart to maintain liquidity sufficient to fund:

(1) Fifty (50) percent of the bank's bonds, notes, Farm Credit Investment Bonds, and interest due within the next 90 days divided by 3;

(2) Fifty (50) percent of the bank's discount notes due within the next 30 days; and

(3) Fifty (50) percent of the bank's commercial bank borrowing due within the next 30 days.

(b) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall separately identify all investments that are held for the purpose of meeting its liquidity reserve requirement under this section. All investments held in the liquidity reserve shall be free of lien.

(c) The liquidity reserve requirement shall be calculated as of the last day of each month utilizing month end data.

[58 FR 63056, Nov. 30, 1993]

§ 615.5135 Management of interest rate risk.

The board of directors of each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall adopt an interest rate risk management section of an asset/liability management policy which establishes interest rate risk exposure limits as well as the criteria to determine compliance with these limits. At a minimum, the interest rate risk management section shall establish policies and procedures for the bank to:

(a) Identify and analyze the causes of risks within its existing balance sheet structure;

(b) Measure the potential impact of these risks on projected earnings and market values by conducting interest

rate shock tests and simulations of multiple economic scenarios at least on a quarterly basis;

(c) Explore and implement actions needed to obtain its desired risk management objectives;

(d) Document the objectives that the bank is attempting to achieve by purchasing eligible investments that are authorized by §615.5140 of this subpart;

(e) Evaluate and document, at least quarterly, whether these investments have actually met the objectives stated under paragraph (d) of this section.

[58 FR 63056, Nov. 30, 1993]

§615.5136 Emergencies impeding normal access of Farm Credit banks to capital markets.

An emergency shall be deemed to exist whenever a financial, economic, agricultural or national defense crisis could impede the normal access of Farm Credit banks to the capital markets. Whenever the Farm Credit Administration determines after consultations with the Federal Farm Credit Banks Funding Corporation that such an emergency exists, the Farm Credit Administration Board shall, in its sole discretion, adopt a resolution that:

(a) Increases the amount of eligible investments that Farm Credit Banks, banks for cooperatives and agricultural credit banks are authorized to hold pursuant to §615.5132 of this subpart; and/or

(b) Modifies or waives the liquidity reserve requirement in §615.5134 of this subpart.

[58 FR 63057, Nov. 30, 1993]

§615.5140 Eligible investments and risk diversification.

(a) In order to comply with §§615.5132, 615.5134, and 615.5135 of this subpart, each Farm Credit Bank, bank for cooperatives, and agricultural credit bank is authorized to hold the following eligible investments, denominated in United States dollars:

(1) Obligations of the United States; full-recourse obligations, other than mortgage-backed securities, of agencies, instrumentalities or corporations of the United States; or debt obligations of other obligors that are fully insured or guaranteed as to both principal and interest by the United States, its agencies, instrumentalities, or corporations;

(2) Mortgage-backed securities (MBSs), as defined by §615.5131(l), Collateralized Mortgage Obligations (CMOs), as defined by §615.5131(e), and Real Estate Mortgage Investment Conduits (REMICs), as defined by §615.5131(p), that comply with the following requirements:

(i) The MBS, CMO, or REMIC shall either be:

(A) Issued by the Government National Mortgage Association or be backed solely by mortgages that are guaranteed as to both principal and interest by the full faith and credit of the United States; or

(B) Issued by and guaranteed as to both principal and interest by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and be rated not lower than AAA (or equivalent) by a nationally recognized credit rating service;

(ii) Securities that are backed by adjustable rate mortgages, as defined by §615.5131(b), shall have a repricing mechanism of 12 months or less tied to an index.

(iii) CMOs, REMICs, and fixed-rate MBSs shall satisfy the following three tests at the time of purchase and each quarter thereafter:

(A) The expected weighted average life (WAL) of the instrument does not exceed 5 years;

(B) The expected WAL does not extend for more than 2 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, nor shorten for more than 3 years assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; and

(C) The estimated change in price is not more than 10 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

In applying the tests of paragraphs (a)(2)(iii) (A), (B), and (C) of this section, each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall rely on verifiable information to support all of its assumptions (including prepayment assumptions)

concerning the collateral mortgages that back the security. All assumptions that form the basis of the bank's analysis of the security and its underlying collateral shall be available for review by the Office of Examination of the Farm Credit Administration. Subsequent changes in the bank's assumptions about the MBS, CMO, or REMIC, shall be documented in writing. The analysis of each security shall be performed prior to purchase, and each quarter subsequent to purchase. If at any time after purchase, a MBS, CMO, or REMIC, no longer complies with any requirement in paragraphs (a)(2)(iii)(A), (B), or (C) of this section, the bank shall divest the security in accordance with § 615.5142 of this part.

(iv) A floating-rate CMO debt class shall not be subject to paragraphs (a)(2)(iii) (A) and (B) of this section if at the time of purchase, or each subsequent quarter, it bears a rate of interest that is below the contractual cap on the instrument.

(v) The following instruments do not qualify as eligible investments for the purpose of this section:

(A) Stripped mortgage-backed securities, as defined in § 615.5131(r), including Interest Only (IO) and Principal Only (PO) classes;

(B) Inverse floating rate debt classes investments.

(vi) MBSs, CMOs, and REMICs that are issued by the Government National Mortgage Association, or are backed solely by mortgages that are guaranteed as to both principal and interest by the full faith and credit of the United States shall not be subject to restrictions on the amount that a bank may hold in its investment portfolio;

(vii) MBSs, CMOs, and REMICs that are issued or guaranteed as to principal and interest by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation shall not exceed 50 percent of the bank's total investment portfolio.

(3) Obligations of the International Bank for Reconstruction and Development (The World Bank);

(4) Bankers acceptances, not to exceed 30 percent of the bank's total investment portfolio;

(5) Negotiable certificates of deposit, as defined in § 615.5131(m), that mature within 1 year or less, in an amount not to exceed 25 percent of the total investment portfolio of any Farm Credit Bank, bank for cooperatives, or agricultural credit bank. Any portion of a domestic or Yankee certificate of deposit that is not insured by either the Federal Deposit Insurance Corporation or the National Credit Union Administration, shall be held in a depository institution that maintains at least a rating of B/C, or its equivalent by a nationally recognized credit rating service. Eurodollar certificates of deposit that are not insured by the Federal or national government of the host country shall be held at banks maintaining a rating of B/C or better, and the country where the account is located shall receive an AAA rating (or equivalent) for political and economic stability from a nationally recognized credit rating service;

(6) Federal funds and Term Federal funds, as defined in § 615.5131(f) of this subpart, that are held either in federally insured depository institutions that maintain a rating of B/C or better, or with other government-sponsored enterprises. Federal funds and Term Federal funds shall not exceed 25 percent of the bank's total investment portfolio;

(7) Prime commercial paper, as defined by § 615.5131(o) of this subpart, shall not exceed 30 percent of the bank's total investment portfolio. In the event that the prime commercial paper is issued by a corporation located outside the United States, the country where the corporation is incorporated shall maintain a rating for political and economic stability of AAA or its equivalent by a nationally recognized credit rating service.

(8) Corporate debt obligations and ABSs, not to exceed 15 percent of the bank's investment portfolio, pursuant to the following requirements:

(i) Corporate debt obligations shall:

(A) Maintain at least a rating of AA, or its equivalent, by a nationally recognized credit rating service, and when applicable, the foreign country where the corporate debtor is incorporated shall maintain an AAA rating or its equivalent for political and economic stability;

(B) Qualify as a marketable investment pursuant to §615.5131(j);

(C) Mature within 5 years or less from the time of purchase;

(D) Not be convertible into equity securities.

(ii) Asset-backed securities, as defined by §615.5131(c) shall:

(A) Mature within 5 years or less from the time of purchase;

(B) Maintain at least a rating of AAA, or its equivalent, by a nationally recognized credit rating service.

(9) Repurchase agreements, as defined in §615.5131(q), collateralized by eligible investments authorized by this section that mature within 100 days or less.

(10) Full faith and credit obligations of any State, territory, or possession of the United States, or political subdivision thereof, including any agency, corporation, or instrumentality of any State, territory, possession, or political subdivision thereof, provided that the obligations:

(i) Maintain at least a rating of A, or the equivalent, by a nationally recognized credit rating service;

(ii) Mature within 10 years from the date of purchase; and

(iii) Qualify as marketable investments within the meaning of §615.5131(j) of this subpart.

(11) Other investments, as authorized by the Farm Credit Administration, that manifest the following characteristics:

(i) A short maturity;

(ii) Qualify as a marketable investment pursuant to §615.5131(j) of this subpart;

(iii) Maintain a high investment rating by a nationally recognized credit rating service.

(b) Except for eligible investments covered by paragraphs (a)(1) and (2) of this section, each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall not invest more than twenty (20) percent of its total capital in eligible investments issued by any single institution, issuer, or obligor.

(c) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall perform ongoing evaluations of all eligible investments held in its portfolio. Each bank shall support its evaluation with the most recent credit rating of each investment by at least one nationally recognized credit rating service.

(d) The collateral value of eligible investments supporting System obligations shall be the lower of cost or market value.

[47 FR 12147, Mar. 22, 1982, as amended at 58 FR 63057, Nov. 30, 1993; 59 FR 22736, May 3, 1994; 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, in §615.5140, paragraph (a)(1) was revised, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

§615.5140 Eligible investments and risk diversification.

(a) * * *

(1) Obligations of the United States and obligations, other than mortgage-backed securities, issued and guaranteed as to both principal and interest by an agency or instrumentality of the United States;

* * * * *

§615.5141 Association investment portfolios.

Each Farm Credit Bank and agricultural credit bank shall review annually as of June 30 or December 31 the investment portfolios of every Federal land bank association, production credit association, agricultural credit association, and Federal land credit association in the district. Associations are authorized to hold eligible investments pursuant to §§615.5140 and 615.5174 as authorized by their Farm Credit Bank or agricultural credit bank. Each Farm Credit Bank and agricultural credit bank shall assist the associations in managing their investment portfolios to reduce interest rate risk and to invest surplus short-term funds.

[58 FR 63058, Nov. 30, 1993]

§615.5142 Disposal of ineligible investments.

(a) Any Farm Credit Bank, bank for cooperatives, or agricultural credit bank that holds investments that are not in compliance with §615.5140 shall dispose of such investments within 6 months of the effective date of the final regulation unless the director of the Office of Examination approves in

writing a comprehensive written plan to comply with § 615.5140. The Office of Examination shall consider whether the proposed plan will enable the bank to dispose of impermissible investments within a reasonable period of time, without a substantial loss to the earnings or capital of the bank.

(b) Each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall dispose of investments that complied with § 615.5140 at the time of purchase, but subsequently became ineligible, within 6 months after the date that such investments became ineligible unless the director of the Office of Examination approves in writing a comprehensive written plan to comply with § 615.5140. The Office of Examination shall consider whether the proposed plan will enable the bank to dispose of impermissible investments within a reasonable period of time, without a substantial loss to the earnings or capital of the bank. Prior to the time that the investment is actually divested, the managers of the bank's investment portfolio shall report to the board of directors, at least quarterly, the status of the investment, including the conditions causing ineligibility, and divesture plans.

[58 FR 63058, Nov. 30, 1993]

§ 615.5143 Banks for cooperatives and agricultural credit banks.

As may be authorized by the banks for cooperatives' or agricultural credit banks boards of directors ownership investment may be made in foreign business entities solely for the purpose of obtaining credit information and other services needed to facilitate transactions which may be financed under section 3.7(b) of the Farm Credit Act Amendments of 1980. Such an investment shall not exceed the level required to access credit and other services of the entity and shall not be made for earnings purposes. The business entity shall be deemed to be principally engaged in providing credit information to and performing such servicing functions for its members where such activities constitute a materially important line of business to its members. Also, investments must be made by a bank for cooperatives or agricultural credit bank for its own account and not on behalf of its members. The bank for cooperatives or agricultural credit bank shall use only those services provided by the business entity as necessary to facilitate transactions authorized by section 3.7(b) of the Farm Credit Act Amendments of 1980.

[46 FR 55088, Nov. 6, 1981, as amended at 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989; 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, § 615.5143 was amended by adding the words ''and agricultural credit banks'' at the end of the heading; by adding the words ''or agricultural credit banks'' after the words ''banks for cooperatives'' in the first sentence; and by adding the words ''or agricultural credit bank'' after the words ''bank for cooperatives'' in the fourth and fifth sentences of the paragraph, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

Subpart F—Property and Other Investments

§ 615.5170 Real and personal property.

Real estate and personal property may be acquired, held, or disposed of by any Farm Credit institution for the necessary and normal operations of its business. The purchase, lease, or construction of office quarters shall be limited to facilities reasonably necessary to meet the foreseeable requirements of the institution. Property shall not be acquired if it involves, or appears to involve, a bank or association in the real estate or other unrelated business.

[50 FR 48554, Nov. 26, 1985. Redesignated at 58 FR 63056, Nov. 30, 1993, and amended at 60 FR 20011, Apr. 24, 1995]

§ 615.5171 Additional investments of Farm Credit Banks.

Farm Credit Banks may purchase nonvoting stock and participation certificates of and pay in surplus to associations in their respective districts when authorized by the bank board of directors on a case basis and approved by the Farm Credit Administration.

[56 FR 2675, Jan. 24, 1991; 56 FR 12298, Mar. 22, 1991. Redesignated at 58 FR 63056, Nov. 30, 1993]

§615.5172 Production credit association and agricultural credit association investment in farmers' notes given to cooperatives and dealers.

(a) In accordance with policies prescribed by the board of directors of the Farm Credit Bank or agricultural credit bank and each production credit association and agricultural credit association (hereinafter association(s)), such association(s) may invest in notes, conditional sales contracts, and other similar obligations given to cooperatives and private dealers by farmers and ranchers eligible to borrow from such associations.

(b) Such notes and other obligations evidencing purchases of farm machinery, supplies, equipment, home appliances, and other items of a capital nature handled by cooperatives and private dealers will be eligible for purchase as investments.

(c) The total amount which an association may invest in such obligations at any one time shall not exceed 15 percent of the balance of its loans outstanding at the close of the association's preceding fiscal year. In addition, the total amount which an association may invest in such obligations that are originated by any one cooperative or private dealer, at any one time, shall not exceed 50 percent of association capital and surplus.

(d) All notes in which an association invests shall be endorsed with full recourse against the cooperative or dealer. The association shall contact each notemaker who meets the association's credit standards to encourage him to become a borrower.

[54 FR 1158, Jan. 12, 1989, as amended at 55 FR 24888, June 19, 1990; 55 FR 38313, Sept. 18, 1990. Redesignated at 58 FR 63056, Nov. 30, 1993]

§615.5173 Stock of the Federal Agricultural Mortgage Corporation.

Banks and associations of the Farm Credit System are authorized to purchase and hold Class B common stock of the Federal Agricultural Mortgage Corporation pursuant to section 8.4 of the Farm Credit Act.

[58 FR 63058, Nov. 30, 1993]

§615.5174 Mortgage-related securities issued or guaranteed by the Federal Agricultural Mortgage Corporation.

(a) Pursuant to sections 1.5(15), 3.1(13)(A), and 7.2(a) of the Farm Credit Act, Farm Credit Banks, banks for cooperatives, and agricultural credit banks are authorized to purchase and hold mortgage-backed securities (MBSs), as defined by §615.5131(l), collateralized mortgage obligations (CMOs), as defined by §615.5131(e), and Real Estate Mortgage Investment Conduits (REMICs), as defined by §615.5131(p), that are guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation, in an amount that does not exceed 20 percent of the total outstanding loans of such banks.

(b) Eligible securities under paragraph (a) of this section shall be backed by either:

(1) Adjustable rate mortgages, as defined by §615.5131(b), that have a repricing mechanism of 12 months or less that are tied to an index; or

(2) Fixed-rate mortgages.

(c) Stripped mortgage-backed securities, as defined in §615.5131(r) of this part, including Interest Only (IO) and Principal Only (PO) classes, and residuals, as defined by §615.5131(s) are not eligible investments for the purposes of this section;

(d) The board of directors of each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall adopt written policies and procedures that bank managers shall follow in purchasing, holding and managing eligible mortgage-related securities that are fully guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation. Quarterly reports about the performance of all investments in securities that are guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation shall be made to the board of directors. The board of directors of each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall, on an annual basis, review these policies and procedures, as well as the performance of eligible Federal Agricultural Mortgage Corporation securities that such bank holds as an investment pursuant

to this section. At a minimum, the written policy should address:

(1) The purpose and objectives of the bank's investment in securities of the Federal Agricultural Mortgage Corporation;

(2) Parameters concerning the size, characteristics, and quality of guaranteed Federal Agricultural Mortgage Corporation securities that the Farm Credit bank shall purchase and hold. At a minimum, this policy should address:

(i) The mix of guaranteed Federal Agricultural Mortgage Corporation securities that are collateralized by qualified agricultural mortgages, rural housing loans, and loans guaranteed by the Farmers' Home Administration pursuant to 7 U.S.C. 1921 *et seq.*

(ii) Product and geographic diversification in the loans that underlie the securities;

(iii) Minimum pool sizes, minimum number of loans in each pool, and maximum allowable premiums for CMOs, REMICs, and ARMs; and

(iv) The mix of guaranteed Federal Agricultural Mortgage Corporation securities that are collateralized by either fixed-rate loans or adjustable rate loans that reprice at least annually, based on changes in a published index.

(3) Delegation of authority to manage bank investments in guaranteed securities of the Federal Agricultural Mortgage Corporation to specific personnel or committees and a statement about the extent of their authority and responsibility.

(4) Permissible brokers, dealers, and other intermediaries for conducting purchase and sale transactions involving securities that are guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation;

(5) Controls to monitor the performance of the bank's investments in guaranteed Federal Agricultural Mortgage Corporation securities for the purposes of preventing loss, fraud, embezzlement, and unauthorized investments;

(6) Management of interest rate risk in these securities pursuant to paragraph (e) of this section;

(7) Procedures to prevent losses to the capital and earnings of the bank;

(8) Procedures for the orderly sales of these securities prior to maturity.

(e) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall manage interest rate risk inherent in guaranteed mortgage-related securities of the Federal Agricultural Mortgage Corporation pursuant to the written policy that its board of directors adopts under paragraph (c)(5) of this section, subject to the following requirements:

(1) The policy of the board of directors shall establish, pursuant to the following formula, the maximum level of interest rate risk exposure that the bank shall incur from CMOs and REMICs that are backed by fixed-rate mortgages:

(i) The expected weighted average life (WAL) of the instrument;

(ii) The maximum number of years that the expected WAL of these instruments will extend assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or shorten assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; and

(iii) The maximum change in the price of these securities due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(2) For CMOs and REMICs that are guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation, and are collateralized by fixed-rate agricultural loans, the board of directors of each Farm Credit bank shall implement a policy, pursuant to the requirements of paragraph (e)(1) of this section, where at the time of purchase or any quarter thereafter, the interest rate risk of the security never exceeds the interest rate risk in the underlying mortgages.

(3) For CMOs and REMICs that are guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation, and are exclusively collateralized by fixed-rate rural housing loans, the board of directors of each Farm Credit bank shall not, under any circumstances, implement a policy pursuant to paragraph (d)(1) of this section where, at the time of purchase or each quarter thereafter:

(i) The expected WAL of security exceeds 10 years;

(ii) The expected WAL of the security extends by more than 4 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or shortens by more than 6 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points; or

(iii) The estimated change in the price of the security is more than 17 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(4) If at any time subsequent to purchase, a mortgage-related security that is guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation no longer complies with the interest rate risk policy that the bank's board of directors adopted under paragraph (d)(1) of this section:

(i) The portfolio managers shall report to the board of directors about the status of the investment, and the conditions that are causing excessive interest rate risk in the security. The portfolio managers shall also recommend to the board of directors a comprehensive plan to prevent loss to the bank's capital and earnings.

(ii) The board of directors of each Farm Credit bank shall adopt and implement a comprehensive policy to prevent the investment from causing loss to the bank's capital and earnings. Any amendment to the plan shall also be approved by the bank's board of directors;

(iii) Until the security is actually divested, the portfolio managers shall report to the board of directors, at least quarterly, about changes in the status of the investment, and the effect of the policy to prevent loss to the bank's capital and earnings.

(iv) All documentation regarding the formulation, adoption, implementation, and revision of the plan to prevent the security from causing loss to the bank's capital and earnings shall be available for review by the Office of Examination of the Farm Credit Administration.

[58 FR 63058, Nov. 30, 1993]

Subpart G—[Reserved]

Subpart H—Capital Adequacy

SOURCE: 53 FR 39247, Oct. 6, 1988, unless otherwise noted.

§615.5200 General.

(a) The Board of Directors of each Farm Credit System institution shall determine the amount of total capital needed to assure the institution's continued financial viability and to provide for growth necessary to meet the needs of its borrowers. The minimum permanent capital standard prescribed in §615.5205 is not meant to be adopted as the optimum capital level in the institution's capital adequacy plan. Rather, the standard is intended to serve as a minimum level of permanent capital that each institution must maintain to protect against the credit and other general risks inherent in its operations.

(b) The Board of Directors shall establish and maintain a formal written capital adequacy plan as a part of the financial plan required by §618.8440. The plan shall include the capital targets that are necessary to achieve the institution's capital adequacy goals as well as the minimum permanent capital standards. The plan shall address any projected dividends, patronage distribution, equity retirements, or other action that may decrease the institution's permanent capital. In addition to factors that must be considered in meeting the minimum standards, the board of directors shall also consider at least the following factors in developing the capital adequacy plan:

(1) Capability of management;

(2) Quality of operating policies, procedures, and internal controls;

(3) Quality and quantity of earnings;

(4) Asset quality and the adequacy of the allowance for losses to absorb potential loss within the loan and lease portfolios;

(5) Sufficiency of liquid funds;

(6) Needs of an institution's customer base; and

(7) Any other risk-oriented activities, such as funding and interest rate risks, potential obligations under joint and several liability, contingent and off-

balance-sheet liabilities or other conditions warranting additional capital.

§ 615.5201 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) *Allocated investment* means earnings allocated but not paid in cash by a System bank to an association or other recipient.

(b) *Commitment* means any arrangement that legally obligates an institution to purchase loans or securities, to participate in loans or leases, to extend credit in the form of loans or leases, to pay the obligation of another, to provide overdraft, revolving credit or underwriting facilities, or to participate in similar transactions.

(c) *Credit conversion factor* means that number by which an off-balance-sheet item shall be multiplied to obtain a credit equivalent before placing the item in a risk-weight category.

(d) *Direct lender institution* means an institution that extends credit in the form of loans or leases to eligible borrowers in its own right and carries such loan of lease assets on its books.

(e) *Government agency* means an agency of the United States Government whose obligations are explicitly guaranteed by the United States Government or their successors.

(f) *Government-sponsored agency* means agencies or instrumentalities chartered by the United States Congress to serve a public purpose whose debt obligations are not explicitly guaranteed by the United States Government.

(g) *Institution* means a Farm Credit bank, Federal land bank association, production credit association, agricultural credit association, Farm Credit Leasing Corporation, bank for cooperatives, National Bank for Cooperatives, and their successors.

(h) *Nonagreeing association* means an association that does not have an allocation agreement in effect with a Farm Credit Bank or agricultural credit bank pursuant to § 615.5210(e).

(i) *Performance-based standby letter of credit* means any letter of credit or similar arrangement that represents an irrevocable obligation to be beneficiary on the part of the issuer to make payment on any default by the account party in the performance of a nonfinancial or commercial obligation.

(j) *Permanent capital* means—

(1) Current year retained earnings;

(2) Allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

(3) All surplus;

(4) Stock issued by a System institution, except—

(i) Stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder;

(ii) Stock that is protected under section 4.9A of the Act or is otherwise not at risk;

(iii) Farm Credit Bank equities required to be purchased by Federal land bank associations in connection with stock issued to borrowers that is protected under section 4.9A of the Act;

(iv) Capital subject to revolvement, unless:

(A) The bylaws of the institution clearly provide that there is no express or implied right for such capital to be retired at the end of the revolvement cycle or at any other time; and

(B) The institution clearly states in the notice of allocation that such capital may only be retired at the sole discretion of the board in accordance with statutory and regulatory requirements and that no express or implied right to have such capital retired at the end of the revolvement cycle or at any other time is thereby granted;

(5) Payments to, or obligations to pay, the Farm Credit System Financial Assistance Corporation to the extent permitted by section 6.26(c)(5)(G) of the Act and § 615.5210(d); and

(6) Financial assistance provided by the Farm Credit System Insurance Corporation that the Farm Credit Administration determines appropriate to be considered permanent capital.

(k) *Risk-adjusted asset base* means the total dollar amount of the institution's assets adjusted in accordance with

§615.5210 (d) and (e) and weighted on the basis of risk in accordance with §615.5210(f).

(l) *Standby letter of credit* means any letter of credit or similar arrangement that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(1) To repay money borrowed by or advanced to or for the account of the account party; or

(2) To make payment on account of any indebtedness undertaken by the account party, in the event the account party fails to fulfill its obligation to the beneficiary.

(m) *Stock* means stock and participation certificates.

(n) *Total capital* means assets minus liabilities, valued in accordance with generally accepted accounting principles (GAAP), except that liabilities shall not include obligations to retire stock protected under section 4.9A of the Act.

[53 FR 39247, Oct. 6, 1988, as amended at 56 FR 2675, Jan. 24, 1991; 59 FR 37404, July 22, 1994]

§615.5205 Minimum permanent capital standards.

(a) Beginning on January 1, 1993, each Farm Credit System institution shall at all times maintain permanent capital at a level of at least 7 percent of its risk-adjusted assets.

(b)(1) During each year beginning on January 1, 1989, through January 1, 1993, each institution that does not meet the minimum permanent capital standard established in paragraph (a) of this section shall maintain a level of permanent capital of all times during such year at a level that is not less than its interim minimum permanent capital standard for such year, determined in accordance with paragraph (b)(2) of this section.

(2) The annual interim minimum permanent capital standards shall be determined for each institution in the following manner: A beginning permanent capital ratio shall be determined as of June 30, 1988. For institutions merged or consolidated after June 30, 1988, the beginning permanent capital ratio shall be determined on the basis of pro forma financial statements as of June 30, 1988. For each year between January 1, 1989 and 1993, the interim minimum permanent capital standard shall be the beginning permanent capital ratio plus the specified percentage of the difference (shortfall) between the beginning permanent capital ratio and the minimum permanent capital standard of 7 percent. During each of the following years each institution shall maintain its permanent capital at a level equal to or greater than its interim minimum permanent capital standard, determined in accordance with the percentage of its shortfall specified below:

YEAR BEGINNING—INTERIM MINIMUM PERMANENT CAPITAL STANDARD

January 1, 1989—Beginning permanent capital ratio

January 1, 1990—beginning permanent capital ratio plus 25 percent of shortfall

January 1, 1991—beginning permanent capital ratio plus 50 percent of shortfall

January 1, 1992—beginning permanent capital ratio plus 75 percent of shortfall

January 1, 1993—the minimum permanent capital ratios shall be and thereafter 7 percent.

The interim minimum permanent capital standards for a new association that results from a special reconsideration under section 7.9(i) of the Act shall be the same standards as those for the association of which it was formerly a part.

§615.5210 Computation of the permanent capital ratio.

(a) The institution's permanent capital ratio shall be determined on the basis of the financial statements of the institution prepared in accordance with generally accepted accounting principles except that the obligations of the Farm Credit System Financial Assistance Corporation shall not be considered obligations of any institution subject to this regulation prior to their maturity.

(b) Through December 31, 1989, the institution's assets and permanent capital may be computed using the average of the most recent 3 months' balances. Thereafter, the institution's asset base and permanent capital shall be computed using average daily balances for the most recent 3 months.

(c) The institution's permanent capital ratio shall be calculated by dividing the institution's permanent capital, adjusted in accordance with paragraph (e) of this section (the numerator), by the risk-adjusted asset base (the denominator), to derive a ratio expressed as a percentage.

(d) Until September 27, 2002, payments of assessments to the Farm Credit System Financial Assistance Corporation, and any part of the obligation to pay future assessments to the Farm Credit System Financial Assistance Corporation that is recognized as an expense on the books of a bank or association, shall be included in the capital of such bank or association for the purpose of determining its compliance with regulatory capital requirements, to the extent allowed by section 6.26(c)(5)(G) of the Act. If the bank directly or indirectly passes on all or part of the payments to its affiliated associations pursuant to section 6.26(c)(5)(D) of the Act, such amounts shall be included in the capital of the associations and shall not be included in the capital of the bank. After September 27, 2002, no payments of assessments or obligations to pay future assessments may be included in the capital of the bank or association.

(e) For the sole purpose of computing the institution's permanent capital ratio, the following adjustments shall be made prior to assigning assets to risk-weight categories and computing the ratio:

(1) Where two Farm Credit System institutions have stock investments in each other, such reciprocal holdings shall be eliminated to the extent of the offset. If the investments are equal in amount, each institution shall deduct from its assets and its total capital an amount equal to the investment. If the investments are not equal in amount, each institution shall deduct from its total capital and its assets an amount equal to the smaller investment.

(2) Where a Farm Credit Bank or an agricultural credit bank is owned by one or more Farm Credit System institutions, the double counting of capital shall be eliminated in the following manner:

(i) All equities of a Farm Credit Bank or agricultural credit bank that have been purchased by other Farm Credit institutions shall be considered to be permanent capital of the Farm Credit Bank or agricultural credit bank.

(ii) Each Farm Credit Bank or agricultural credit bank and each of its affiliated associations may enter into an agreement that specifies, for the purpose of computing permanent capital only, a dollar amount and/or percentage allotment of the association's allocated investment between the bank and the association. The following conditions shall apply:

(A) The agreement shall be for a term of 1 year or longer.

(B) The agreement shall be entered into on or before its effective date.

(C) The agreement may be amended according to its terms, but no more frequently than annually except in the event that a party to the agreement is merged or reorganized, or in the event of a reallotment pursuant to paragraph (e)(2)(ii)(G) of this section. The agreement shall include a provision addressing how the agreement will be amended if a reallotment is required by paragraph (e)(2)(ii)(G) of this section.

(D) On or before the effective date of the agreement, a certified copy of the agreement, and any amendments thereto, shall be sent to the field office of the Farm Credit Administration responsible for examining the institution. A copy shall also be sent within 30 calendar days of adoption to the bank's other affiliated associations.

(E) Unless the parties otherwise agree, if the bank and the association have not entered into a new agreement on or before the expiration of an existing agreement, the existing agreement shall automatically be extended for another 12 months, unless either party notifies the Farm Credit Administration in writing of its objection to the extension prior to the expiration of the existing agreement.

(F) In the absence of an agreement between a Farm Credit Bank or an agricultural credit bank and one or more associations, or in the event that an agreement expires and at least one party has timely objected to the continuation of the terms of its agreement, the following formula shall be applied with respect to the allocated investments held by those associations

with which there is no agreement (nonagreeing associations), and shall not be applied to the allocated investments held by those associations with which the bank has an agreement (agreeing associations):

(*1*) The allotment formula shall be calculated annually.

(*2*) The permanent capital ratio of the Farm Credit Bank or agricultural credit bank shall be computed as of the date that the existing agreement terminates, using a 3-month average daily balance, excluding the allocated investment from nonagreeing associations but including any allocated investments of agreeing associations that are allotted to the bank under applicable allocation agreements. The permanent capital ratio of each nonagreeing association shall be computed as of the same date using a 3-month average daily balance, and shall be computed excluding its allocated investment in the bank.

(*3*) If the permanent capital ratio for the Farm Credit Bank or agricultural credit bank calculated in accordance with paragraph (e)(2)(ii)(F)(*2*) of this section is 7 percent or above, the allocated investment of each nonagreeing association whose permanent capital ratio calculated in accordance with paragraph (e)(2)(ii)(F)(*2*) of this section is 7 percent or above shall be allotted 50 percent to the bank and 50 percent to the association.

(*4*) If the permanent capital ratio of the Farm Credit Bank or agricultural credit bank calculated in accordance with paragraph (e)(2)(ii)(F)(*2*) of this section is 7 percent or above, the allocated investment of each nonagreeing association whose capital ratio is below 7 percent shall be allotted to the association until the association's capital ratio reaches 7 percent or until all of the investment is allotted to the association, whichever occurs first. Any remaining unallotted allocated investment shall be allotted 50 percent to the bank and 50 percent to the association.

(*5*) If the permanent capital ratio of the Farm Credit Bank or agricultural credit bank calculated in accordance with paragraph (e)(2)(ii)(F)(*2*) of this section is less than 7 percent, the amount of additional capital needed by the bank to reach a permanent capital ratio of 7 percent shall be determined, and an amount of the allocated investment of each nonagreeing association shall be allotted to the Farm Credit Bank or agricultural credit bank as follows:

(*i*) If the total of the allocated investments of all nonagreeing associations is greater than the additional capital needed by the bank, the allocated investment of each nonagreeing association shall be multiplied by a fraction whose numerator is the amount of capital needed by the bank and whose denominator is the total amount of allocated investments of the nonagreeing associations, and such amount shall be allotted to the bank. Next, if the permanent capital ratio of any nonagreeing association is less than 7 percent, a sufficient amount of unallotted allocated investment shall then be allotted to each nonagreeing association, as necessary, to increase its permanent capital ratio to 7 percent, or until all such remaining investment is allotted to the association, whichever occurs first. Any unallotted allocated investment still remaining shall be allotted 50 percent to the bank and 50 percent to the nonagreeing association.

(*ii*) If the additional capital needed by the bank is greater than the total of the allocated investments of the nonagreeing associations, all of the remaining allocated investments of the nonagreeing associations shall be allotted to the bank.

(G) If a payment or part of a payment to the Farm Credit System Financial Assistance Corporation pursuant to section 6.9(e)(3)(D)(ii) of the Act would cause a bank to fall below its minimum permanent capital requirement, the bank and one or more associations shall amend their allocation agreements to increase the allotment of the allocated investment to the bank sufficiently to enable the bank to make the payment to the Farm Credit System Financial Assistance Corporation, provided that the associations would continue to meet their minimum permanent capital requirement. In the case of a nonagreeing association, the Farm Credit Administration may require a revision of the allotment sufficient to enable the bank to make the payment to the Farm Credit System Financial

Assistance Corporation, provided that the association would continue to meet its minimum permanent capital requirement. The Farm Credit Administration Board may, at the request of one or more of the institutions affected, waive the requirements of this paragraph (e)(2)(ii)(G) if the Board deems it is in the overall best interest of the institutions affected.

(3) A Farm Credit Bank or agricultural credit bank and a recipient, other than an association, of allocated earnings from such bank may enter into an agreement specifying a dollar amount and/or percentage allotment of the recipient's allocated earnings in the bank between the bank and the recipient. Such agreement shall comply with the provisions of paragraph (e)(2) of this section, except that, in the absence of an agreement, the allocated investment shall be allotted 100 percent to the allocating bank and 0 percent to the recipient. All equities of the bank that are purchased by a recipient shall be considered as permanent capital of the issuing bank.

(4) A bank for cooperatives and a recipient of allocated earnings from such bank may enter into an agreement specifying a dollar amount and/or percentage allotment of the recipient's allocated earnings in the bank between the bank and the recipient. Such agreement shall comply with the provisions of paragraph (e)(2) of this section, except that, in the absence of an agreement, the allocated investment shall be allotted 100 percent to the allocating bank and 0 percent to the recipient. All equities of a bank that are purchased by a recipient shall be considered as permanent capital of the issuing bank.

(5) Where a bank or association invests in an association to capitalize a loan participation interest, the investing institution shall deduct from its total capital an amount equal to its investment in the participating institution.

(6) The double counting of capital between the Leasing Corporation and its owner institutions shall be eliminated by deducting an amount equal to their investment in the Leasing Corporation from their total capital.

(7) Each institution shall deduct from its total capital an amount equal to any goodwill acquired after May 12, 1988. Beginning on January 1, 1993, each institution shall deduct from its total capital all goodwill, whenever acquired.

(8) To the extent an institution has deducted its investment in another Farm Credit institution from its total capital, the investment may be eliminated from its asset base.

(9) Where a Farm Credit Bank and an association have an enforceable written agreement to share losses on specifically identified assets on a predetermined quantifiable basis, such assets shall be counted in each institution's risk-adjusted asset base in the same proportion as the institutions have agreed to share the loss.

(f) The risk-adjusted asset base (denominator) shall be determined in the following manner:

(1) Each asset on the institution's balance sheet and each off-balance-sheet item, adjusted by the appropriate credit conversion factor in paragraph (f)(3) of this section, shall be assigned to one of five risk categories in accordance with this section. The aggregate dollar value of the assets in each category shall be multiplied by the percentage weight assigned to that category. The sum of the weighted dollar values from each of the five risk categories shall comprise the denominator for computation of the permanent capital ratio.

(2) Balance sheet assets shall be assigned to the percentage risk categories as follows:

(i) *Category 1: 0 Percent*

(A) Cash on hand and demand balances held in domestic and foreign banks.

(B) Claims on Federal Reserve Banks.

(C) Goodwill acquired after May 12, 1988.

(D) Beginning 1993, all goodwill, whenever acquired.

(ii) *Category 2: 10 Percent*

(A) All securities issued by the United States Government and Government agencies.

(B) Cash items in the process of collection.

(C) Portions of loans and other assets collateralized by securities of the United States Government or Government agencies.

(D) Securities and other claims guaranteed by the United States Government or Government agencies or portions of such claims (but only to the extent guaranteed).

(iii) *Category 3: 20 Percent*

(A) Loans and other assets collateralized by United States Government-sponsored agency securities.

(B) Claims on foreign banks with an original maturity of 1 year or less.

(C) Claims on domestic banks (exclusive of demand balances).

(D) Investments in State and local government obligations backed by the ''full faith and credit of State or local government.'' Other claims (including loans) and portions of claims guaranteed by the full faith and credit of a State government (but only to the extent guaranteed).

(E) Claims on official multinational lending institutions or regional development institutions in which the United States Government is a shareholder or contributor.

(F) Loans and other obligations of and investments in Farm Credit institutions.

(G) Local currency claims on foreign central governments to the extent that the Farm Credit institution has local liabilities in that country.

(iv) *Category 4: 50 Percent*

(A) All other investment securities with maturities under 1 year.

(B) Rural housing loans secured by first lien mortgages or deeds of trust.

(v) *Category 5: 100 percent*

(A) All other claims on private obligors.

(B) Claims on foreign banks with original maturity greater than 1 year.

(C) All other assets not specified above, including but not limited to, leases, fixed assets, and receivables.

(D) Until 1993, goodwill acquired before May 12, 1988.

(E) All non-local currency claims on foreign central governments, as well as local currency claims on foreign central governments that are not included in category 3 (G).

(3) Off-Balance-Sheet Items.

(i) The dollar amount of off-balance-sheet items that shall be assigned to a risk-weight category for inclusion in the denominator shall be determined by multiplying the face amount of the item by the appropriate credit conversion factor set forth in paragraph (f)(3)(ii) of this section. The resulting amount shall be then assigned to the appropriate risk-weight category described in paragraph (f)(2) of this section on the basis of the type of obligor.

(ii) Credit conversion factors shall be applied to off-balance-sheet items as follows:

(A) *0 Percent*

(*1*) Unused commitments with an original maturity of 1 year or less;

(*2*) Unused commitments with an original maturity of greater than 1 year if;

(*i*) They are unconditionally cancellable by the institution; and

(*ii*) The institution has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition before each drawing under the lending arrangement.

(B) *20 Percent*

(*1*) Short-term, self-liquidating, trade-related contingencies, including but not limited to, commercial letters of credit.

(C) *50 Percent*

(*1*) Transaction-related contingencies (e.g. bid bonds, performance bonds, warranties, and performance-based standby letters of credit related to a particular transaction).

(*2*) Unused loan commitments with an original maturity exceeding 1 year, including underwriting commitments and commercial credit lines.

(*3*) Revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements pursuant to which the institution's customer can issue short-term debt obligations in its own name, but for which the institution has a legally binding commitment to either:

(*i*) Purchase the obligations the customer is unable to sell by a stated date; or

(*ii*) Advance funds to its customer if the obligations cannot be sold.

(D) *100 Percent*

(*1*) Direct credit substitutes including financial-guarantee-type standby letters of credit that support financial claims on the account party. The face amount of a direct credit substitute shall be netted against any participations sold in that item. The amount not so sold shall be assigned to a risk-weight category using the criteria of § 615.5210(f)(2).

(*2*) Acquisitions of risk participations in bankers acceptances and participations in direct credit substitutes.

(*3*) Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet.

(*4*) Forward agreements (i.e., contractual obligations) to purchase assets, including financing facilities with certain drawdown.

(iii) Credit equivalents of interest rate contracts and foreign exchange contracts (except single currency floating/floating interest rate swaps) shall be determined by adding the replacement cost (mark-to-market value, if positive) to the potential future credit exposure, determined by multiplying the notional principal amount by the following credit conversion factors as appropriate.

[In percent]

Remaining maturity	Interest rate contracts	Exchange rate contracts
Less than 1-year	0	1.0
1 year and over	0.5	5.0

(iv) Credit equivalents of single currency floating/floating interest rate swaps shall be determined by their replacement cost (mark-to-market).

[53 FR 39247, Oct. 6, 1988, as amended at 54 FR 31323, July 28, 1989; 59 FR 37404, July 22, 1994]

§ 615.5215 Distribution of earnings.

The boards of directors of System institutions may not reduce the permanent capital of the institution through the payment of patronage refunds or dividends, or the retirement of stock or allocated equities except retirements pursuant to §§ 615.5280 and 615.5290 if, after or due to the action, the permanent capital of the institution would fail to meet the minimum permanent capital adequacy standard established under § 615.5205 for that period. This limitation shall not apply to the payment of noncash patronage refunds by any institution exempt from Federal income tax if the entire refund paid qualifies as permanent capital at the issuing institution. Any System institution subject to Federal income tax may pay patronage refunds partially in cash if the cash portion of the refund is the minimum amount required to qualify the refund as a deductible patronage distribution for Federal income tax purposes and the remaining portion of the refund paid qualifies as permanent capital.

[53 FR 39247, Oct. 6, 1988, as amended at 53 FR 40046, Oct. 13, 1988]

§ 615.5216 Regulatory forbearance.

(a) During 1989, no institution shall be subject to a regulatory enforcement action solely for failure to meet its interim minimum permanent standard so long as it maintains its permanent capital ratio at or above the beginning permanent capital ratio of June 30, 1988. For each year thereafter no institution shall be subject to regulatory enforcement action solely for failure to meet its minimum permanent capital standard so long as it maintains its permanent capital ratio at or above the beginning permanent capital ratio plus the forbearance increment specified in this paragraph.

Year	Forbearance Criteria
1990	Beginning ratio plus 50 basis points.
1991	Beginning ratio plus 125 basis points.
1992	Beginning ratio plus 200 basis points.
1993	Beginning ratio plus 300 basis points.
Thereafter	1993 ratio plus 100 basis points each year, cumulatively, until 7 percent is reached.

(b) The provisions of paragraph (a) of this section shall not apply to any institution that meets one or more of the conditions specified in § 627.2710 of this chapter for the appointment of a conservator or receiver.

[53 FR 39247, Oct. 6, 1988, as amended at 57 FR 46487, Oct. 9, 1992]

Subpart I—Issuance of Equities

SOURCE: 53 FR 40046, Oct. 13, 1988, unless otherwise noted.

§615.5220 Capitalization bylaws.

The board of directors of each System bank and association shall, pursuant to section 4.3A of the Farm Credit Act of 1971 (Act), adopt capitalization bylaws, subject to the approval of its voting shareholders that set forth:

(a) Classes of equities and the manner in which they shall be issued, transferred, converted and retired;

(b) For each class of equities, a description of the class(es) of persons to whom such stock may be issued, voting rights, dividend rights and preferences, and priority upon liquidation, including rights, if any, to share in the distribution of the residual estate;

(c) The number of shares and par value of equities authorized to be issued for each class of equities, except that equities that are required to be purchased as a condition of obtaining a loan and nonvoting stock into which voting stock is converted after repayment of the loan may be authorized to be issued in unlimited amounts;

(d) For Farm Credit Banks and associations, the percentage or dollar amount of equity investment (which may be expressed as a range within which the board of directors may from time to time determine the requirement) that will be required to be purchased as a condition for obtaining a loan, which amount may be more than, but shall be not less than, 2 percent of the loan amount or $1,000, whichever is less;

(e) For banks for cooperatives, the percentage or dollar amount of equity or guaranty fund investment (which may be expressed as a range within which the board may from time to time determine the requirement) that serves as a target level of investment in the bank for patronage-sourced business, which amount may be more than, but shall not be less than, 2 percent of the loan amount or $1,000, whichever is less;

(f) The amount of voting stock protected under section 4.9A of the Act that existing borrowers will be required to exchange for new voting stock issued under capitalization bylaws adopted pursuant to section 4.3A of the Act;

(g) The manner in which equities will be retired, including a provision stating that equities other than those protected under section 4.9A of the Act are retirable at the sole discretion of the board, provided minimum permanent capital adequacy standards (including interim standards) established in subpart H of this part are met;

(h) The manner in which earnings will be allocated and distributed, including the basis on which patronage refunds will paid, which shall be in accord with cooperative principles; and

(i) For Farm Credit banks, the manner in which the capitalization requirements of the Farm Credit Bank shall be allocated and equalized from time to time among its owners.

§615.5230 Implementation of cooperative principles.

(a) Voting shareholders of Farm Credit banks and associations shall be accorded full voting rights in accordance with cooperative principles.

(1) Voting shareholders of associations and banks for cooperatives shall:

(i) Have only one vote, regardless of the number of shares owned or the number of loans outstanding, except as otherwise required by statute or regulation and except as modified by paragraph (b) of this section;

(ii) Unless regional election of directors is provided for in the bylaws pursuant to §615.5230(a)(3), be accorded the right to vote in the election of each director (except for a director that is elected by the other directors);

(iii) Unless regional election of directors is provided for in the bylaws, or unless otherwise provided in the bylaws, be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion.

(2) Each voting shareholder of a Farm Credit Bank shall:

(i) Have one vote that is assigned a weight proportional to the number of the association's voting shareholders in a manner that does not discriminate against agricultural credit associations that have resulted from the merger or consolidation of Federal land bank associations and production credit associations; and

(ii) Have the right to vote in the election of each director and, unless otherwise agreed to by each association

shareholder, be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion.

(3) Regional election of directors is permitted under the following conditions:

(i) A bylaw establishing regional elections is approved by a majority of voting shareholders, voting in person or by proxy, prior to implementation;

(ii) The bylaw provides that all voting shareholders of the institution, whether or not they reside in the director's region, have the right to vote in any shareholder vote to remove each director;

(iii) There are an approximately equal number of voting shareholders in each of the institution's voting regions. The regions shall be deemed to have an approximately equal number of voting shareholders if no region contains more than 25 percent more voting shareholders than in any other region. At least once every 3 years, the institution shall count the number of voting shareholders in each region and, if the regions do not have an approximately equal number of shareholders, shall adjust the regional boundaries to achieve such result; and

(iv) An institution may provide for more than one director to represent a region. In such case, for purposes of determining whether the regions have an approximately equal number of voting shareholders, the number of voting shareholders in the region with more than one director shall be divided by the number of director positions representing that region, and the resulting quotient shall be the number that is compared to the number of voting shareholders in other regions.

(b) Each equityholder of each institution shall be equitably treated in the operation of the institution.

(1) Each issuance of preferred stock (other than preferred stock to be issued to the Farm Credit System Financial Assistance Corporation and preferred stock outstanding on October 5, 1988, and stock into which such outstanding stock is converted that has substantially similar preferences) shall be approved by a majority of the shares of each class of equities affected by the preference, voting as a class, whether or not such classes are otherwise authorized to vote;

(2) Any dividends paid to the holders of common stock and participation certificates shall be on a per share basis and without preference as to rate or priority of payment between classes of common stock, between classes of participation certificates, between classes of common stock and classes of participation certificates, or between holders of the same class of stock or participation certificates, except that any class of common stock or participation certificates that result from the conversion of allocated surplus may be subordinated to other classes of common stock and participation certificates in the payment of dividends.

(3) Any patronage refunds that are paid shall be paid in accordance with cooperative principles, on an equitable and nondiscriminatory basis determined by the board of directors in accordance with the capitalization bylaws, provided that any earning pools that may be established for the payment of patronage shall be established on a rational and equitable basis that will ensure that each patron of the institution receives its fair share of the earnings of the institution and bears its fair share of the expenses of the institution.

(4) All classes of common stock and participation certificates (except those resulting from a conversion of allocated surplus) must be accorded the same priority with respect to impairment and restoration of impairment and have the same rights and priority upon liquidation.

[53 FR 40046, Oct. 13, 1988, as amended at 54 FR 6118, Feb. 8, 1989; 60 FR 57921, Nov. 24, 1995]

§ 615.5240 Permanent capital requirements.

The capitalization bylaws shall enable the institution to meet the minimum permanent capital adequacy standards (including interim standards) established under subpart H of this part and the total capital requirements established by the board of directors of the institution.

(a) In order to qualify as permanent capital, equities issued under the bylaws must meet the following requirements:

(1) For common stock and participation certificates—

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan;

(ii) Retirement must be at not more than book value;

(iii) Disclosure must have been made pursuant to §615.5250 of the nature of the investment and the terms and conditions under which it is issued, and the rights, if any, to share in any patronage distributions that may be made.

(iv) Dividends must be payable only at the discretion of the board and must be noncumulative.

(2) For preferred stock issued to persons other than the Farm Credit System Financial Assistance Corporation—

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan;

(ii) Retirement must be at not more than book value;

(iii) Dividends must be payable only in the discretion of the board, and may be cumulative; and

(iv) Disclosure must have been made pursuant to §615.5250 of the nature of the investment and the terms and conditions under which it is issued.

(b) Until a bank or association meets the minimum permanent capital standards (including interim standards) established by the FCA under subpart H of this part, all equities required to be purchased as a condition for obtaining a loan shall be purchased from the institution.

§615.5250 Disclosure requirements.

(a) Equities purchased as a condition for obtaining a loan. Prior to loan closing, the institution shall provide the prospective borrower with the following:

(1) The institution's most recent annual report filed under 12 CFR part 620;

(2) The institution's most recent quarterly report filed under 12 CFR part 620, if more recent than the annual report;

(3) A copy of the institution's capitalization bylaws; and

(4) A written description of the terms and conditions under which the equity is issued. In addition to specific terms and conditions, the description shall disclose:

(i) That the equity is an at-risk investment and not a compensating balance;

(ii) That the equity is retirable only at the discretion of the board of directors and only if minimum permanent capital standards (including interim standards) established under subpart H of this part are met;

(iii) Whether the institution presently meets its minimum permanent capital standards, including interim standards; and

(iv) Whether the institution knows of any reason the institution may not meet its permanent capital standard on the next earnings distribution date.

(b) Notwithstanding the provisions of paragraph (a) of this section, no materials previously provided to a purchaser need be provided again unless the purchaser requests, except the disclosure required by paragraph (a)(4) of this section.

(c) Prior to any mandatory exchange of eligible borrower stock, as defined in §615.5260(a)(1), for stock issued under capitalization bylaws required under §615.5220, equityholders shall be provided with the disclosures required by paragraphs (a)(3) and (a)(4) of this section.

(d) Other equities. (1) No stock or participation certificates other than those required to be purchased as a condition of obtaining a loan may be offered for sale except pursuant to a disclosure statement containing all of the information required by 12 CFR part 620 in the annual report to shareholders as of a date within 135 days of the proposed sale, which disclosure statement must have been reviewed

and cleared by the Farm Credit Administration. The most recent annual report to shareholders and the most recent quarterly report filed with the Farm Credit Administration may be incorporated by reference into the disclosure statement in satisfaction of this requirement. In addition, the disclosure statement shall include items in (3) and (4) of paragraph (a) of this section and a discussion of the intended use of the sale proceeds. No materials previously provided to the purchaser need be provided again unless the purchaser requests it, except the disclosure required by paragraph (a)(4) of this section and a discussion of the use of sale proceeds.

(2) At least 45 days prior to the proposed sale of such equities, the institution shall submit the disclosure statement required by paragraph (d)(1) of this section to the Farm Credit Administration for review and clearance.

(3) Within 30 days of the receipt of such disclosure statement and any clarifying information the Farm Credit Administration may request, the Farm Credit Administration shall inform the institution whether the Farm Credit Administration will consider the issuance permanent capital for the purpose of meeting the minimum permanent capital standards established under subpart H (including interim standards) and shall inform the institution of any required changes or additions to the disclosure materials.

(4) No officer, director, employee, or agent of a System institution shall make any disclosure, through the disclosure statement or otherwise, in connection with the sale of equities that is inaccurate or misleading, or omit to make any statement needed to make other disclosures made by such person not misleading.

(5) The Farm Credit Administration may waive any or all of the disclosure requirements of paragraph (b) of this section when a single investor acquires $100,000 or more of a single class of equity if the sophistication of the purchaser warrants, provided that any certificate that may be issued evidencing such an equity states on its face in boldface type:

The denomination of this equity may not be reduced to less than $100,000 without the prior written approval of the Farm Credit Administration.

(e) The requirements of this section shall not apply to the sale of Farm Credit System institution equities to other Farm Credit System institutions, other financing institutions, or non-Farm Credit System lenders.

[53 FR 40046, Oct. 13, 1988, as amended at 56 FR 2675, Jan. 24, 1991; 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, in § 615.5250, paragraph (e) was revised, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

§ 615.5250 Disclosure requirements.

* * * * *

(e) The requirements of this section shall not apply to the sale of Farm Credit System institution equities to other Farm Credit System institutions or other financing institutions having a discount or lending relationship with the selling Farm Credit System institution.

* * * * *

Subpart J—Retirement of Equities

§ 615.5260 Retirement of eligible borrower stock.

(a) *Definitions.* For the purposes of this subpart the following definitions shall apply:

(1) *Eligible borrowers stock* means:

(i) Stock, participation certificates or allocated equities outstanding on January 6, 1988, or purchased as a condition of obtaining a loan prior to the earlier of the date of shareholder approval of capitalization bylaws under section 4.3A of the Act or October 6, 1988; and

(ii) Any stock, participation certificates or allocated equities for which such eligible borrower stock is exchanged in connection with a merger, consolidation, or other reorganization or a transfer of territory. *Eligible borrower stock* does not include equities for which eligible borrower stock is required to be exchanged pursuant to the bylaws adopted under section 4.3A or equities for which eligible borrower

stock is voluntarily exchanged except in connection with a merger, consolidation or other reorganization or a transfer of territory.

(2) *Retirement in the ordinary course of business* means:

(i) Retirement upon repayment of a loan or under a retirement or revolvement plan in effect prior to January 6, 1988, and for eligible borrower stock issued after that date, at the time the loan was made;

(ii) Retirement pursuant to §§615.5280 and 615.5290; or

(iii) Retirement necessary to accomplish an exchange of eligible borrower stock for a like amount of at-risk stock.

(3) *Par value* means:

(i) In the case of stock, par value;

(ii) In the case of participation certificates and other equities (except equities unable to be retired in connection with a liquidation occurring after January 1, 1983, and before January 1, 1988), face or equivalent value; or

(iii) In the case of participation certificates and allocated surplus subject to retirement under a revolving cycle and retired out or order pursuant to §§615.5280 and 615.5290 or otherwise under the Act, par or face value discounted at a rate determined by the institution to reflect the present value of the equity as of the date of such retirement.

(b) When an institution retires eligible borrower stock in the ordinary course of business, such equities shall be retired at par, even if book value is less than par.

(c) When a Farm Credit Bank retires stock for the sole purpose of enabling an association to retire eligible borrower stock that was issued in connection with a long term real estate loan, such stock shall be retired at par even if its book value is less than par.

(d) No eligible borrower stock shall be retired other than in the ordinary course of business without the prior approval of the Farm Credit Administration.

[53 FR 40048, Oct. 13, 1988; 54 FR 7029, Feb. 16, 1989]

§615.5270 Retirement of other equities.

(a) Equities other than eligible borrower stock shall be retired at not more than their book value.

(b) No equities shall be retired, except pursuant to §§615.5280 and 615.5290, unless after the retirement the institution would continue to meet the minimum permanent capital standards (including interim standards) established under subpart H of this part.

[53 FR 40048, Oct. 13, 1988; 54 FR 7029, Feb. 16, 1989]

§615.5280 Retirement in event of default.

(a) When the debt of a holder of eligible borrower stock issued by a production credit association, Federal land association, Federal land credit association or agriculture credit association is in default, such institution may, but shall not be required to, retire at par eligible borrower stock owned by such borrower on which the institution has a lien, in total or partial liquidation of the debt.

(b) When the debt of a holder of stock, participation certificates or other equities issued by a production credit association, Federal land bank association, Federal land credit association or agricultural credit association is in default, such institution may, but shall not be required to, retire at book value not to exceed par all or part of such equities, other than eligible borrower stock as defined in §615.5260(a)(1), owned by such borrower on which the institution has a lien, in total or partial liquidation of the debt.

(c) When the debt of a holder of equities or guaranty fund certificates issued by a bank for cooperatives or agricultural credit bank is in default the bank may, but shall not be required to, retire all or part of such equities qualify or guaranty fund investments owned by the borrower on which the bank has a lien, in total or partial liquidation of the debt. If such investments qualify as eligible borrower stock, it shall be retired at par, as defined in §615.5260(a)(3). All other investments shall be retired at a rate determined by the institution to reflect its present value on the date of retirement.

(d) When the debt of a holder of the equities of a Farm Credit Bank or agricultural credit bank is in default the bank may, but shall not be required to, retire all or part of such equities owned by the borrower on which the bank has a lien, in total or partial liquidation of the debt. If such equities qualify as eligible borrower stock or are retired solely to permit a Federal land bank association to retire eligible borrower stock under § 615.5280(a), they shall be retired at par. All other equities shall be retired at book value not to exceed par.

(e) Any retirements made under this section by a Federal land bank association shall be made only upon the specific approval of, or in accordance with, approval procedures issued by the association's funding bank.

(f) Prior to making any retirement pursuant to this section, except retirements pursuant to paragraphs (c) and (d) of this section, the institution shall provide the borrower with written notice of the following matters;

(1) A statement that the institution has declared the borrower's loan to be in default;

(2) A statement that the institution will retire all or part of the equities of the borrower in total or partial liquidation of his or her loan;

(3) A description of the effect of the retirement on the relationship of the borrower to the institution;

(4) A statement of the amount of the outstanding debt that will be owed to the institution after the retirement of the borrower's equities; and

(5) The date on which the institution will retire the equities of the borrower.

(g) The notice required by this section shall be provided in person at least 10 days prior to the retirement of any equities of a holder, or by mailing a copy of the notice by first class mail to the last known address of the equity holder at least 13 days prior to the retirement of such person's equities.

(h) The requirements of this section may be satisfied by notices given pursuant to §§ 614.4516, 614.4518, and 614.4519 of title 12 of the Code of Federal Regulations that contain the information required by this section.

[53 FR 40048, Oct. 13, 1988; 54 FR 7029, Feb. 16, 1989, as amended at 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, in § 615.5280, paragraphs (a) through (e) were revised, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

§ 615.5280 Retirement in event of default.

(a) When the debt of a holder of eligible borrower stock issued by a production credit association, Federal land bank association or agricultural credit association is in default, such institution may, but shall not be required to, retire at par eligible borrower stock owned by such borrower on which the institution has a lien, in total or partial liquidation of the debt.

(b) When the debt of a holder of stock, participation certificates or other equities issued by a production credit association, Federal land bank association, or agricultural credit association is in default, such institution may, but shall not be required to, retire at book value not to exceed par all or part of such equities, other than eligible borrower stock as defined in § 615.5260(a)(1), owned by such borrower on which the institution has a lien, in total or partial liquidation of the debt.

(c) When the debt of a holder of equities or guaranty fund certificates issued by a bank for cooperatives is in default, the bank for cooperatives may, but shall not be required to, retire all or part of such equities or guaranty fund investments owned by the borrower on which the bank for cooperatives has a lien, in total or partial liquidation of the debt. If such investments qualify as eligible borrower stock, it shall be retired at par, as defined in § 615.5260(a)(3). All other investments shall be retired at a rate determined by the institution to reflect its present value on the date of retirement.

(d) When the debt of a holder of the equities of a Farm Credit Bank is in default, the Farm Credit Bank may, but shall not be required to, retire all or part of such equities owned by the borrower on which the Farm Credit Bank has a lien, in total or partial liquidation of the debt. If such equities qualify as eligible borrower stock or are retired solely to permit a Federal land bank association to retire eligible borrower stock under § 615.5280(a), they shall be retired at par. All other equities shall be retired at book value not to exceed par.

(e) Any retirements made under this section by a Federal land bank association that is not a direct lender shall be made only upon the specific approval of or in accordance with approval procedures issued by the district Farm Credit Bank.

* * * * *

§615.5290 Retirement of capital stock and participation certificates in event of restructuring.

(a) If a Farm Credit Bank or agricultural credit bank forgives and writes off, under §614.4517, any of the principal outstanding on a loan made to any borrower, where appropriate the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and to the extent provided for in the bylaws of the Bank relating to its capitalization, the Farm Credit Bank or agricultural credit bank shall retire an equal amount of stock owned by the Federal land bank association.

(b) If a production credit association or merged association forgives and writes off, under §614.4517, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such loan.

(c) Notwithstanding paragraphs (a) and (b) of this section, the borrower shall be entitled to retain at least one share of stock to maintain the borrower's membership and voting interest.

[53 FR 35457, Sept. 14, 1988, as amended at 61 FR 67188, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67188, Dec. 20, 1996, in §615.5290, paragraph (a) was amended by adding the words ''or agricultural credit bank'' after the words ''Farm Credit Bank'', effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

Subpart K—Surplus and Reserves

§615.5330 Banks for cooperatives.

Each bank for cooperatives shall add to the unallocated surplus account annually an amount not less than 10 percent of net earnings after taxes until such time as the unallocated surplus equals half of the minimum permanent capital requirement established under §615.5205(a) of subpart H of this part.

[53 FR 40048, Oct. 13, 1988]

Subparts L–N—[Reserved]

Subpart O—Book-Entry Procedures for Farm Credit Securities

SOURCE: 61 FR 67192, Dec. 20, 1996, unless otherwise noted.

§615.5450 Definitions.

In this subpart, unless the context otherwise requires or indicates:

(a) *Adverse claim* means a claim that a claimant has a property interest in a security and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the security.

(b) *Book-entry security* means a Farm Credit security issued or maintained in the Book-entry System.

(c) *Book-entry System* means the automated book-entry system operated by the Federal Reserve Banks, acting as the fiscal agent for the Farm Credit banks, through which book-entry securities are issued, recorded, transferred and maintained in book-entry form.

(d) *Definitive Farm Credit security* means a Farm Credit security in engraved or printed form, or that is otherwise represented by a certificate.

(e) *Eligible book-entry security* means a book-entry security issued or maintained in the Book-entry System, which by the terms of its securities documentation, is eligible to be converted from book-entry into definitive form.

(f) *Entitlement Holder* means a person to whose account an interest in a book-entry security is credited on the records of a securities intermediary.

(g) *Farm Credit banks* means one or more Farm Credit Banks, agricultural credit banks, and banks for cooperatives.

(h) *Farm Credit securities* means consolidated notes, bonds, debentures, or other similar obligations of the Farm Credit banks and Systemwide notes, bonds, debentures, or similar obligations of the Farm Credit banks issued under sections 4.2(c) and 4.2(d) of the Act, or laws repealed thereby.

(i) *Federal Reserve Bank* means a Federal Reserve Bank or Branch acting as

agent for the Farm Credit banks and the Funding Corporation.

(j) *Federal Reserve Bank Operating Circular* means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Federal Reserve Bank maintains book-entry securities accounts and transfers book-entry securities.

(k) *Funding Corporation* means the Federal Farm Credit Banks Funding Corporation established pursuant to section 4.9 of the Act, which issues Farm Credit securities on behalf of the Farm Credit banks.

(l) *Funds Account* means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, book-entry securities transaction fees, or principal and interest payments.

(m) *Participant* means a person that maintains a participant's securities account with a Federal Reserve Bank.

(n) *Participant's Securities Account* means an account in the name of a participant at a Federal Reserve Bank to which book-entry securities held for a participant are or may be credited.

(o) *Person* means an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative and any other similar organization, but does not mean the United States, a Farm Credit bank, the Funding Corporation or a Federal Reserve Bank.

(p) *Revised Article 8* means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text, and has the same meaning as in 31 CFR 357.2.

(q) *Securities Documentation* means the applicable statement of terms, trust indenture, securities agreement, offering circular or other documents establishing the terms of a book-entry security.

(r) *Securities Intermediary* means:

(1) A person that is registered as a ''clearing agency'' under the Federal securities laws; a Federal Reserve Bank; any other person that provides clearance or settlement services with respect to a book-entry security that would require it to register as a clearing agency under the Federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a Federal or State governmental authority; or

(2) A person (other than an individual, unless such individual is registered as a broker or dealer under the Federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(s) *Security* means a Farm Credit security as defined in paragraph (h) of this section.

(t) *Security Entitlement* means the rights and property interest of an entitlement holder with respect to a book-entry security.

(u) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(v) *Transfer Message* means an instruction of a participant to a Federal Reserve Bank to effect a transfer of a book-entry security maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

§ 615.5451 Book-entry and definitive securities.

Subject to subpart C of this part:

(a) Farm Credit banks operating under the same title of the Act may issue consolidated securities in book-entry form.

(b) Farm Credit banks may issue Systemwide securities in book-entry form.

(c) Consolidated and Systemwide securities also may be issued in bearer-definitive form.

§ 615.5452 Law governing rights and obligations of United States, Federal Reserve Banks, Farm Credit banks, and Funding Corporation; rights of any person against United States, Federal Reserve Banks, Farm Credit banks, and Funding Corporation.

(a) Except as provided in paragraph (b) of this section, the following are governed solely by the regulations contained in this subpart O, the securities

documentation, and Federal Reserve Bank Operating Circulars:

(1) The rights and obligations of the United States, the Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks with respect to:

(i) A book-entry security or security entitlement, and

(ii) The operation of the Book-entry System as it applies to Farm Credit securities; and

(2) The rights of any person, including a participant, against the United States, the Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks with respect to:

(i) A book-entry security or security entitlement, and

(ii) The operation of the Book-entry System as it applies to Farm Credit securities.

(b) A security interest in a security entitlement that is in favor of a Federal Reserve Bank from a participant and that is not recorded on the books of a Federal Reserve Bank pursuant to §615.5454(c)(1) of this subpart, is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the participant's securities account is located. A security interest in a security entitlement that is in favor of a Federal Reserve Bank from a person that is not a participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to §615.5454(c)(1)of this subpart, is governed by the law determined in the manner specified in §615.5453 of this subpart.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted revised Article 8 (see 31 CFR 357.2) then the law specified in paragraph (b) of this section shall be the law of that State as though revised Article 8 had been adopted by that State.

§615.5453 Law governing other interests.

(a) To the extent not inconsistent with these regulations, the law (not including the conflict-of-law rules) of a securities intermediary's jurisdiction governs:

(1) The acquisition of a security entitlement from the securities intermediary;

(2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement;

(4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection and priority of a security interest in a security entitlement.

(b) The following rules determine a ''securities intermediary's jurisdiction'' for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the entitlement holder's account as

provided in paragraph (b)(3) of this section, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted revised Article 8 (see 31 CFR 357.2), then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the securities account is a clearing corporation, and the participant's interest in a book-entry security is a security entitlement.

§ 615.5454 Creation of participant's security entitlement; security interests.

(a) A participant's security entitlement is created when a Federal Reserve Bank indicates by book entry that a book-entry security has been credited to a participant's securities account.

(b) A security interest in a security entitlement of a participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a security entitlement of a participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an ''authorized representative of the United States'' is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Farm Credit banks, the Funding Corporation, the United States, and the Federal Reserve Banks have no obligation to agree to act on behalf of any person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a security entitlement that is in favor of a Federal Reserve Bank, a Farm Credit bank, the Funding Corporation, or a person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a security entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 615.5452(b) or § 615.5453 of this subpart. The perfection, effect of perfection or non-perfection and priority of a security interest are governed by that applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under that law, including with respect to the effect of perfection and priority of the security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule

adopted by a clearing corporation for such purposes.

§615.5455 Obligations of the Farm Credit banks and the Funding Corporation; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in §615.5454(c)(1), for the purposes of this subpart O, the Farm Credit banks, the Funding Corporation and the Federal Reserve Banks shall treat the participant to whose securities account an interest in a book-entry security has been credited as the person exclusively entitled to issue a transfer message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such security, notwithstanding any information or notice to the contrary. The Federal Reserve Banks, the United States, the Farm Credit banks, and the Funding Corporation are not liable to a person asserting or having an adverse claim to a security entitlement or to a book-entry security in a participant's securities account, including any such claim arising as a result of the transfer or disposition of a book-entry security by a Federal Reserve Bank pursuant to a transfer message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Farm Credit banks and the Funding Corporation to make payments (including payments of interest and principal) with respect to book-entry securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest or other payments on book-entry securities are either credited by a Federal Reserve Bank to a funds account maintained at the Federal Reserve Bank or otherwise paid as directed by the participant.

(2) Book-entry securities are redeemed in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the participant's securities account in which they are maintained and by either crediting the amount of the redemption proceeds, including both principal and interest, where applicable, to a funds account at the Federal Reserve Bank or otherwise paying such principal and interest as directed by the participant. No action by the participant is required in connection with the redemption of a book-entry security.

§615.5456 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Farm Credit banks and the Funding Corporation to perform functions with respect to the issuance of book-entry securities offered and sold by the Farm Credit banks and the Funding Corporation to which this subpart applies, in accordance with the terms of the securities documentation and the provisions of this subpart:

(1) To service and maintain book-entry securities in accounts established for such purposes;

(2) To make payments of principal and interest, as directed by the Farm Credit banks and the Funding Corporation;

(3) To effect transfer of book-entry securities between participants' securities accounts as directed by the participants;

(4) To effect conversions between book-entry securities and definitive Farm Credit securities with respect to those securities as to which conversion rights are available pursuant to the applicable securities documentation; and

(5) To perform such other duties as fiscal agent as may be requested by the Farm Credit banks and the Funding Corporation.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this subpart, governing the details of its handling of book-entry securities, security entitlements, and the operation of the Book-entry System under this subpart.

§615.5457 Withdrawal of eligible book-entry securities for conversion to definitive form.

(a) Eligible book-entry securities may be withdrawn from the Book-entry System by requesting delivery of like definitive Farm Credit securities.

(b) A Federal Reserve Bank shall, upon receipt of appropriate instructions to withdraw eligible book-entry securities from book-entry in the

Book-entry System, convert such securities into definitive Farm Credit securities and deliver them in accordance with such instructions.

(c) Farm Credit securities which are to be delivered upon withdrawal may be issued in bearer form, to the extent permitted by the applicable securities documentation.

(d) All requests for withdrawal of eligible book-entry securities must be made prior to the maturity or date of call of the Farm Credit securities.

§ 615.5458 Waiver of regulations.

The Farm Credit Administration reserves the right, in the Farm Credit Administration's discretion, to waive any provision(s) of the regulations in this subpart in any case or class of cases for the convenience of the Farm Credit banks and the Funding Corporation or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not adversely affect any substantial existing rights, and the Farm Credit Administration is satisfied that such action will not subject the Farm Credit banks and the Funding Corporation to any substantial expense or liability.

§ 615.5459 Liability of Farm Credit banks, Funding Corporation and Federal Reserve Banks.

The Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks may rely on the information provided in a transfer message or other transaction documentation, and are not required to verify the information. The Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in the transfer message, other transaction documentation, or evidence submitted in support thereof.

§ 615.5460 Additional provisions.

(a) *Additional requirements.* In any case or any class of cases arising under the regulations in this subpart, the Farm Credit banks and the Funding Corporation may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of the Farm Credit banks and the Funding Corporation be necessary for the protection of the interests of the Farm Credit banks and the Funding Corporation.

(b) *Notice of attachment for Farm Credit securities in the Book-entry System.* The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except where a security entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

§ 615.5461 Lost, stolen, destroyed, mutilated or defaced Farm Credit securities, including coupons.

(a) Relief on the account of the loss, theft, destruction, mutilation, or defacement of any definitive consolidated or Systemwide securities of the Farm Credit banks and coupons of such securities may be granted on the same basis and to the same extent as relief may be granted under the statutes of the United States and the regulations of the Department of the Treasury on the account of the loss, theft, destruction, mutilation, or defacement of United States securities and coupons of such securities.

(b) Applicants for relief under paragraph (a) of this section, shall present claims and proof of loss:

(1) To the Division of Special Investments, Bureau of the Public Debt, P.O. Box 396, Parkersburg, WV 26102–0396, in the case of consolidated or Systemwide securities of the Farm Credit banks issued prior to May 1, 1978; or

(2) To the Federal Farm Credit Banks Funding Corporation, 10 Exchange Place, Suite 1401, Jersey City, NJ 07302, in the case of consolidated or Systemwide securities issued on or after May 1, 1978.

§ 615.5462 Restrictive endorsement of bearer securities.

When consolidated and Systemwide bearer securities of the Farm Credit banks are being presented to Federal

Reserve Banks, for redemption, exchange, or conversion to book entry, such securities may be restrictively endorsed. The restrictive endorsement shall be placed thereon in substantially the same manner and with the same effects as prescribed in United States Treasury Department regulations, now or hereafter in force, governing like transactions in United States bonds; and consolidated or Systemwide securities of the Farm Credit banks so endorsed shall be prepared for shipment and shipped in the manner prescribed in such regulations for United States bearer securities. (See 31 CFR part 328.)

Subpart P—Global Debt Securities

§615.5500 Definitions.

In this subpart, unless the context otherwise requires or indicates:

(a) *Global debt securities* means consolidated Systemwide debt securities issued by the Funding Corporation on behalf of the Farm Credit banks under section 4.2(d) of the Act through a fiscal agent or agents and distributed either exclusively outside the United States or simultaneously inside and outside the United States.

(b) *Global agent* means any fiscal agent, other than the Federal Reserve Banks, used by the Funding Corporation to facilitate the sale of global debt securities.

[60 FR 57919, Nov. 24, 1995]

§615.5502 Issuance of global debt securities.

(a) The Funding Corporation may provide for the sale of global debt securities on behalf of the Farm Credit banks through a global agent or agents by negotiation, offer, bid, or syndicate sale, and deliver such obligations by book-entry, wire transfer, or such other means as may be appropriate.

(b) The Funding Corporation Board of Directors shall establish appropriate criteria for the selection of global agents and shall approve each global agent.

[60 FR 57919, Nov. 24, 1995]

Subpart Q—Bankers Acceptances

§615.5550 Bankers acceptances.

Subject to the provisions of §614.4710, banks for cooperatives may rediscount with other purchasers the acceptances they have created. The bank for cooperatives' board of directors, under established policies, may delegate this authority to management.

[55 FR 24888, June 19, 1990]

Subpart R—Farm Credit System Financial Assistance Corporation Securities

§615.5560 Book-entry Procedure for Farm Credit System Financial Assistance Corporation Securities.

(a) The Farm Credit System Financial Assistance Corporation (Financial Assistance Corporation) is a federally chartered instrumentality of the United States, and an institution of the Farm Credit System, subject to the examination and regulation of the Farm Credit Administration.

(b) Subject to the approval of the Farm Credit System Assistance Board, the Financial Assistance Corporation is authorized by section 6.26 of the Act to issue uncollateralized bonds, notes, debentures, and similar obligations, guaranteed as to the timely payment of principal and interest by the Secretary of the Treasury, for a term of 15 years (Financial Assistance Corporation securities). The Financial Assistance Corporation may prescribe the forms, the denominations, the rates of interest, the conditions, the manner of issuance and the prices of such Financial Assistance Corporation obligations.

(c) Financial Assistance Corporation securities shall be governed by §§615.5450, and 615.5452 through 615.5460. In interpreting those sections for purposes of this subpart, unless the context requires otherwise, the term ''Financial Assistance Corporation securities'' shall be read for ''Farm Credit securities,'' and ''Financial Assistance Corporation'' shall be read for ''Farm Credit banks'' and ''Funding Corporation.'' These terms shall be read as

though modified where necessary to effectuate the application of the designated sections of subpart O of this part to the Financial Assistance Corporation.

[53 FR 12141, Apr. 13, 1988; 53 FR 27156, July 19, 1988, as amended at 61 FR 67195, Dec. 20, 1996]

Subpart S—Federal Agricultural Mortgage Corporation Securities

§ 615.5570 Book-entry procedures for Federal Agricultural Mortgage Corporation Securities.

(a) The Federal Agricultural Mortgage Corporation (Farmer Mac) is a Federally chartered instrumentality of the United States and an institution of the Farm Credit System, subject to the examination and regulation of the Farm Credit Administration.

(b) Farmer Mac, either in its own name or through an affiliate controlled or owned by Farmer Mac, is authorized by section 8.6 of the Act:

(1) To issue and/or guarantee the timely payment of principal and interest on securities representing interests in or obligations backed by pools of agricultural real estate loans (guaranteed securities); and

(2) to issue debt obligations (which, together with the guaranteed securities described in paragraph (b)(1) of this section, are referred to as Farmer Mac securities). Farmer Mac may prescribe the forms, the denominations, the rates of interest, the conditions, the manner of issuance, and the prices of Farmer Mac securities.

(c) Farmer Mac securities shall be governed by §§ 615.5450, and 615.5452 through 615.5460. In interpreting those sections for purposes of this subpart, unless the context requires otherwise, the term ''Farmer Mac securities'' shall be read for ''Farm Credit securities,'' and ''Farmer Mac'' shall be read for ''Farm Credit banks'' and ''Funding Corporation.'' These terms shall be read as though modified where necessary to effectuate the application of the designated sections of subpart O of this part to Farmer Mac.

[61 FR 31394, June 20, 1996, as amended at 61 FR 67195, Dec. 20, 1996]

PART 616—[RESERVED]

PART 617—INVESTIGATIONS

Subpart A—[Reserved]

Subpart B—Investigations—Personnel

Sec.
617.7110 Reporting of violations.
617.7120 Cases for referral.

Subpart C—Investigations—Borrowers and Others

617.7130 Investigation.
617.7140 Types of violations.
617.7150 Reporting of violations.
617.7160 Cases for referral.
617.7170 Notice to local police and bonding company.

AUTHORITY: Secs. 5.9, 5.17(a)(10); 12 U.S.C. 2243, 2252(a)(10).

SOURCE: 37 FR 11440, June 7, 1972, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Investigations—Personnel

§ 617.7110 Reporting of violations.

Violations or possible violations of Federal criminal statutes involving the banks and associations shall be immediately reported to the president of the bank and the attorney or other person designated by the bank for that purpose. The violation or possible violation shall then be promptly reported to the Farm Credit Administration.

(a) If any bank or association employee or director discovers irregularities in the funds and accounts of a bank or association, or has reasonable grounds for belief that Federal criminal statutes may have been violated, the employee or director shall report the matter to the appropriate officer of the bank and furnish such information as he has obtained or developed.

(b) The bank shall immediately notify the Chief Examiner of the Farm Credit Administration, and make available all information concerning the matter. The Chief Examiner will advise the bank what further steps, if any, should be taken by the representative in the case.

(c) The bank shall bring any irregularity found to exist to the attention of the board of directors of the association concerned and shall keep it informed of all significant developments in order that the board may take such action as may be required to protect the association's interest. The bank shall keep the bank board informed of all irregularities.

(d) Where irregularities occur in a production credit association office which also handles transactions for a Federal land bank association, or vice versa, or where persons involved are jointly employed by a production credit association and a Federal land bank association, notice of such irregularities shall be given to appropriate officials of the bank involved.

[37 FR 11440, June 7, 1972, as amended at 47 FR 12150, Mar. 22, 1982; 56 FR 2675, Jan. 24, 1991]

§617.7120 Cases for referral.

It shall be the function of the Chief Examiner of the Farm Credit Administration to refer directly to the local United States Attorney all cases investigated which concern violation of Federal criminal statutes for consideration for criminal prosecution.

[47 FR 12150, Mar. 22, 1982]

Subpart C—Investigations—Borrowers and Others

§617.7130 Investigation.

The bank shall make an investigation of any case involving violations of Federal criminal statutes by its borrowers.

§617.7140 Types of violations.

Violations of Federal criminal statutes by borrowers in connection with their loans most commonly involve actions prohibited by 18 U.S.C. 658 and 18 U.S.C. 1014. Section 658 of the criminal code makes it unlawful for any person knowingly, and with intent to defraud, to conceal, remove, dispose of, convert to his own use or to that of another, property mortgaged, pledged to, or held by an association. Section 1014 of the criminal code makes it unlawful to knowingly make a false statement or report for the purpose of influencing the action of the association or bank upon any application, advance, commitment, or loan or any change or extension of any such action by renewal, deferment of action, or otherwise, or acceptance, release, or substitution of security therefor.

§617.7150 Reporting of violations.

(a) *Notice to bank.* Violations of Federal criminal statutes involving borrowers shall be reported to the president of the bank, and the general counsel of the district or an attorney who is designated for the purpose. The violations shall then be reported to the Farm Credit Administration.

(b) *Report of details.* Promptly after giving notification that there may be a violation of a Federal criminal statute, the association shall ascertain the full details involved in the alleged violation and prepare a concise and specific report which will include each of the items listed in the criminal violations worksheet prescribed by the Farm Credit Administration. This complete report shall be sent directly to the district general counsel or bank attorney with the association's recommendation regarding prosecution. It is the responsibility of the general counsel or bank attorney to review the material submitted, to request additional factual information necessary to make a determination as to whether there is substantial evidence of the violation of a Federal criminal statute or whether further investigation should be undertaken to produce additional factual evidence which may be needed in the prosecution.

[37 FR 11440, June 7, 1972, as amended at 56 FR 2675, Jan. 24, 1991]

§617.7160 Cases for referral.

It shall be the function of the general counsel of the Farm Credit district (or a designated bank attorney) to determine if there is substantial evidence that a violation of a Federal criminal statute has occurred, and to refer the matter to the United States Attorney for consideration of prosecution under established procedures. Violations reported to the United States Attorney shall also be reported to the General Counsel of the Farm Credit Administration. At no time shall any director

or employee of an association or bank threaten a borrower with criminal prosecution, whether in an effort to collect an indebtedness, recover property, or otherwise.

[47 FR 12151, Mar. 22, 1982]

§ 617.7170 Notice to local police and bonding company.

In case of burglary, holdup, or violations of other non-Federal criminal statutes, the bank or association shall immediately notify local police authorities. The association shall also notify an appropriate office of the bank. Losses of other natures for any institution which can be recovered under the district bankers blanket bond shall be immediately reported in accordance with established procedures.

PART 618—GENERAL PROVISIONS

Subpart A—Related Services

Sec.
618.8000 Definitions.
618.8005 Eligibility.
618.8010 Related services authorization process.
618.8015 Policy guidelines.
618.8020 Feasibility requirements.
618.8025 Feasibility reviews.
618.8030 Out-of-territory related services.

Subpart B—Member Insurance

618.8040 Authorized insurance services.

Subpart C—Leasing

618.8050 Leasing authority.
618.8060 Leasing limitations.

Subparts D–E—[Reserved]

Subpart F—Miscellaneous Provisions

618.8210 Conducting information programs.
618.8220 [Reserved]
618.8230 [Reserved]
618.8250 Purchases and sales of personal property.
618.8260 Purchase of automobiles through General Services Administration.
618.8270 Travel, subsistence, and other related expenses.

Subpart G—Releasing Information

618.8300 General regulation.
618.8310 Lists of borrowers and stockholders.
618.8320 Data regarding borrowers and loan applicants.
618.8325 Disclosure of loan documents.
618.8330 Director, officer or employee summoned as witness.
618.8340 Information regarding personnel.

Subpart H—Disposition of Obsolete Records

618.8360 Authorization.
618.8370 Records disposal.

Subpart I—Federal Records

618.8380 Record material.
618.8390 Federal records in the districts.
618.8400 National Archives and Records Administration regulations.
618.8410 Transfers to Federal Records Center.
618.8420 Requests for additional disposal authority.

Subpart J—Internal Controls

618.8430 Internal controls.
618.8440 Planning.

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, 2252.

Subpart A—Related Services

SOURCE: 60 FR 34099, June 30, 1995, unless otherwise noted.

§ 618.8000 Definitions.

For the purposes of this subpart, the following definitions shall apply:

(a) *Program* means the method or procedures used to deliver a related service. This distinguishes the particulars of how a related service will be provided from the type of activity or concept.

(b) *Related service* means any service or type of activity provided by a System bank or association that is appropriate to the recipient's on-farm, aquatic, or cooperative operations, including control of related financial matters. The term ''related service'' includes, but is not limited to, technical assistance, financial assistance, financially related services and insurance, but does not include lending or leasing activities.

(c) *System banks and associations* means Farm Credit Banks, agricultural

credit banks, banks for cooperatives, agricultural credit associations, production credit associations, Federal land bank associations, Federal land credit associations, and service corporations formed pursuant to section 4.25 of the Act.

§618.8005 Eligibility.

(a) Farm Credit Banks and associations may offer related services to persons eligible to borrow as defined in §§613.3010, 613.3020 (a)(1), (a)(2), (b), and 613.3045 of this chapter.

(b) Banks for cooperatives may offer related services to entities eligible to borrow as defined in §§613.3110 and 613.3120 of this chapter.

(c) Agricultural credit banks may offer related services appropriate to on-farm and aquatic operations of persons eligible to borrow specified in paragraph (a) of this section and may offer related services appropriate to cooperative operations of entities eligible to borrow as specified in paragraph (b) of this section.

(d) Service corporations formed pursuant to section 4.25 of the Act may offer related services to persons eligible to borrow from the owners of the service corporation, pursuant to paragraphs (a), (b), (c), and (e) of this section.

(e) System banks and associations may provide related services to recipients that do not otherwise meet the requirements of this section in connection with loan applications, loan servicing, and other transactions between these recipients and persons eligible to borrow as defined in paragraphs (a), (b), or (c) of this section, as long as the service provided is requested by an eligible borrower or necessary to the transaction between the parties. Such services include, but are not limited to, fee appraisals of agricultural assets provided to any Federal agency, commercial banks, and other lenders.

§618.8010 Related services authorization process.

(a) *Authorities.* System banks and associations may only offer related services that meet the criteria specified in this regulation and are authorized by the FCA.

(b) *New service proposals.* (1) A System bank or association that proposes or intends to offer a related service that the FCA has not previously authorized must submit to the FCA, in writing, a proposal that includes a description of the service, a statement of how it meets the regulatory definition of ''related services'' in §618.8000(b), and the risk analysis cited in §618.8020(b)(3). The FCA will evaluate the proposed service based on the information submitted, and may also consider whether there are extenuating circumstances or other compelling reasons that justify the proposed service or support a determination that the service is not authorized. This evaluation will focus primarily on Systemwide issues rather than on institution or program-specific factors.

(2) When authorizing a proposed related service, at its discretion, the FCA may impose special conditions or limitations on any related service or program to offer a related service.

(3) At its discretion the FCA may, at any time during its evaluation of a proposed related service, publish the proposed related service in the FEDERAL REGISTER for public comment.

(4) Within 60 days of the FCA receiving a completed proposal, including any additional information the FCA may require, the FCA will act on the request to authorize a new service. The FCA shall approve the request, deny the request, or publish the service for public comment in the FEDERAL REGISTER. For good cause and prior to the expiration of the 60 days, the FCA may extend this period for an additional 60 days.

(5) Within the time period established in paragraph (b)(4) of this section, the FCA shall notify the requesting institution of its actions. Following notification of the requesting institution, the FCA will notify all System banks and associations of its determination on the proposed service by bookletter or other means. If a service is not authorized, the reasons for denial will be included in the notifications to the System and the requesting institution.

(c) *Previously authorized services.* (1) For related services that have been authorized by the FCA, any System bank

or association may develop a program and subsequently offer the related service to eligible recipients, subject to any special conditions or institutional limits placed by the FCA. These programs will be subject to review and evaluation during the examination and enforcement process.

(2) The FCA shall make available to all System banks and associations a list of such related services (''related services list'' or ''list'') and will update the list in accordance with paragraph (b)(5) of this section. The list will contain the following:

(i) A description of each related service; and

(ii) The types of institutions authorized to offer each type of related service;

(iii) Identification of any special conditions on how the related service may be offered. The special conditions and description of the service will be fully detailed in FCA's notice to System institutions under paragraph (b)(5) of this section.

(3) At least 10 business days prior to implementing a related service program already on the list, the System bank or association must notify the FCA Office of Examination field office responsible for examining that institution in writing and provide it with a description of the proposed related service program.

§ 618.8015 Policy guidelines.

(a) The board of directors of each System bank or association providing related services must adopt a policy addressing related services. The policy shall include clearly stated purposes, objectives, and operating parameters for offering related services and a requirement that each service offered be consistent with the institution's business plan and long-term strategic goals. Such policy shall also be subject to review under an appropriate internal control policy.

(b) All related services must be offered to recipients on an optional basis. If the institution requires a related service as a condition to borrow, it must inform the recipient that the related service can be obtained from the institution or from any other person or entity offering the same or similar related services.

(c) All fees for related services must be separately identified from loan interest charges and disclosed to the recipient of the service prior to providing or implementing the service.

§ 618.8020 Feasibility requirements.

For every related service program a System bank or association provides, it must document program feasibility. The feasibility analysis shall include the following:

(a) Support for the determination that the related service is authorized; and

(b) An overall cost-benefit analysis that demonstrates program feasibility, taking into consideration the following items:

(1) An analysis of how the program relates to or promotes the institution's business plan and strategic goals, and whether offering the service is consistent with the long-term goals described in its capital plan;

(2) An analysis of the expected financial returns of the program which, at a minimum, must include an evaluation of market, pricing, competition issues, and expected profitability. This analysis should include an explanation of how the program will contribute to the overall financial health of the institution; and

(3) An analysis of the risk in the program, including:

(i) An evaluation of the operational costs and risks involved in offering the program, such as management and personnel requirements, training requirements, and capital outlays;

(ii) An evaluation of the financial liability that may be incurred as a result of offering the program and any insurance or other measures that are necessary to minimize these risks; and

(iii) An evaluation of the conflicts of interest, whether real or perceived, that may arise as a result of offering the program and any steps that are necessary to eliminate or appropriately manage these conflicts.

§ 618.8025 Feasibility reviews.

(a) Prior to an association offering a related service program for the first time or offering a service that it did

not offer during the most recently completed business cycle (generally 1 year), the board of directors of the funding bank must verify that the association has performed a feasibility analysis pursuant to §618.8020. The bank review is limited to a determination that the feasibility analysis is complete and that the analysis establishes that it is feasible for the association to provide the program. Any conclusion by the bank that the feasibility analysis is incomplete or fails to demonstrate program feasibility must be fully supported and communicated to the association in writing within 60 days of its submission to the bank.

(b) Prior to a service corporation offering a service for the first time or offering a service that it did not offer during the most recently completed business cycle (generally 1 year), the owners of the service corporation must verify that the service corporation has performed a feasibility analysis pursuant to §618.8020. If the owners all agree, one bank with a significant ownership interest can be delegated this responsibility.

[60 FR 34099, June 30, 1995; 60 FR 42029, Aug. 15, 1995]

§618.8030 Out-of-territory related services.

(a) System banks and associations may offer related services outside their chartered territories subject to the following conditions:

(1) The System bank or association obtains consent from all chartered institutions currently offering the same type of service in the territory in which the service is to be provided; or

(2) If no System bank or association is currently offering the same type of service in the territory, then the out-of-territory institution must obtain the consent of at least one direct lender institution chartered in the territory in which the related service is to be provided.

(3) The consent obtained pursuant to paragraphs (a)(1) and (a)(2) of this section shall be in the form of a written agreement with specific terms and conditions including timeframes.

(b) System banks and associations providing out-of-territory services must fulfill all requirements of subparts A and B of this part 618.

(c) An institution that consents to another bank or association providing a related service in its chartered territory must meet the requirements of this section, but need not comply with the other requirements of subparts A and B of this part 618, unless the program consented to imposes a financial obligation on the consenting institution. If a financial obligation exists, then the consenting institution must comply with §§618.8015, 618.8020 and 618.8025.

(d) Service corporations must follow the requirements of this section in offering related services out-of-territory. A service corporation cannot consent to an out-of-territory institution providing services in its chartered territory.

Subpart B—Member Insurance

§618.8040 Authorized insurance services.

(a) Farm Credit System banks (excluding banks for cooperatives) (hereinafter banks) and associations may sell to their members and borrowers, on an optional basis, credit or term life and credit disability insurance appropriate to protect the loan commitment in the event of death or disability of the debtors. The sale of other insurance necessary to protect a member's or borrower's farm or aquatic unit is permitted, but limited to hail and multiple-peril crop insurance, title insurance, and insurance necessary to protect the facilities and equipment of aquatic members and borrowers. A member or borrower shall have the option, without coercion from the bank or association, to accept or reject such insurance.

(b) Bank and association board policies governing the provision of member insurance programs shall be established within the following general guidelines:

(1) A System bank or association may provide credit or term-life or credit-disability insurance only to persons who have a loan or lease with any System bank or association, without regard to whether such institution is the provider. Term-life insurance coverage

may continue after the loan has been repaid or the lease terminated, provided the member can reasonably be expected to borrow again within 2 years, and provided the continuation of insurance is not contrary to state law.

(2) A debtor-creditor relationship is not required for the sale of other insurance specified in paragraph (a) of this section, as long as purchasers are members of a System bank or association. For the purposes of this section, ''member'' means someone eligible to borrow who is a stockholder or participation certificate holder and who acquired stock or participation certificates to obtain a loan, for investment purposes, or to qualify for other services of the association or bank.

(3) In making insurance available through private insurers, each bank shall approve the programs of more than two insurers for each type of insurance offered in the bank's chartered territory, provided that more than two insurers for each type of insurance have proposed programs to the bank that will, in all likelihood, have long-term viability, and meet the requirements of §618.8040(b)(4)(i) of this section. The banks shall make a reasonable and good faith effort to attract more than two qualified insurers for each insurance program offered to borrowers in all States of the bank's chartered territory. Where the bank is unable to approve more than two insurers, the bank shall document its efforts to attract additional qualified insurers for the affected insurance program and State. The banks may provide comparative information relating to costs and quality of approved programs and the financial condition of approved companies.

(4) Member insurance services may be offered only if:

(i) The insurance program has been approved by the bank or association from among eligible programs made available to it by insurers—

(A) Meeting reasonable financial and quality of service standards prescribed by the bank; and

(B) Licensed under State law to do business in the State(s) in which the insurance is offered:

(ii) The bank or association has the capacity to render authorized insurance services in an effective and efficient manner;

(iii) There exists the probability that the service will generate sufficient revenue to cover all costs;

(iv) Rendering the insurance service will not have an adverse effect on the credit or other operations of the bank or association; and

(v) In making insurance available through approved insurers, the board of directors of the bank or association shall make a reasonable and good faith effort to select and offer at least two approved insurers for each type of insurance made available to the members and borrowers. In the event that the bank or association has selected less than two insurers for any insurance program, such bank or association shall document the reasons why it is unable to offer members and borrowers additional insurers for the affected insurance program.

(5) All costs to members and borrowers for insurance services provided shall be disclosed separately from interest charges.

(6) Bank and association personnel shall not benefit from insurance sales by receipt of commissions or gifts from underwriting insurance companies. However, employees may participate in an incentive plan under which incentive compensation is provided based on the sale of insurance.

(i) In any single year, for all employees except full-time insurance personnel or full-time supervisors or managers of insurance departments, incentive compensation attributable to sales of all types of insurance cannot exceed an amount equivalent to 5 percent of the recipient's annual base salary.

(ii) In any single year, for full-time insurance personnel and full-time supervisors and managers of insurance departments, incentive compensation for sales of credit life and similar types of insurance (i.e. insurance that pays on a loan or mortgage upon the death or disability of the debtor) cannot exceed an amount equivalent to 5 percent of the recipient's annual base salary.

(iii) No incentive compensation limit applies to sales of other insurance (crop, title, etc.) by full-time insurance personnel or full-time supervisors or managers of insurance departments.

(7) Term insurance may be written for the amount of coverage desired by the member or borrower, but in no case may the amount of term insurance, credit life insurance, or a combination of the two with an institution of the System, be in excess of total loan commitments to the member or borrower by the institution writing the insurance.

(8) The banks may, only by agreement with an insurer, offer services traditionally furnished by insurers to the Farm Credit System. This shall include master marketers when considering the sale of Federal crop insurance. The banks shall not underwrite insurance, adjust claim payments or settlements, or train and school or service adjustors or insurance agents.

(9) No bank or association shall, directly or indirectly, condition the extension of credit or provision of other service on the purchase of insurance sold or endorsed by a bank or association. At the time insurance sold or endorsed by a bank or association is offered to a member or borrower, a bank or association shall present a written notice that the service is optional. The notice shall be in prominent type and separately signed by the member or borrower. The bank or association shall explain to the member or borrower that purchase of insurance from the association is optional and that the member or borrower will not be discriminated against for obtaining the insurance elsewhere.

(10) No bank or association shall, directly or indirectly, discriminate in any manner against any agent, broker, or insurer that is not affiliated with such bank or association, or against any party who purchases insurance through any such nonaffiliated insurance agent, broker, or insurer.

(11) Bank supervision shall ensure that insurance services offered by approved insurers consistently provide members or borrowers with a high quality and cost-effective service as prescribed by policies of the bank's board of directors, but such supervision shall be without any coercion or suasion from any bank in favor of any agent or insurer.

(12) Records must be maintained by banks and associations in sufficient detail to facilitate the review and supervision required herein.

[47 FR 38867, Sept. 3, 1982, as amended at 53 FR 35305, Sept. 13, 1988; 56 FR 65990, Dec. 20, 1991. Redesignated and amended at 60 FR 34099, 34101, June 30, 1995]

Subpart C—Leasing

§618.8050 Leasing authority.

A Farm Credit bank or association with direct lending authority may own and lease, or lease with option to purchase, to its eligible borrowers, equipment or facilities needed in the farming and aquatic or cooperative operations of such eligible borrowers.

[55 FR 24888, June 19, 1990]

§618.8060 Leasing limitations.

This authority shall not be operative until such time as adequate programs have been formulated and approved by the bank's board.

[37 FR 11442, June 7, 1972. Redesignated at 47 FR 12151, Mar. 22, 1982, as amended at 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989]

Subparts D–E—[Reserved]

Subpart F—Miscellaneous Provisions

SOURCE: 37 FR 11442, June 7, 1972, unless otherwise noted. Redesignated at 47 FR 12151, Mar. 22, 1982.

§618.8210 Conducting information programs.

Recognizing the importance of informed members and prospective members to the success of a cooperative organization, the banks and associations should conduct information programs to inform the farmers and the general public about their organization, functions, and services. These efforts may include use of publications, advertising, motion pictures, news releases, broadcast materials, special educational events and other member relations and public information methods. Such programs shall be coordinated within each district and, where appropriate, across district lines.

[37 FR 11442, June 7, 1972. Redesignated at 47 FR 12151, Mar. 22, 1982, and amended at 56 FR 2675, Jan. 24, 1991]

§ 618.8220 [Reserved]

§ 618.8230 [Reserved]

§ 618.8250 Purchases and sales of personal property.

Personal property shall be bought and sold by the banks and associations in accordance with policies and practices adopted by the district board. In order to avoid grounds for allegations of favoritism or fraud a bank or association shall not sell surplus property above a stated value established by the board to an employee except through open competitive bidding.

§ 618.8260 Purchase of automobiles through General Services Administration.

(a) Banks may purchase automobiles through the facilities of the General Services Administration by placing orders with the Farm Credit Administration. A purchase order will be issued to the General Services Administration showing in detail the exact specifications shown on the bank's order. The low bid for all orders submitted shall be accepted by the banks provided that the low bid is awarded according to the exact specifications outlined in the purchase order.

(b) No automobile purchased through the General Services Administration shall be disposed of before 2 years after delivery to the bank unless it has been driven at least 50,000 miles. Exceptions to this general rule will be made only if an automobile has been wrecked or damaged and is determined by the bank in writing submitted to the Farm Credit Administration to be beyond economical repair.

EFFECTIVE DATE NOTE: At 61 FR 67188, Dec. 20, 1996, § 618.8260 was removed and reserved, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§ 618.8270 Travel, subsistence, and other related expenses.

(a) Each Farm Credit institution board shall develop a written policy and maintain written records regarding the reimbursement of travel, subsistence, and other related expenses to its directors, officers, and employees. The policy shall address, at a minimum, the authorized purposes for which reimbursement of travel, subsistence, and other related expenses may be made and the guidelines and limitations on reimbursement.

(b) Each board shall require a review by the institution's internal auditor (or person designated by the board) of at least a sampling of the records maintained pursuant to paragraph (a) of this section to determine if the policies are being consistently followed. This review shall be conducted at least annually, with the results reported to the board audit committee or the full board, if the board does not have an audit committee.

[59 FR 37411, July 22, 1994]

Subpart G—Releasing Information

§ 618.8300 General regulation.

Except as necessary in performing official duties or as authorized in the following paragraphs, no director or employee of a bank, association, or agency thereof shall disclose information of a type not ordinarily contained in published reports or press releases regarding any such banks or associations or their borrowers or members.

[37 FR 11442, June 7, 1972. Redesignated at 47 FR 12151, Mar. 22, 1982]

§ 618.8310 Lists of borrowers and stockholders.

(a) Any System institution, for the purpose of protecting the security position of the institution, may provide lists of borrowers to buyers, warehousemen, and others who deal in produce or livestock of the kind that secures such loans, except to the extent such actions are prohibited by State laws adopted in accordance with the Food Security Act of 1985, Pub. L. 99–198, 99 Stat. 1354. Lists of borrowers or stockholders shall not otherwise be released by any bank or association except in accordance with paragraph (b) of this section.

(b)(1) Within 7 days after receipt of a written request by a stockholder, each agricultural credit bank bank for cooperatives, Federal land bank association, production credit association, merged association, or Farm Credit

Bank shall provide a current list of its stockholders to such requesting stockholder. As a condition to providing the list, the bank or association may require that the stockholder agree and certify in writing that the stockholder will:

(i) Utilize the list exclusively for communicating with stockholders for permissible purposes; and

(ii) Not make the list available to any person, other than the stockholder's attorney or accountant, without first obtaining the written consent of the institution.

(2) As an alternative to receiving a list of stockholders, a stockholder may request the institution to mail or otherwise furnish to each stockholder a communication for a permissible purpose on behalf of the requesting stockholder. This alternative may be used at the discretion of the requesting stockholder, provided that the requester agrees to defray the reasonable costs of the communication. In the event the requester decides to exercise this option, the institution shall provide the requester with a written estimate of the costs of handling and mailing the communication as soon as practicable after receipt of the stockholder's request to furnish a communication.

(3) For purposes of paragraph (b) of this section ''permissible purpose'' is defined to mean matters relating to the business operations of the bank or association. This shall include matters relating to the effectiveness of management, the use of corporate assets, and the performance of directors and officers. This shall not include communications involving commercial, social, political, or charitable causes, communications relating to the enforcement of a personal claim or the redress of a personal grievance, or proposals advocating that the bank or association violate any Federal, State, or local law or regulation.

[51 FR 39503, Oct. 28, 1986, as amended at 53 FR 35457, Sept. 14, 1988; 61 FR 67188, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67188, Dec. 20, 1996, in §618.8310, paragraph (b)(1) was amended by adding the words ''agricultural credit bank'' before the words ''bank for cooperatives'', effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§618.8320 Data regarding borrowers and loan applicants.

(a) Except as provided in paragraph (b) of this section, the directors, officers, and employees of every bank and association shall hold in strict confidence all information regarding the character, credit standing, and property of borrowers and applicants for loans. They shall not exhibit or quote the following documents: Loan applications; supplementary statements by applicants; letters and statements relative to the character, credit standing, and property of borrowers and applicants; recommendations of loan committees; and reports of inspectors, fieldmen, investigators, and appraisers.

(b) The requirements of paragraph (a) of this section are subject to the following exceptions.

(1) Examiners and other authorized representatives of the Farm Credit Administration and the bank concerned shall have free access to all information, records, and files.

(2) In connection with a legitimate law enforcement inquiry, accredited representatives of any agency or department of the United States may be given access to information upon presentation of official identification and a written request specifying:

(i) The particular information desired; and

(ii) That the information is relevant to the law enforcement inquiry and will be used only for the purpose for which it is sought.

(3) The chairman of the presidents committees and the presidents of the banks may supply statistical and other impersonal information pertaining to groups of borrowers, applicants, and loans, in response to requests from any department or independent office of the Government of the United States, or responsible private organizations, with the understanding that the information will not be published.

(4) Information concerning borrowers may be given for the confidential use of any Farm Credit institution in contemplation of the extension of credit or the collection of loans.

(5) Impersonal information based solely on transaction or experience with a borrower, such as amounts of loans, terms and payment records, may be given by a bank or association to a consumer reporting agency, or any other reliable organization for its confidential use in contemplation of the extension of credit.

(6) Credit information concerning any borrower may be given when such borrower consents thereto in writing.

(7) In litigation between a borrower (or his successor in interest) and a bank or association, any competent evidence may be introduced with respect to any relevant statements made orally or in writing by or to the borrower or his successor.

(8) An unsuccessful applicant for credit which primarily is for personal, family, or household purposes, if his application was rejected either wholly or partly because of information contained in a consumer report from a consumer reporting agency shall be advised as required in section 615(a) of the Fair Credit Reporting Act (84 Stat. 1133), and if his application was rejected either wholly or partly because of information obtained from a person other than a consumer reporting agency shall be advised as required in section 615(b) thereof.

(9)(i) Any information or analysis of information requested during the course of mediation by a State agency, governor's office or mediator under any State mediation program certified under section 501 of the Agricultural Credit Act of 1987, may be provided to the State agency, governor's office or mediator, with the approval of the borrower.

(ii) Information concerning borrowers contained in an appraisal report may be given by a Farm Credit institution to any State agency certifying and licensing real estate appraisers provided that the Farm Credit institution:

(A) Certifies that the information is required in connection with an employee's application for certification and licensure and that the institution has taken appropriate steps to protect the confidentiality of any borrower information that is not essential to the State's evaluation of the application; and

(B) Determines that the State certification and licensing program makes reasonable provisions for protecting the confidentiality of the borrower information contained in the appraisal report.

(10) Collateral evaluation reports may be released to a loan applicant, when required by the Equal Credit Opportunity Act or related regulations.

(c) The exceptions in paragraph (b) of this section shall be exercised by Farm Credit institutions with full awareness of the requirements of the Fair Credit Reporting Act.

[37 FR 11442, June 7, 1972. Redesignated at 47 FR 12151, Mar. 22, 1982, and amended at 53 FR 35457, Sept. 14, 1988; 56 FR 2675, Jan. 24, 1991; 58 FR 51994, Oct. 6, 1993; 59 FR 46734, Sept. 12, 1994; 61 FR 67188, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67188, Dec. 20, 1996, in § 618.8320, paragraphs (b)(2) and (5) were revised, (b)(9) was removed, and (b)(10) and (11) were redesignated as (b)(9) and (10), effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

§ 618.8320 Data regarding borrowers and load applicants.

* * * * *

(b) * * *

(2) Accredited representatives of the Federal Bureau of Investigation, Department of Justice; the Office of Inspector General, United States Postal Service; the Secret Service; the Internal Revenue Service; and the Office of Inspector General, United States Department of Agriculture may, upon presentation of official identification and a written request identifying the individual case on which information is sought, the particular information desired and a certification that such information is pertinent to the official information of the case and is requested for confidential use of the investigating office, be given access to information pertinent to their official investigations of individual cases.

* * * * *

(5) Impersonal information based solely on transactions or experience with a borrower,

such as amounts of loans, terms, and payment records may be given by a bank or association for the confidential use of any reliable organization in contemplation of the extension of credit.

* * * * *

(9) Any information relating to a loan to a borrower which has been considered for restructuring under §614.4517 may be provided to the District Special Asset Group, if any, and the National Special Asset Council, upon the request of either of these entities.

* * * * *

§618.8325 Disclosure of loan documents.

(a) For purposes of this section, the following definitions shall apply:

(1) *Borrower* means any signatory to a loan contract who is either primarily or secondarily liable on such contract, including guarantors, endorsers, cosigners or the like.

(2) *Execution of the loan* means the time at which the borrower and the qualified lender have entered into a legal, binding, and enforceable loan contract and any subsequent amendment or modification of such contract.

(3) *Loan* means a loan made to a farmer, rancher, or producer or harvester of aquatic products, for any agricultural or aquatic purpose and other credit needs of the borrower, including financing for basic processing and marketing directly related to the borrower's operations and those of other eligible farmers, ranchers, and producers or harvesters of aquatic products.

(4) *Loan contract* means any written agreement under which a qualified lender lends or agrees to lend funds to a borrower in consideration for, among other things, the borrower's promise to repay the loaned funds at an agreed-upon rate of interest.

(5) *Loan document* means any form, application, agreement, contract, instrument, or other writing to which a borrower affixes his signature or seal and which the qualified lender intends to retain in its files as evidence relating to the loan contract entered into between it and the borrower, but shall not include any document related to a loan which the borrower has not signed.

(6) *Qualified lender* means:

(i) A System institution that makes loans (as defined in paragraph (a)(3) of this section) except a bank for cooperatives; and

(ii) Each bank, institution, corporation, company, union, and association described in section 1.7(b)(1)(B) of the Act, but only with respect to loans discounted or pledged under section 1.7(b)(1) of the Act.

(b) Each qualified lender shall provide a copy of all loan documents to the borrower or the borrower's legal representative at the execution of the loan. Subsequently, upon written request of a borrower or a borrower's legal representative, a qualified lender shall provide, as soon as practicable, a copy of any loan documents signed by the borrower, a copy of other documents delivered by such borrower to that qualified lender, and a copy of each collateral evaluation of the borrower's assets made or used by the qualified lender. To the extent that a collateral evaluation may contain confidential third party information, the lender may protect such confidential third party information by withholding any information that would disclose identifying characteristics of the third party or his property. One copy shall be furnished free of charge. The lender may assess reasonable copying charges for any additional copies requested by the borrower.

(c) Each System bank and association shall have available in its offices copies of the institution's articles of incorporation or charter and bylaws for inspection and shall furnish a copy of such documents to any owner of stock or participation certificates upon request.

[51 FR 39504, Oct. 28, 1986, as amended at 53 FR 35458, Sept. 14, 1988; 56 FR 2675, Jan. 24, 1991; 59 FR 46734, Sept. 12, 1994; 61 FR 67188, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67188, Dec. 20, 1996, §618.8325 was amended in paragraph (c) by removing the commas following the words ''offices'', ''charter'', and ''inspection'', effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§ 618.8330 Director, officer or employee summoned as witness.

If a director, officer or employee of any association or bank is summoned as a witness in litigation to which neither the Government nor any Farm Credit organization is a party, for the purpose of testifying or producing documentary evidence with respect to matters which he is precluded by these regulations to disclose, he shall arrange, if possible, with the attorney who obtained the summons, to be excused from testifying. If not excused, he shall appear in response to the summons but, before testifying or producing documentary evidence as to confidential information, he shall respectfully advise the court of these regulations against disclosing such information and respectfully request that its confidential nature be safeguarded. After so doing, he may then testify or produce documentary evidence as to such information only to the extent and under the conditions directed by the court.

[37 FR 11442, June 7, 1972. Redesignated at 47 FR 12151, Mar. 22, 1982, as amended at 61 FR 67188, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67188, Dec. 20, 1996, § 618.8330 was amended by removing paragraph (b) and the designation (a) in the remaining paragraph, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

§ 618.8330 Director, officer or employee summoned as witness.

(a) * * *

(b) Upon receiving any such summons, the director, officer, or employee may request advice and assistance from an attorney for the organization with which he is connected. For this purpose, the directors, officers, and employees of associations shall consult an attorney for the supervising bank.

§ 618.8340 Information regarding personnel.

Lists of bank and associations employees shall not be released without the approval of the chief executive officer of the supervising bank. This section is subject to the following exceptions.

(a) Taxing authorities shall be supplied, on request, with the names, addresses, and compensation of the officers, agents, and employees of any bank or association.

(b) Banks may release lists of their associations and their chief executive officers.

(c) For use by their respective groups of associations and cooperatives in nominating and electing members of a district board, the banks may release lists of directors of their associations, and a bank for cooperatives may release lists of the cooperatives that hold stock in it.

(d) Banks and associations may release employees' names, addresses, positions, and spouses' names to reputable concerns for listing in local directories. The concern must agree this information is for directory purposes only. Employees wishing to do so shall be allowed to withhold their names.

[37 FR 11442, June 7, 1972. Redesignated at 47 FR 12151, Mar. 22, 1982, and amended at 51 FR 41949, Nov. 20, 1986]

EFFECTIVE DATE NOTE: At 61 FR 67188, Dec. 20, 1996, § 618.8340 was removed and reserved, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

Subpart H—Disposition of Obsolete Records

§ 618.8360 Authorization.

(a) Banks and associations are authorized to dispose of obsolete records not required for research, legal, or audit purposes in accordance with written procedures, except the following:

(1) Original corporate records, including articles of incorporation, bylaws, and minutes of meetings of stockholders, directors, and committees.

(2) Payroll records, including gross salary and deductions for retirement, social security, and income tax withholdings.

(3) Basic personnel records, including personnel folders, service records, cards, and earnings records for all active and former employees covered under the Civil Service Retirement Act.

(4) Records required by Federal or State laws.

(5) Federal records (see following subpart I of this part).

(6) Financial reports of the banks and associations as of June 30 and December 31 each year.

(7) Applications, notes, security instruments, financial statements, and any individual records pertaining to loans charged off where the borrower has a significant, enforceable, and residual liability.

(8) Listing of obsolete records destroyed.

(b) If management desires, records may be retained in a form other than the original provided that the records are acceptable for legal evidence of a transaction in the jurisdiction in which the institution is located.

(c) Capital stock transfer records may be disposed of after 5 years following the date on which the stock was retired and the proceeds paid to the owner, or as required by the statute of limitation, whichever is longer. Management will determine if a longer retention period is desirable.

[37 FR 11442, June 7, 1972, as amended at 46 FR 35082, July 7, 1981. Redesignated at 47 FR 12151, Mar. 22, 1982; 56 FR 2675, Jan. 24, 1991; 56 FR 112298, Mar. 22, 1991]

EFFECTIVE DATE NOTE: At 61 FR 67188, Dec. 20, 1996, §618.8360 was removed and reserved, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§618.8370 Records disposal.

Each bank shall maintain an up-to-date records disposal schedule which has the approval of its board. Each association shall maintain an up-to-date records disposal schedule which has the approval of its supervising bank.

[38 FR 27839, Oct. 9, 1973. Redesignated at 47 FR 12151, Mar. 22, 1982]

EFFECTIVE DATE NOTE: At 61 FR 67188, Dec. 20, 1996, §618.8360 was removed and reserved, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

Subpart I—Federal Records

SOURCE: 37 FR 11442, June 7, 1972, unless otherwise noted. Redesignated at 47 FR 12151, Mar. 22, 1982.

EFFECTIVE DATE NOTE: At 61 FR 67188, Dec. 20, 1996, Subpart I, consisting of §§618.8380 to 618.8420 were removed, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

§618.8380 Record material.

Records of the Federal Government consist of all written or printed papers, letters, documents, books, maps, charts, plans, drawings, punchcards, tabulation sheets, motion pictures or other photographic records, sound recordings, and any other records made or received by any agency of the Federal Government in pursuance of Federal law or the transaction of public business, and preserved or appropriate for preservation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data contained therein. Extra copies of documents preserved only for evidence, and memoranda or other papers that do not serve as the basis for official actions, are not considered record material.

§618.8390 Federal records in the districts.

The following are Federal records:

(a) Records in the Federal land banks and Federal land bank associations relating to Commissioner loans, including those records that existed as of the date any loans were purchased by the banks.

(b) Records of the Federal Farm Mortgage Corporation.

(c) Records of the Federal intermediate credit banks and production credit corporations in existence on December 31, 1956.

(d) Records created prior to January 1, 1957, relating to the liquidation of any production credit association.

(e) Records in the office of joint services up to December 31, 1956, relating to Commissioner loans, the Farm Credit Administration, and to the Federal intermediate credit banks, production credit associations, and Federal Farm Mortgage Corporation, including joint records of any such bank or corporation and a Federal land bank, bank for

cooperatives, production credit association, or national farm loan association.

§ 618.8400 National Archives and Records Administration regulations.

The National Archives and Records Administration is the Federal agency responsible for promulgating rules and regulations governing the management and disposal of Federal records. Farm Credit Administration personnel shall manage and dispose of Federal records generated by or otherwise in possession of the Farm Credit Administration in accordance with such rules and regulations.

[51 FR 41950, Nov. 20, 1986]

§ 618.8410 Transfers to Federal Records Center.

Any bank or office of joint services that wishes to be relieved of the custody of Federal records, but cannot do so either because authority to destroy or microfilm them has not been obtained or because the retention periods approved by National Archives and the Congress require that the records be held either permanently or for further periods of time, may request the Farm Credit Administration to arrange with the National Archives and Records Administration to have such records transferred to a regional Federal Records Center.

[51 FR 41950, Nov. 20, 1986]

§ 618.8420 Requests for additional disposal authority.

If any bank or office of joint services wishes to dispose of Federal records for which disposal authority has not been obtained from the National Archives and the Congress, two samples of the records involved, together with a description of each record and the proposed retention period, should be sent to the Farm Credit Administration, which will refer the proposal to the National Archives and will notify the bank or office of joint services of the action taken.

Subpart J—Internal Controls

§ 618.8430 Internal controls.

Each Farm Credit institution's board of directors shall adopt an internal control policy which provides adequate direction to the institution in establishing effective control over and accountability for operations, programs, and resources. The policy shall include, at a minimum, the items enumerated in the list which follows:

(a) Direction to management which assigns responsibility for the internal control function (financial, credit, credit review, collateral, and administrative) to an officer (or officers) of the institution.

(b) Adoption of internal audit and control procedures that evidence responsibility for review and maintenance of comprehensive and effective internal controls.

(c) Direction for the operation of a program to review and assess its assets. These policies shall include standards which address the administration of this program, described in the list which follows:

(1) Loan, loan-related assets, and appraisal review standards, including standards for scope of review selection and standards for workpapers and supporting documentation.

(2) Asset quality classification standards to be utilized in accordance with a standardized classification system consistent among associations within a district and their funding Farm Credit Bank or agricultural credit bank.

(3) Standards for assessing credit administration, including the appraisal of collateral.

(4) Standards for the training required to initiate the program.

[55 FR 24888, June 19, 1990]

§ 618.8440 Planning.

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

(b) The plan shall include, at a minimum, the following:

(1) A mission statement.

(2) A review of the internal and external factors that are likely to affect the institution during the planning period.

(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).

[53 FR 39250, Oct. 6, 1988]

PART 619—DEFINITIONS

Sec.

619.9000 The Act.
619.9010 Additional security.
619.9015 Agricultural credit associations.
619.9020 Agricultural credit banks.
619.9025 Agricultural land.
619.9030 Agricultural products.
619.9040 Aquatic products.
619.9050 Associations.
619.9060 Bank for cooperatives.
619.9065 Bona fide farmer or rancher.
619.9080 Cooperative.
619.9090 Cooperative basis.
619.9100 Cooperative member.
619.9110 Consolidation.
619.9120 Custom-type services.
619.9130 Differential interest rates.
619.9135 Direct lender.
619.9140 Farm Credit bank(s).
619.9145 Farm Credit Bank.
619.9146 Farm Credit institutions.
619.9150 Farm-related businesses.
619.9155 Federal land credit association.
619.9160 Federated cooperative.
619.9165 Five basic credit factors.
619.9170 Fixed interest rate.
619.9180 Fixed interest spread.
619.9185 Funding Corporation.
619.9190 Legal entity.
619.9195 Loan participation.
619.9200 Loss-sharing agreements.
619.9210 Merger.
619.9220 Moderate-priced housing.
619.9230 Open-end mortgage loan plans.
619.9240 Participation agreement.
619.9250 Participation certificates.
619.9260 Primary security.
619.9270 Producer or harvester of aquatic products.
619.9280 Production or harvesting of aquatic products in open waters under uncontrolled conditions.
619.9290 Recovery value.
619.9300 Rural area.
619.9310 Rural residence.
619.9330 Speculative purposes.
619.9340 Variable interest rate.

AUTHORITY: Secs. 1.7, 2.4, 4.9, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8 of the Farm Credit Act; 12 U.S.C. 2015, 2075, 2160, 2243, 2246, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2.

SOURCE: 37 FR 11446, June 7, 1972, unless otherwise noted.

§619.9000 The Act.

The Farm Credit Act of 1971; Pub. L. 92–181 and amendments.

§619.9010 Additional security.

Supplementary collateral to the primary security taken in connection with the loan.

§619.9015 Agricultural credit associations.

Agricultural credit associations are associations created by the merger of one or more Federal land bank associations or Federal land credit associations and one or more production credit associations and which have received a transfer of authority to make and participate in long-term real estate mortgage loans pursuant to section 7.6 of the Act.

[55 FR 24888, June 19, 1990]

§619.9020 Agricultural credit banks.

Agricultural credit banks are those banks created by the merger of a Farm Credit Bank and a bank for cooperatives pursuant to section 7.0 of the Act.

[55 FR 24888, June 19, 1990]

§619.9025 Agricultural land.

Land improved or unimproved which is devoted to or available for the production of crops and other products such as but not limited to fruits and timber or for the raising of livestock.

[37 FR 11446, June 7, 1972. Redesignated at 55 FR 24888, June 19, 1990]

§619.9030 Agricultural products.

That which is the direct result of husbandry and cultivation of the soil. The product is in its natural, unmanufactured condition.

§619.9040 Aquatic products.

Fish and other marine life.

§619.9050 Associations.

The term *associations* includes (individually or collectively) Federal land bank associations, Federal land credit

associations, production credit associations, and agricultural credit associations.

[55 FR 24888, June 19, 1990]

§ 619.9060 Bank for cooperatives.

A bank for cooperatives is a bank that is operating under section 3.0 of the Act.

[61 FR 67188, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67188, Dec. 20, 1996, § 619.9060 was revised, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

§ 619.9060 Bank for cooperatives.

Bank operating under title III of the Act, including the National Bank for Cooperatives, individual and regional banks for cooperatives and agricultural credit banks.

[55 FR 28886, July 16, 1990]

§ 619.9065 Bona fide farmer or rancher.

A person owning agricultural land, or engaged in the production of agricultural products and livestock including aquatic products under controlled conditions.

[37 FR 11446, June 7, 1972. Redesignated at 55 FR 24888, June 19, 1990]

§ 619.9080 Cooperative.

See § 613.3110(a)(1).

[37 FR 11446, June 7, 1972, as amended at 55 FR 24889, June 19, 1990]

§ 619.9090 Cooperative basis.

Conduct of the business for the mutual benefit of the members as patrons.

§ 619.9100 Cooperative member.

Person having stock or other ownership interest in a cooperative and acquires membership under its bylaws.

§ 619.9110 Consolidation.

Creation of one new organizational entity from two or more existing entities or parts thereof.

§ 619.9120 Custom-type services.

The performance of on-farm functions on a ''for-hire'' basis which farmers and ranchers typically have done for themselves.

§ 619.9130 Differential interest rates.

An interest rate program under which different rates of interest may be made applicable to individual or classes of loans on the basis of type, purpose, amount, quality of loan, or a combination of these factors.

§ 619.9135 Direct lender.

The term *direct lender* refers to Farm Credit banks and associations (production credit associations, agricultural credit associations, and Federal land credit associations) authorized to lend to eligible borrowers identified in § 613.3000.

[55 FR 24889, June 19, 1990]

§ 619.9140 Farm Credit bank(s).

Except as otherwise defined, the term *Farm Credit bank(s)* includes Farm Credit Banks, agricultural credit banks, and banks for cooperatives.

[55 FR 24889, June 19, 1990]

§ 619.9145 Farm Credit Bank.

The term *Farm Credit Bank* refers to a bank resulting from the mandatory merger of the Federal land bank and the Federal intermediate credit bank in each Farm Credit district pursuant to section 410 of the Agricultural Credit Act of 1987, Pub. L. 100–233, or any bank resulting from a merger of two or more Farm Credit Banks.

[55 FR 24889, June 19, 1990]

§ 619.9146 Farm Credit institutions.

Except as otherwise defined, the term *Farm Credit institutions* refers to all institutions chartered and regulated by the Farm Credit Administration as described in section 1.2 of the Act, and to the Funding Corporation.

[55 FR 24889, June 19, 1990, as amended at 56 FR 2675, Jan. 24, 1991]

§ 619.9150 Farm-related businesses.

A person which is engaged in furnishing to farmers and ranchers custom-type farm-related services performed

on the farm directly related to their on-farm operating needs.

[37 FR 11446, June 7, 1972. Redesignated at 55 FR 24888, June 19, 1990]

§619.9155 Federal land credit association.

The term *Federal land credit association* refers to a Federal land bank association that has received a transfer of direct long-term real estate lending authority pursuant to section 7.6 of the Act.

[55 FR 24889, June 19, 1990]

§619.9160 Federated cooperative.

An entity in which at least 80 percent of the voting control is vested in two or more eligible cooperatives.

[37 FR 11446, June 7, 1972. Redesignated at 55 FR 24888, June 19, 1990]

§619.9165 Five basic credit factors.

See §614.4160 of this chapter.

[37 FR 11446, June 7, 1972. Redesignated and amended at 55 FR 24888–24889, June 19, 1990]

§619.9170 Fixed interest rate.

The rate of interest specified in the note or loan document which will prevail as the maximum rate chargeable to the borrower during the period of the loan.

§619.9180 Fixed interest spread.

A percentage to be added to the cost of money to the bank or association as the means of establishing a lending rate.

§619.9185 Funding Corporation.

The term *Funding Corporation* refers to the Federal Farm Credit Banks Funding Corporation established pursuant to section 4.9 of the Act.

[55 FR 24889, June 19, 1990]

§619.9190 Legal entity.

Any partnership, corporation, estate, trust, or other entity which is legally vested with authority to conduct a business.

§619.9195 Loan participation.

A fractional undivided interest in the principal amount of a loan that is sold by a lead lender to a participating institution in accordance with the requirements of §614.4330 of this chapter. The term ''loan participation'' does not include a subordinated participation interest.

[57 FR 38250, Aug. 24, 1992]

§619.9200 Loss-sharing agreements.

A contractual arrangement under which the parties agree to share losses associated with loans or otherwise, as may be provided for in the agreement.

[42 FR 20457, Apr. 20, 1977]

§619.9210 Merger.

Combining of one or more organizational entities into another similar entity.

§619.9220 Moderate-priced housing.

See §613.3040(d) of this chapter.

§619.9230 Open-end mortgage loan plans.

A mortgage loan which permits the borrower to obtain additional sums during the term of the loan.

§619.9240 Participation agreement.

A contract under which a lender agrees to sell a portion of a loan to one or more purchasers under specific terms set forth in the agreement.

§619.9250 Participation certificates.

Evidence of investment in a bank or association to which all the rights and obligations of stock attach with the exception of the right to vote in the affairs of the institution.

§619.9260 Primary security.

The basic collateral securing the loan.

§619.9270 Producer or harvester of aquatic products.

A person or persons engaged in the production or harvesting of aquatic products in open waters under uncontrolled conditions.

§619.9280 Production or harvesting of aquatic products in open waters under uncontrolled conditions.

Extraction of aquatic products where no element of husbandry of the product is involved prior to such extraction

where the applicant and the public have equal access to the product.

§ 619.9290 Recovery value.

See § 614.4140 of this chapter.

[37 FR 11446, June 7, 1972, as amended at 55 FR 24889, June 19, 1990]

§ 619.9300 Rural area.

See § 613.3040 of this chapter.

§ 619.9310 Rural residence.

See § 613.3040(b) of this chapter.

§ 619.9330 Speculative purposes.

To buy or sell with the expectation of profiting by fluctuations in price.

[40 FR 49078, Oct. 21, 1975]

§ 619.9340 Variable interest rate.

An interest rate on the outstanding loan balances, which may be changed from time to time during the period of the loan, if provision is made in the note or loan document.

PART 620—DISCLOSURE TO SHAREHOLDERS

Subpart A—General

Sec.
620.1 Definitions.
620.2 Preparing and filing the reports.
620.3 Prohibition against incomplete, inaccurate, or misleading disclosure.

Subpart B—Annual Report to Shareholders

620.4 Preparing and distributing the annual report.
620.5 Contents of the annual report to shareholders.

Subpart C—Quarterly Report to Shareholders

620.10 Preparing and distributing the quarterly report.
620.11 Content of quarterly report to shareholders.

Subpart D—Association Annual Meeting Information Statement

620.20 Preparing and distributing the information statement.
620.21 Contents of the information statement and other information to be furnished in connection with the annual meeting.

Subpart E—Bank Director Disclosure Requirements

620.30 Disclosure statement for bank director candidates.
620.31 Contents of disclosure statements.

Subpart F—Annual Report of Condition of the Federal Agricultural Mortgage Corporation

620.40 Content, timing, and distribution of Federal Agricultural Mortgage Corporation's annual report of condition.

AUTHORITY: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act; 12 U.S.C. 2252, 2254, 2279aa–ll; sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart A—General

§ 620.1 Definitions.

For the purpose of this part, the following definitions shall apply:

(a) *Affiliated organization* means any organization, other than a Farm Credit organization, of which a director, senior officer or nominee for director of the reporting institution is a partner, officer, or majority shareholder.

(b) *Association* means any of the associations as described in § 619.9050 of this chapter.

(c) *Bank* means any of the Farm Credit banks as described in § 619.9140 of this chapter.

(d) *Direct lender association* means any association that is a direct lender as described in § 619.9135 of this chapter.

(e) *Immediate family* means spouse, parents, siblings, children, mothers- and fathers-in-law, brothers- and sisters-in-law, and sons- and daughters-in-law.

(f) *Institution* means any bank or association chartered by the Act.

(g) *Loan* means any extension of credit or lease that is recorded as an asset of a reporting institution, whether made directly or purchased from another lender. The term ''loan'' includes, but is not limited to, loans originated through direct negotiations between the reporting institution and a borrower; purchased loans or interests in loans, including participation interests, retained subordinated participation interests in loans sold, interests in

pools of subordinated participation interests that are held in lieu of retaining a subordinated participation interest in loans sold; contracts of sale; notes receivable; and other similar obligations and lease financings.

(h) *Material.* The term *material,* when used to qualify a requirement to furnish information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable person would attach importance in making shareholder decisions or determining the financial condition of the institution.

(i) *Normal risk of collectibility* means the ordinary risk inherent in the lending operation. Loans that are deemed to have more than a normal risk of collectibility include, but are not limited to, any adversely classified loans.

(j) *Permanent capital* shall have the same meaning as set forth in §615.5201(j) of this chapter.

(k) *Protected borrower capital* means eligible borrower stock as defined in §615.5260 of this chapter.

(l) *Related association* means an association within the reporting bank's chartered territory that generates loans for the bank or whose operations the bank funds.

(m) *Related bank* means a reporting association's funding bank or the bank for which it generates loans.

(n) *Related organization* means any Farm Credit institution that is a shareholder of the reporting institution or in which the reporting institution has an ownership interest.

(o) *Senior officer* means any person designated by the board of directors as responsible for a major management function.

(p) *Shareholder* means a holder of any equity interest in an institution.

(q) *Significant event* means any event that is likely to have a material impact on the reporting institution's financial condition, results of operations, cost of funds, or reliability of sources of funds. The term ''significant event'' includes, but is not limited to, actual or probable noncompliance with the regulatory minimum permanent capital standards or capital adequacy requirements, stock impairment, the imposition of or entering into enforcement actions, execution of financial assistance agreements with other institutions, collateral deficiencies that impact a bank's ability to obtain loan funds, or defaults on debt obligations.

[51 FR 8656, Mar. 13, 1986, as amended at 51 FR 42086, Nov. 21, 1986; 53 FR 3337, Feb. 5, 1988; 56 FR 29421, June 27, 1991; 56 FR 42649, Aug. 28, 1991; 58 FR 48791, Sept. 20, 1993; 59 FR 37406, July 22, 1994]

§620.2 Preparing and filing the reports.

For the purposes of this part, the following shall apply:

(a) Three complete copies of each report or information statement required by this part (for the purpose of this section, referred to as ''report'' unless otherwise specified), including financial statements and related schedules, exhibits, and all other papers and documents that are part of the report shall be filed with the Chief Examiner, Farm Credit Administration, McLean, Virginia 22102–5090, or with such other Farm Credit Administration offices as the Chief Examiner designates. The report shall be received by the Farm Credit Administration within the period prescribed under applicable sections of individual subparts regarding preparation and distribution of the report. The annual and quarterly reports shall be available for public inspection at the issuing institution and the Farm Credit Administration office with which the reports are filed. Bank reports shall also be available for public inspection at each related association office.

(b) At least one of the reports filed with the Farm Credit Administration shall be dated and manually signed on behalf of the institution by:

(1) The person designated by the board of directors to certify the reports of condition and performance in accordance with §621.14 of this chapter;

(2) The chief executive officer; and

(3)(i) For each quarterly report filed under this section, each member of the board or, at a minimum, one of the following board members formally designated by action of the board to certify quarterly reports on behalf of individual board members: The chairperson of the board; the chairperson of the audit committee; or a board member

designated by the chairperson of the board.

(ii) For all other reports, each member of the board.

The name and position title of each person signing the report shall be typed or printed beneath his or her signature. The statement to which the signers of the report shall attest shall read as follows:

> The undersigned certify that this report has been prepared in accordance with all applicable statutory and regulatory requirements and that the information contained herein is true, accurate, and complete to the best of his or her knowledge and belief.

If any officer or any member of the board is unable to or refuses to sign the report, the institution shall disclose the individual's name and position title and the reasons such individual is unable or refuses to sign the report.

(c) The report sent to shareholders shall be signed and dated by and on behalf of the institution and its board of directors by its chief executive officer and the chairman of the board of directors. If any person required to sign the report submitted to the Farm Credit Administration pursuant to paragraph (b) of this section has not signed the report, the name and position title of the individual and the reasons such individual is unable or refuses to sign shall be disclosed in the report sent to shareholders.

(d) Information in any part of this report may be incorporated by reference in answer or partial answer to any other item of the report.

(e) All items of essentially the same character as items required to be reported in the reports of condition and performance pursuant to part 621 of this chapter shall be prepared in accordance with the rules set forth in part 621.

(f) No disclosure required by subparts B and D shall be deemed to violate any regulation of the Farm Credit Administration.

(g) Each annual and quarterly report of a bank shall present the financial statements of the bank and its related associations on a combined basis. The report shall also include, at a minimum, the statement of condition and statement of income for the bank only. The bank-only statements may be in summary form and shall disclose the basis of presentation if different from the accounting policies of the combined bank and association statements.

(h) Each association shall include a statement in a prominent location within each annual and quarterly report that the shareholders' investment in the association is materially affected by the financial condition and results of operations of the related bank and that a copy of the bank quarterly report is available upon request free of charge.

(i) Each annual and quarterly report shall include addresses and telephone numbers where association shareholders may obtain copies of bank quarterly reports. Upon request, the institution receiving the request shall promptly mail or deliver a bank quarterly report to the requesting shareholder free of charge.

[51 FR 8656, Mar. 13, 1986, as amended at 51 FR 21340, June 12, 1986; 56 FR 29421, June 27, 1991; 58 FR 27923, May 12, 1993; 58 FR 48791, Sept. 20, 1993]

§ 620.3 Prohibition against incomplete, inaccurate, or misleading disclosure.

No institution and no employee, officer, director, or nominee for director of the institution shall make any disclosure to shareholders or the general public concerning any matter required to be disclosed by this part that is incomplete, inaccurate, or misleading. When any such person makes disclosure that, in the judgment of the Farm Credit Administration, is incomplete, inaccurate, or misleading, whether or not such disclosure is made in disclosure statements required by this part, such institution or person shall make such additional or corrective disclosure as is necessary to provide shareholders and the general public with a full and fair disclosure.

[56 FR 29422, June 27, 1991]

Subpart B—Annual Report to Shareholders

§620.4 Preparing and distributing the annual report.

(a) Each institution of the Farm Credit System shall prepare and distribute to its shareholders an annual report within 90 days of the end of its fiscal year.

(b) Each bank shall distribute its annual report to the shareholders of related associations within the period required by paragraph (a) of this section. Each bank shall coordinate such distribution with its related associations.

(c) The report shall contain, at a minimum, the information required by §620.5 and, in addition, such other information as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

[51 FR 8656, Mar. 13, 1986. Redesignated and amended at 56 FR 29421, 29422, June 27, 1991]

§620.5 Contents of the annual report to shareholders.

The report shall contain the following items in substantially the same order:

(a) *Description of business.* The description shall include a brief discussion of the following items:

(1) The territory served;

(2) The persons eligible to borrow;

(3) The types of lending activities engaged in and related services offered. Each bank shall also briefly describe the lending and related services offered by its related associations, as well as related services offered to the borrowers in the bank's chartered territory by any service organization in which it has an ownership interest. Each association shall briefly describe the lending and related services offered by its related organizations or incorporate by reference relevant portions of the related bank's report, if such report is distributed to association shareholders;

(4) Any significant developments within the last 5 years that had or could have a material impact on earnings or interest rates to borrowers, including, but not limited to, changes in the reporting entity and financial assistance provided by or to the institution through loss-sharing or capital preservation agreements or from any other source;

(5) Any acquisition or disposition of material assets during the last fiscal year, other than in the ordinary course of business;

(6) Any material change during the last fiscal year in the manner of conducting the business;

(7) Any seasonal characteristics of the institution's business;

(8) Any concentrations of more than 10 percent of its assets in particular commodities or particular types of agricultural activity or business, and the institution's dependence, if any, upon a single customer, or a few customers, including other financial institutions (OFIs), as defined in §614.4540(e) of this chapter, the loss of any one of which would have a material effect on the institution; and

(9) A brief description of the business of any related Farm Credit institution, as described in §619.9146 of this chapter, and the nature of the institution's relationship with such organization.

(b) *Description of property.* State the location of and briefly describe the principal offices, i.e., headquarters, and major facilities where the institution makes and services its loans, and other materially important physical properties (other than property acquired in the course of collecting a loan) of the institution. If any such property is not held in fee or is held subject to any major encumbrance, so state and describe briefly the terms and conditions of the agreement under which the property is used or occupied.

(c) *Legal proceedings and enforcement actions.* (1) Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the institution is a party, of which any of its property is the subject, or which involved claims that the institution may be required by contract or operation of law, to satisfy. Include the name of the court in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceeding and the relief sought.

(2) Describe the type of and reason for each enforcement action in effect,

i.e., agreements, cease and desist orders, temporary cease and desist orders, prohibitions and removals of officers or directors, or civil money penalties, if any, imposed or assessed on the institution or its officers or directors and the amount of any civil money penalties assessed.

(d) *Description of capital structure.* (1) Describe each class of stock and participation certificates the institution is authorized to issue and the rights, duties, and liabilities of each class. The description shall include:

(i) The number of shares of each class outstanding;

(ii) The par or face value;

(iii) The voting and dividend rights;

(iv) The order of priority upon impairment or liquidation;

(v) The institution's retirement policies and restrictions on transfer;

(vi) The statutory requirement that a borrower purchase stock as a condition to obtaining a loan;

(vii) The manner in which the stock is purchased (i.e., promissory note to the issuer, or cash not advanced by issuing institution);

(viii) The statutory authority of the institution to require additional capital contributions, if any; and

(ix) The statutory and regulatory restrictions regarding retirement of stock and distribution of earnings, and for banks for cooperatives, the amount required to be added to the unallocated surplus, pursuant to §§ 615.5215 and 615.5330 of this chapter.

(2) Describe regulatory minimum permanent capital standards, and the institution's compliance with such standards. For banks, also discuss any related associations that are not currently in compliance with the standards.

(3) State whether the institution is currently prohibited from retiring stock or distributing earnings by the statutory and regulatory restrictions described in paragraph (d)(1)(ix) of this section, or knows of any reason such prohibitions may apply during the fiscal year subsequent to the fiscal year just ended.

(4) Describe the institution's capital adequacy requirements and the minimum stock purchase requirement in effect.

(e) *Description of liabilities.* (1) Describe separately the institution's insured and uninsured debt, indicating the type, amount, maturity, and interest rates of each category of obligations outstanding at the end of the fiscal year just ended. Describe the nature of the insurance provided under part E of title V of the Act. Describe any applicable statutory and regulatory restrictions on the institution's ability to incur debt.

(2) Describe fully the institution's rights and obligations under any agreement, formal or informal, between the institution and any other person or entity having to do with capital preservation, loss sharing, or any other form of financial assistance.

(3) Describe any statutory authorities or obligations to contribute to or on behalf of another institution of the Farm Credit System.

(4) Describe the statutory responsibility of Farm Credit System institutions for repayment of obligations issued by the Farm Credit System Financial Assistance Corporation.

(f) *Selected financial data.* Furnish in comparative columnar form for each of the last 5 fiscal years the following financial data:

(1) *For banks and direct lender associations.*

(i) *Balance sheet.*

(A) Total assets.

(B) Investments.

(C) Loans.

(D) Allowance for losses.

(E) Net loans.

(F) Other property owned.

(G) Total liabilities.

(H) Obligations with maturities less than 1 year.

(I) Obligations with maturities longer than 1 year.

(J) Protected borrower capital.

(K) *At-risk capital.*

(*1*) Stock and participation certificates.

(*2*) Allocated surplus.

(*3*) Unallocated surplus.

(ii) *Statement of income.*

(A) Net interest income.

(B) Provision for loan losses.

(C) Extraordinary items.

(D) Net income.

(iii) *Key financial ratios.*

(A) Return on average assets.

(B) Return on average protected borrower capital and at-risk capital.

(C) Net interest margin as a percentage of average earning assets.

(D) Protected and at-risk capital-to-total assets.

(E) Net chargeoffs-to-average loans.

(F) Allowance for loan losses-to-loans.

(iv) *Net income distributed.*

(A) Dividends.

(B) *Patronage refunds.*

(*1*) Cash.

(*2*) Stock.

(*3*) Allocated surplus.

(2) *For associations that are not direct lender associations.*

(i) *Balance sheet.*

(A) Total assets.

(B) Accrued obligation under loss-sharing agreement, if any.

(C) Protected borrower capital.

(D) At-risk capital.

(ii) *Statement of income.*

(A) Compensation from related bank.

(B) Total operating expense.

(C) Extraordinary items.

(D) Provision for obligation under capital preservation or loss-sharing agreement, if any.

(E) Net income.

(iii) *Other.*

(A) Loans serviced for related bank.

(B) Dividends paid.

(C) *Patronage refunds paid.*

(*1*) Cash.

(*2*) Stock.

(*3*) Allocated surplus.

(D) Payments under loss-sharing agreement.

(3) *For all institutions.*

(i) Permanent capital ratio (for associations); or

(ii) Bank-only permanent capital ratio (for banks).

(g) *Management's discussion and analysis of financial condition and results of operations.* Fully discuss any material aspects of the institution's financial condition, changes in financial condition, and results of operations during the last 2 fiscal years, identifying favorable and unfavorable trends, and significant events or uncertainties. In addition to the items enumerated below, the discussion shall provide such other information as is necessary to an understanding of the institution's financial condition, changes in financial condition, and results of operations.

(1) *Loan portfolio.* (i) Describe the types of loans in the portfolio by major category (e.g., agricultural real estate mortgage loans, rural home loans, agricultural production loans, processing and marketing loans, farm business loans, and international loans), indicating the approximate percentage of the total dollar portfolio represented by each major category. Associations that make agricultural production loans shall provide the information required for such loans by major subcategory (e.g., cash grains, field crops, livestock, dairy, poultry, and timber). For each category and subcategory, discuss any special features of the loans that may be material to the evaluation of risk and any economic or business conditions that have had or are likely to have a material impact on their collectibility. For banks, also disclose separately the aggregate amount of loans outstanding to related associations and other financial institutions.

(ii) Describe the geographic distribution of the loan portfolio by State or other significant geographic division, if any.

(iii) *Purchases and sales of loans.* (A) Describe any participation in the Federal Agricultural Mortgage Corporation program or origination of loans for resale.

(B) Disclose the amount of purchased loans, loans sold with recourse, retained subordinated participation interests in loans sold, and interests in pools of subordinated participation interests that are held in lieu of retaining a subordinated participation interest in the loans sold.

(iv) *Risk exposure.* For the periods covered by the financial statements provide:

(A) An analysis of high-risk assets and loan performance categories, to include, but not limited to, a discussion of the nature and extent of significant potential credit risks within the loan portfolio, or other information that could adversely impact performance of the loan portfolio in the near future;

(B) An analysis of the allowance for loan losses that includes the ratios of the allowance to loans and net

chargeoffs to average loans, and a discussion of the adequacy of the allowance for losses to absorb the risk inherent in the institution's loan portfolio;

(C) Financial assistance given or received under districtwide or Systemwide loss-sharing or capital preservation agreements or otherwise;

(D) For banks, a description in the aggregate of the recent loss experience of related associations that are its shareholders, including the items enumerated in paragraphs (g)(1)(iv) (A), (B), and (C) of this section.

(E) Describe any obligations with respect to loans sold and the amount of any contributions made in connection with loans sold into the secondary market pursuant to section 8.7 of the Act. Further disclose the amount of risk of loss associated with such obligations and the amount included in the allowance for losses to provide for such risk.

(2) *Results of operations.* (i) Describe, on a comparative basis, changes in the major components of net interest income during the last 2 fiscal years, describing significant factors that contributed to the changes and quantifying the amount of change(s) due to an increase in volume or the introduction of new services and the amount due to changes in interest rates earned and paid, based on averages for each period.

(ii) Describe any unusual or infrequent events or transactions or any significant economic changes, including, but not limited to, financial assistance received or paid that materially affected reported income. In each case, indicate the extent to which income was so affected.

(iii) Discuss the factors underlying the material changes, if any, in the return on average assets, the return on average protected borrower capital and at-risk capital, and the permanent capital ratio as determined in accordance with part 615, subpart H of this chapter. An explanation of the basis of the calculation of ratios relating to permanent capital and at-risk capital shall be included.

(iv) Describe, on a comparative basis, the major components of operating expense, indicating the reasons for significant increases or decreases.

(v) Describe any other significant components of income or expense, including, but not limited to, income from investments, that should be described in order to understand the institution's results of operations.

(vi) For associations, discuss any events affecting a related organization that are likely to have a material impact on the associations' financial condition, results of operations, cost of funds, or reliability of sources of funds.

(vii) Describe any known trends or uncertainties that have had, or that the institution reasonably expects will have, a material impact on net interest income or net income. Disclose any events known to management that will cause a material change in the relationship between costs and revenues.

(3) *Liquidity and funding sources.* (i) Funding sources. (A) Describe the average and yearend amounts, maturities, and interest rates on outstanding consolidated Systemwide debt obligations or other bond obligations used to fund the institution's lending operations.

(B) Describe existing lines of credit and their terms.

(C) Describe the institution's capital accounts and other sources of lendable funds.

(ii) Liquidity. (A) Discuss the institution's liquidity policy and the components of asset liquidity, including, but not limited to, cash, investment securities, and maturing loan repayments. Assess the ability of the institution to generate adequate amounts of cash to fund its operations and meet its obligations.

(B) Discuss any known trends that are likely to result in a liquidity deficiency and the course of action management intends to take to resolve it. Discuss any material increase or decrease in liquidity that is likely to occur.

(C) Discuss the institution's participation in the Federal Agricultural Mortgage Corporation secondary market programs authorized by title VIII of the Act and the origination of loans for resale under other authorities, if any.

(iii) Funds management. (A) Discuss the institution's interest rate programs and the institution's ability to control interest rate margins.

(B) Discuss changes in net interest margin (net interest income as a percentage of average earning assets), explaining the reasons therefor.

(4) *Capital resources.* (i) Describe any material commitments to purchase capital assets and the anticipated sources of funding.

(ii) Describe any material trends or changes in the mix and cost of debt and capital resources. The discussion shall consider changes in protected borrower capital, permanent capital, debt, and any off-balance-sheet financing arrangements.

(iii) Describe any favorable or unfavorable trends in the institution's capital resources.

(iv) Discuss and explain any material changes in capital ratios, noting any material adverse variances from regulatory guidelines.

(v) Discuss the adequacy of the current permanent capital position and any material changes in the capital plan adopted pursuant to § 615.5200 of this chapter, to the extent that such changes may have an effect on the institution's minimum stock purchase requirements and its ability to retire stock and distribute earnings.

(vi) Discuss any trends, commitments, contingencies, or events that are reasonably likely to have a materially adverse effect upon the institution's ability to meet the regulatory minimum permanent capital standards and capital adequacy requirements.

(h) *Directors and senior officers.* (1) List the names of all directors and senior officers of the institution, indicating the position title and term of office of each.

(2) Briefly describe the business experience during the past 5 years of each director and senior officer, including each person's principal occupation and employment during the past 5 years.

(3) For each director, list any other business entity on whose board the director serves and state the principal business in which it is engaged.

(i) *Compensation of directors and senior officers*—(1) *Director compensation.* Describe the arrangements under which directors of the institution are compensated for all services as a director (including total cash compensation and any noncash compensation that exceeds 10 percent of total compensation) and state the total cash compensation paid to all directors as a group during the last fiscal year. If applicable, describe any exceptional circumstances under which a waiver of section 4.21 of the Act was granted by the FCA. For each director, state:

(i) The number of days served at board meetings;

(ii) The total number of days served in other official activities;

(iii) The total compensation paid to each director during the last fiscal year.

(2) *Senior officer compensation.* Disclose the information on senior officer compensation and compensation plans as required by this paragraph. Farm Credit System associations may disclose the information required by this paragraph in the Association Annual Meeting Information Statement (AAMIS), but must include a reference in the annual report stating that the senior officer compensation information is included in the AAMIS.

(i) The institution shall disclose the total amount of compensation paid to senior officers in substantially the same manner as the tabular form specified in the following Summary Compensation Table (table):

SUMMARY COMPENSATION TABLE

Name of individual or No. in group	Year	Annual			Other	Total
		Salary	Bonus	Deferred/perquisites		
(a)	(b)	(c)	(d)	(e)	(f)	(g)
CEO	199X					
	199X					
	199X					
Aggregate No. of Senior Officers						
(X)	199X					
(X)	199X					

SUMMARY COMPENSATION TABLE—Continued

Name of individual or No. in group	Year	Annual			Other	Total
		Salary	Bonus	Deferred/perquisites		
(a)	(b)	(c)	(d)	(e)	(f)	(g)
(X)	199X					

(A) Report the total amount of compensation paid and the amount of each component of compensation paid to the institution's chief executive officer (CEO) for each of the last 3 completed fiscal years, naming the individual. If more than one person served in the capacity of CEO during any given fiscal year, individual compensation disclosures must be provided for each CEO. Except that, no disclosure need be provided for any CEO whose salary and bonus (or annualized salary and bonus, if the CEO served in that capacity less than a year) do not exceed $150,000, adjusted annually to reflect changes in the Consumer Price Index (CPI) for all urban consumers, as published by the Bureau of Labor Statistics. The threshold for individually disclosing CEO compensation information shall be adjusted in the following manner: Current year's compensation disclosure threshold = Prior year's compensation disclosure threshold adjusted by the prior year's annual average percent change in the CPI for all urban consumers. The 1994 calendar year shall serve as the base year for making subsequent CPI adjustments to the $150,000 compensation disclosure threshold.

(B) Report the aggregate amount of compensation paid and the components of compensation paid during each of the last 3 completed fiscal years to all senior officers as a group, stating the number of officers in the group without naming them. At a minimum, disclose the aggregate amount of compensation paid to the five most highly compensated officers, whether or not designated as a senior officer by the board.

(C) Amounts shown as ''Salary'' (column (c)) and ''Bonus'' (column (d)) shall reflect the dollar value of salary and bonus earned by the senior officer during the fiscal year. Amounts contributed during the fiscal year by the senior officer pursuant to a plan established under section 401(k) of the Internal Revenue Code, or similar plan, shall be included in the salary column or bonus column, as appropriate. If the amount of salary or bonus earned during the fiscal year is not calculable by the time the report is prepared, the reporting institution shall provide its best estimate of the compensation amount(s) and disclose that fact in a footnote to the table.

(D) Amounts shown as ''deferred/perquisites'' (column (e)) shall reflect the dollar value of other annual compensation not properly categorized as salary or bonus, including but not limited to:

(*1*) Deferred compensation earned during the fiscal year, whether or not paid in cash; or

(*2*) Perquisites and other personal benefits unless the aggregate value of such compensation is the lesser of either $25,000 or 10 percent of the total of annual salary and bonus reported for the senior officer in columns (c) and (d).

(E) Compensation amounts reported under the category ''Other'' (column (f)) shall reflect the dollar value of all other compensation not properly reportable in any other column. Items reported in this column shall be specifically identified and described in a footnote to the table. Such compensation includes, but is not limited to:

(*1*) The amount paid to the senior officer pursuant to a plan or arrangement in connection with the resignation, retirement, or termination of such officer's employment with the institution; or

(*2*) The amount of contributions by the institution on behalf of the senior officer to a vested or unvested defined contribution plan unless the plan is made available to all employees on the same basis.

(F) Amounts displayed under ''Total'' (column (g)) shall reflect the sum total

of amounts reported in columns (c), (d), (e), and (f).

(ii) Provide a description of all plans pursuant to which cash or noncash compensation was paid or distributed during the last fiscal year, or is proposed to be paid or distributed in the future for performance during the last fiscal year, to those individuals described in paragraph (i)(2)(i) of this section. The description of each plan must include, but not be limited to:

(A) A summary of how the plan operates and who is covered by the plan;

(B) The criteria used to determine amounts payable, including any performance formula or measure;

(C) The time periods over which the measurement of compensation will be determined;

(D) Payment schedules; and

(E) Any material amendments to the plan during the last fiscal year.

(iii) The annual report or AAMIS shall include a statement that disclosure of information on the total compensation paid during the last fiscal year to any senior officer or to any other officer included in the aggregate whose compensation exceeds $50,000 is available and will be disclosed to shareholders of the institution and shareholders of related associations (if applicable) upon request.

(3) *Travel, subsistence, and other related expenses.*

(i) Briefly describe the policy adopted pursuant to § 618.8270 of this chapter addressing reimbursements for travel, subsistence, and other related expenses as it applies to directors and senior officers. The report shall include a statement that a copy of the policy is available to shareholders of the institution and shareholders of related associations (if applicable) upon request.

(ii) For each of the last 3 fiscal years, state the aggregate amount of reimbursement for travel, subsistence, and other related expenses for all directors as a group.

(j) *Transactions with senior officers and directors.* (1) State the institution's policies, if any, on loans to and transactions with officers and directors of the institution.

(2) Transactions other than loans. For each person who served as a senior officer or director on January 1 of the year following the fiscal year of which the report is filed, or at any time during the fiscal year just ended, describe briefly any transaction or series of transactions other than loans that occurred at any time since the last annual meeting between the institution and such person, any member of the immediate family of such person, or any organization with which such person is affiliated. State the name of the officer or director who entered into the transaction or whose immediate family member or affiliated organization entered into the transaction, the nature of the person's interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed $5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(3) *Loans to senior officers and directors.* (i) To the extent applicable, state that the institution (or in the case of an association that does not carry loans to its senior officers and directors on its books, its related bank) has had loans outstanding during the last full fiscal year to date to its senior officers and directors, their immediate family members, and any organizations with which such senior officers or directors are affiliated that:

(A) Were made in the ordinary course of business; and

(B) Were made on the same terms, including interest rate, amortization schedule, and collateral, as those prevailing at the time for comparable transactions with other persons.

(ii) To the extent applicable, state that no loan to a senior officer or director, or to any organization affiliated with such person, or to any immediate family member who resides in the same household as such person or in whose loan or business operation such person has a material financial or legal interest, involved more than the normal risk of collectibility; provided that no

such statement need be made with respect to any director or senior officer who has resigned before the time for filing the applicable report with the Farm Credit Administration (but in no case later than the actual filing), or whose term of office will expire or terminate no later than the date of the meeting of stockholders to which the report relates.

(iii) If the conditions stated in paragraphs (j)(3)(i) and (ii) of this section do not apply to the loans of the persons or organizations specified therein, with respect to such loans state:

(A) The name of the officer or director to whom the loan was made or to whose relative or affiliated organization the loan was made.

(B) The largest aggregate amount of each indebtedness outstanding at any time during the last fiscal year.

(C) The nature of the loan(s).

(D) The amount outstanding as of the latest practicable date.

(E) The reasons the loan does not comply with the criteria contained in paragraphs (j)(3)(i) and (j)(3)(ii) of this section.

(F) If the loan does not comply with paragraph (j)(3)(i)(B) of this section, the rate of interest payable on the loan and the repayment terms.

(G) If the loan does not comply with paragraph (j)(3)(ii) of this section, the amount past due, if any, and the reason the loan is deemed to involve more than a normal risk of collectibility.

(k) *Involvement in certain legal proceedings.* Describe any of the following events that occurred during the past 5 years and that are material to an evaluation of the ability or integrity of any person who served as director or senior officer on January 1 of the year following the fiscal year for which the report is filed or at any time during the fiscal year just ended:

(1) A petition under the Federal bankruptcy laws or any State insolvency law was filed by or against, or a receiver, fiscal agent, or similar officer was appointed by a court for the business or property of such person, or any partnership in which such person was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which such person was a senior officer at or within 2 years before the time of such filing;

(2) Such person was convicted in a criminal proceeding or is a named party in a pending criminal proceeding (excluding traffic violations and other misdemeanors);

(3) Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended, or vacated, by any court of competent jurisdiction, permanently or temporarily enjoining or otherwise limiting such person from engaging in any type of business practice.

(l) *Relationship with independent public accountant.* If a change or changes in accountants have taken place since the last annual report to shareholders or if a disagreement with an accountant has occurred that the institution would be required to report to the Farm Credit Administration under part 621 of this chapter, the information required by § 621.4(c) and (d) of this chapter shall be disclosed.

(m) *Financial statements.* (1) Furnish financial statements and related footnotes that have been prepared in accordance with generally accepted accounting principles and instructions and other requirements of the Farm Credit Administration and that have been audited in accordance with generally accepted auditing standards by a qualified public accountant, as defined in § 621.2(i) of this chapter, and an opinion expressed thereon. The statements shall include the following statements and related footnotes for the last 3 fiscal years: balance sheet, statement of income, statement of changes in protected borrower capital and at-risk capital, and statement of cash flows.

(2) The financial statements shall be accompanied by a letter signed by the chief executive officer and the chairman of the board representing that the financial statements, in the opinion of management, fairly present the financial condition of the institution, except as otherwise noted.

[51 FR 8656, Mar. 13, 1986, as amended at 51 FR 21341, June 12, 1986; 51 FR 42087, Nov. 21, 1986; 53 FR 3335, 3337, Feb. 5, 1988; 53 FR 16697, May 11, 1988. Redesignated and amended at 56 FR 29421, 29422, June 27, 1991; 56 FR 42649, Aug. 28, 1991; 58 FR 48791, Sept. 20, 1993; 59 FR 37412, July 22, 1994; 60 FR 34102, June 30, 1995]

Subpart C—Quarterly Report to Shareholders

§620.10 Preparing and distributing the quarterly report.

(a) Each institution that is a direct lender shall prepare and distribute to its shareholders a quarterly report within 45 days after the end of each fiscal quarter, except that no report need be prepared for the fiscal quarter that coincides with the end of the fiscal year of the institution.

(b) Except as provided in paragraphs (e) and (f) of this section, each bank shall distribute its quarterly reports to shareholders of related associations within the period required by paragraph (a) of this section. Each bank shall coordinate such distribution with its related associations.

(c) The report shall contain, at a minimum, the information specified in §620.11 and, in addition, such other material information as is necessary to make the required disclosures, in light of the circumstances under which they are made, not misleading.

(d) Distribution to shareholders may be by mail or by publication in newspapers or periodicals in the trade area of wide enough circulation to be reasonably assured that all of the institution's shareholders are reached on a timely basis.

(e) A bank is not required to distribute its quarterly reports to shareholders of related associations that are direct lender associations for those quarters in which no significant events have occurred or no significant events which occurred during the preceding quarters continue to materially affect the related associations. For each quarter in which no distribution is made, the bank shall certify to the Farm Credit Administration as follows:

The undersigned certify that for the period between the end of the preceding fiscal quarter and the end of the most recent fiscal quarter, no significant events (as defined in §620.1(q)) have occurred which are likely to have a material impact on related associations that are direct lenders or no significant events which occurred during the preceding quarters continue to materially affect such related associations.

The certification shall accompany the quarterly report filed with the FCA and shall be dated and signed by:

(1) The person designated by the board of directors to certify the reports of condition and performance in accordance with §621.14 of this chapter,

(2) The chief executive officer, and

(3) Each member of the board or, at a minimum, one of the following board members formally designated by action of the board to certify on behalf of individual board members: The chairperson of the board; the chairperson of the audit committee; or a board member designated by the chairperson of the board.

The name and position title of each person signing the certification shall be typed or printed beneath his or her signature. If any officer or any member of the board is unable to or refuses to sign the certification, the bank shall disclose the individual's name and position title and the reasons such individual is unable or refuses to sign the report. If a majority of the board of directors or its designee is unable to or refuses to sign the certification, the bank must distribute its quarterly report to shareholders of related direct lender associations.

(f) For each quarter in which distribution of bank quarterly reports to association shareholders is not made pursuant to paragraph (e) of this section, copies of bank quarterly reports shall be made available free of charge to shareholders of related associations promptly upon request by the shareholder to the issuing bank or to the association of which the requestor is a shareholder.

(g) Each direct lender association shall include a statement in the first annual and first quarterly reports issued after the effective date of this paragraph explaining the regulatory changes in the distribution of bank quarterly reports and the new procedures under which association shareholders can obtain the bank quarterly reports.

[56 FR 29424, June 27, 1991, as amended at 58 FR 27923, May 12, 1993; 58 FR 48791, Sept. 20, 1993]

§ 620.11 Content of quarterly report to shareholders.

(a) *General.* The information required to be included in the quarterly report may be presented in any format deemed suitable by the institution, except as otherwise required by this section. The report must be organized in an easily understandable format and not presented in a manner that is misleading.

(b) *Rules for condensation.* For purposes of this section, major captions to be provided in the financial statements are the same as those provided in the financial statements contained in the institution's annual report to shareholders, except that the financial statements included in the quarterly report may be condensed into major captions in accordance with the rules prescribed under this paragraph and paragraph (f) of this section.

(1) *Interim balance sheets.* When any major balance sheet caption is less than 10 percent of total assets and the amount in the caption has not increased or decreased by more than 25 percent since the end of the preceding fiscal year, the caption may be combined with others.

(2) *Interim statements of income.* When any major income statement caption is less than 15 percent of average net income for the 3 most recent fiscal years and the amount in the caption has not increased or decreased by more than 20 percent since the corresponding interim period of the preceding fiscal year, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the 3 most recent fiscal years, the average loss shall be used for purposes of this test.

(3) The interim financial information shall include disclosure either on the face of the financial statements or in accompanying footnotes sufficient to make the interim information presented not misleading. Institutions may presume that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year and the adequacy of additional disclosure needed for a fair presentation may be determined in that context. Accordingly, footnote disclosure that would substantially duplicate the disclosure contained in the most recent audited financial statements (such as a statement of significant accounting policies and practices), and details of accounts that have not changed significantly in amount or composition since the end of the most recent completed fiscal year may be omitted. However, disclosure shall be provided of events occurring subsequent to the end of the most recent fiscal year that have a material impact on the institution. Disclosures should encompass, for example, significant changes since the end of the most recently completed fiscal year in such items as accounting principles and practices; estimates inherent in the preparation of financial statements; status of long-term contracts; capitalization, including significant new indebtedness or modification of existing financing agreements; and the reporting entity resulting from business combinations or dispositions.

(4) If, during the most recent interim period presented, the institution entered into a business combination treated for accounting purposes as a pooling of interests, the interim financial statements for both the current year and the preceding year shall reflect the combined results of the pooled businesses. Supplemental disclosure of the separate results of the combined entities for periods prior to the combination shall be given, with appropriate comments or comparisons between the separate and consolidated results.

(5) If a material business combination accounted for as a purchase has occurred during the current fiscal year, pro forma disclosure shall be made of the results of operations for the current year up to the date of the most recent interim balance sheet provided (and for the corresponding period in the preceding year) as though the companies had combined at the beginning of that period. This pro forma information shall, at a minimum, show:

(i) Total operating income.

(ii) Income before securities gains (losses), extraordinary items, and the cumulative effect of accounting changes.

(iii) Net income.

(6) In addition to meeting the reporting requirements specified by existing accounting pronouncements for accounting changes, the institution shall state the date of any material accounting change and the reasons for making it. In addition, a letter from the persons who verify the institution's financial statements shall be filed as an exhibit, indicating whether or not the change is to an alternative principle which in their judgment is preferable under the circumstances, except that no such letter need be filed when the change is made in response to a standard adopted by the Financial Accounting Standards Board which requires such change.

(7) Any material retroactive prior period adjustment made during any period covered by the interim financial statements shall be disclosed, together with its effect upon net income and upon the balance of undivided profits for any prior period included. If results of operations for any period presented have been adjusted retroactively by such an item subsequent to the initial reporting of such period, similar disclosure of the effect of the change shall be made.

(8) The interim financial statements furnished shall reflect all adjustments that are, necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Furnish any material information necessary to make the information called for not misleading, such as a statement that the results for interim periods are not necessarily indicative of results to be expected for the year.

(c) *Management's discussion and analysis of financial condition and results of operations.* Discuss material changes, if any, to the information provided to shareholders pursuant to § 620.5(g) that have occurred during the periods specified in paragraphs (d)(1) and (2) of this section. Such additional information as is needed to enable the reader to assess material changes in financial condition and results of operations between the periods specified in paragraphs (d)(1) and (2) of this section shall be provided.

(1) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided. If the interim financial statements include an interim balance sheet as of the corresponding interim date of the preceding fiscal year, any material changes in financial conditions from that date to the date of the most recent interim balance sheet provided also shall be discussed. If discussions of changes from both the end and the corresponding interim date of the preceding fiscal year are required, the discussions may be combined at the discretion of the institution.

(2) *Material changes in results of operations.* Discuss any material changes in the institution's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. Such discussion also shall cover material changes with respect to that fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year. In addition, if the institution has elected to provide an income statement for the 12-month period ended as of the date of the most recent interim balance sheet provided, the discussion also shall cover material changes with respect to that 12-month period and the 12-month period ended as of the corresponding interim balance sheet date of the preceding fiscal year.

(d) *Financial statements.* The following financial statements shall be provided:

(1) An interim balance sheet as of the end of the most recent fiscal quarter and as of the end of the preceding fiscal year. A balance sheet for the comparable quarter of the preceding fiscal year is optional.

(2) Interim statements of income for the most recent fiscal quarter, for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable periods for the previous fiscal year.

(3) Interim statements of changes in protected borrower capital and at-risk capital for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year.

(4) For banks, interim statements of cash flows for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year. For associations, interim statements of cash flows are optional.

(e) *Review by independent public accountant.* The interim financial information need not be audited or reviewed by an independent public accountant prior to filing. If, however, a review of the data is made in accordance with the established professional standards and procedures for such a review, the institution may state that the independent accountant has performed such a review. If such a statement is made, the report of the independent accountant on such review shall accompany the interim financial information.

(f) If any amount that would otherwise be required to be shown by this subpart with respect to any item is not material, it need not be separately shown. The combination of insignificant items is permitted.

[51 FR 21341, June 12, 1986, as amended at 53 FR 3337, Feb. 5, 1988. Redesignated and amended at 56 FR 29421, 29424, June 27, 1991]

Subpart D—Association Annual Meeting Information Statement

§ 620.20 Preparing and distributing the information statement.

(a) Each association of the Farm Credit System shall prepare and distribute to its shareholders at least 10 days prior to any meeting at which directors are to be elected an information statement (''statement'').

(b) The statement shall contain, at a minimum, the information specified in § 620.21 and, in addition, such other material information as is necessary to make the required statement, in light of the circumstances under which they are made, not misleading.

(c) The statement shall incorporate by reference the annual report to shareholders required by subpart B of this part. In addition, if any institution holds its annual meeting of shareholders more than 134 days after the end of its fiscal year, the statement shall be preceded or accompanied by the most recent quarterly statements required by subpart C of this part.

[51 FR 8656, Mar. 13, 1986, as amended at 53 FR 3337, Feb. 5, 1988. Redesignated and amended at 56 FR 29421, 29425, June 27, 1991]

§ 620.21 Contents of the information statement and other information to be furnished in connection with the annual meeting.

The statement shall address the following items:

(a) *Date, time, and place of the meeting(s).*

(b) *Voting shareholders.* For each class of stock entitled to vote at the meeting, state the number of shareholders entitled to vote, and, when shareholders are asked to vote on preferred stock, the number of shares entitled to vote. State the record date as of which the shareholders entitled to vote will be determined and the voting requirements for each matter to be voted upon.

(c) *Directors.* (1) State the names and ages of persons currently serving as directors of the institution, their terms of office, and the periods during which such persons have served. No information need be given with respect to any director whose term of office as a director will not continue after the meeting to which the statement relates.

(2) State the name of any incumbent director who attended fewer than 75 percent of the total of board meetings and any board committee meeting of committees on which he or she served during the last fiscal year.

(3) If any director resigned or declined to stand for reelection since the last annual meeting because of a policy disagreement with the board, and if the director has furnished a letter requesting disclosure of the nature of the disagreement, state the date of the director's resignation and summarize the director's description of the disagreement contained in the letter. If the institution holds a different view of the disagreement, the institution's view may be summarized.

(4) If any transactions between the institution and its senior officers and directors of the type required to be disclosed in the annual report to shareholders under § 620.5(j), or any of the events required to be disclosed in the

annual report to shareholders under § 620.5 (k) have occurred since the end of the last fiscal year and were not disclosed in the annual report to shareholders, the disclosures required by § 620.5 (j) and (k) shall be made with respect to such transactions or events in the annual information statement. If any material change in the matters disclosed in the annual report to shareholders pursuant to § 620.5 (j) and (k) has occurred since the annual report to shareholders was prepared, disclosure shall be made of such change in the annual information statement.

(d) *Nominees.* (1) If directors are nominated or elected by region, describe the regions and state the number of voting shareholders entitled to vote in each region. Any nominee from the floor must be an eligible candidate for the director position for which the person has been nominated.

(2) If fewer than two nominees for each position are named, describe the efforts of the nominating committee to locate two willing nominees.

(3) State that nominations shall be accepted from the floor.

(i) If directors are not elected by region, the following shall apply:

(A) If the annual meeting is to be held in more than one session and mail balloting will be conducted upon the conclusion of all sessions, state that nominations from the floor may be made at any session or, if the association's bylaws so provide, state that nominations from the floor shall be accepted only at the first session.

(B) If shareholders will not vote solely by mail ballot upon conclusion of all sessions, state that nominations from the floor may be made only at the first session.

(ii) If directors are elected by region, the following shall apply:

(A) If more than one session of an annual meeting is held in a region, and if mail balloting will be conducted at the end of all sessions in a region, state that nominations from the floor may be made at any session in the region or, if the association's bylaws so provide, state that nominations from the floor shall be accepted only at the first session held in the region.

(B) If shareholders will not vote solely by mail ballot upon conclusion of all sessions in a region, state that nominations from the floor may be made only at the first session held in the region.

(4) For each nominee, state the nominee's name, age, and business experience during the last 5 years, including each person's principal occupation and employment during the past 5 years. List any business entities on whose board of directors the director serves and state the principal business in which the entity is engaged.

(5) For each nominee who is not an incumbent director, except a nominee from the floor, provide the information referred to in § 620.5 (j) and (k) and § 620.21(d)(4). If shareholders will vote by mail ballot upon conclusion of all sessions, each floor nominee must provide the information referred to in § 620.5 (j) and (k) and § 620.21(d)(4) in writing to the association within the time period prescribed by the association's bylaws. If the association's bylaws do not prescribe a time period, state that each floor nominee must provide the written disclosure to the association within 5 business days of the nomination. The association shall ensure that the information is distributed to the voting shareholders with the mailing of the ballots for the election of directors in the same format as the comparable information contained in the association's annual meeting information statement. If shareholders will not vote by mail ballot upon conclusion of all sessions, each floor nominee must provide the information referred to in § 620.5 (j) and (k) and § 620.21(d)(4) in writing at the first session at which voting is held.

(6) No person may be a nominee for director who does not make the disclosures required by this subpart.

(e) *Other shareholder action.* (1) If shareholders are asked to vote on matters not normally required to be submitted to shareholders for approval, describe fully the material circumstances surrounding the matter, the reason shareholders are asked to vote, and the vote required for approval of the proposition.

(2) The statement shall describe any other matter that will be discussed at the meeting upon which shareholder vote is not required.

(f) *Relationship with independent public accountant.* If an institution of the Farm Credit System has had a change or changes in accountants since the last annual report to shareholders, or if a disagreement with an accountant has occurred, the institution shall disclose the information required by § 621.4(c) and (d) of this chapter.

[51 FR 8656, Mar. 13, 1986. Redesignated and amended at 56 FR 29421, 29425, June 27, 1991; 56 FR 42649, Aug. 28, 1991; 58 FR 48791, Sept. 20, 1993; 60 FR 20013, Apr. 24, 1995; 60 FR 57922, Nov. 24, 1995]

Subpart E—Bank Director Disclosure Requirements

§ 620.30 Disclosure statement for bank director candidates.

Each bank shall adopt policies and procedures that assure that a disclosure statement is prepared by each candidate for election by the stockholders to the bank board. The banks shall provide a form providing for the information required and distribute or mail copies of completed and signed disclosure statements to stockholders with the election ballots. No person may be a candidate for bank director who does not make the disclosures required by this subpart.

[53 FR 50399, Dec. 15, 1988. Redesignated at 56 FR 29421, June 27, 1991]

§ 620.31 Contents of disclosure statements.

Disclosure statements shall include the following information:

(a) A statement of the institution's policies, if any, on loans to and transactions with directors of the bank.

(b) Candidate's name, residential address, business address if any, citizenship, business experience during the last 5 years including principal occupation and employment during the last 5 years, a list of any business entities on whose board of directors the candidate serves and state the principal business in which the entities are engaged, and any information pertinent to the creation of a nepotistic relationship upon election to the bank board.

(c) Transactions other than loans. The disclosure statement should describe briefly any transaction or series of transactions other than loans that occurred since the last annual meeting between the bank and the candidate, any member of the immediate family of such person, or any organization with which such person is affiliated, the nature of the person's interest in the transaction, and the terms of the transaction. No information need be given where the purchase price, fees, or charges involved were determined by competitive bidding or where the amount involved in the transaction (including the total of all periodic payments) does not exceed $5,000, or the interest of the person arises solely as a result of his or her status as a stockholder of the institution and the benefit received is not a special or extra benefit not available to all stockholders.

(d) Loans to director candidates. (1) To the extent applicable, state that the bank has had loans outstanding during the last full fiscal year-to-date to the candidate, his or her immediate family members, and any organizations with which such persons are affiliated that:

(i) Were made in the ordinary course of business;

(ii) Were made on the same terms, including interest rate, amortization schedule, and collateral, as those prevailing at the time for comparable transactions with other persons.

(2) To the extent applicable, state that no loan to a candidate, or to any organization affiliated with the candidate, or to any immediate family member who resides in the same household as the candidate or in whose loan or business operation the candidate has a material financial or legal interest, involved more than the normal risk of collectibility;

(3) If the conditions stated in paragraphs (d) (1) and (2) of this section do not apply to the loan(s) of the candidates or organizations specified therein with respect to such loans, state:

(i) The name of the candidate to whom the loan was made or to whose relative or affiliated organization the loan was made;

(ii) The largest aggregate amount of each indebtedness outstanding at any time during the last fiscal year;

(iii) The nature of the loan(s);

(iv) The amount outstanding as of the latest practicable date;

(v) The reasons the loan does not comply with the criteria contained in this section;

(vi) If the loan does not comply with this section, the rate of interest payable on the loan and the repayment terms;

(vii) If the loan does not comply with this section, the amount past due, if any, and the reason the loan is deemed to involve more than a normal risk of collectibility.

(e) Involvement in certain legal proceedings. The disclosure statement should describe any of the following events that occurred during the past 5 years and that are material to an evaluation of the ability or integrity of the candidate:

(1) A petition under the Federal bankruptcy laws or any State insolvency law was filed by or against, or a receiver, fiscal agent, or similar officer was appointed by a court for the business or property of the candidate, or any partnership in which the candidate was a general partner at or within 2 years before the time of such filing, or any corporation or business association of which the candidate was a senior officer at or within 2 years before the time of such filing;

(2) The candidate was convicted in a criminal proceeding or is a named party in a pending criminal proceeding (excluding traffic violations and other misdemeanors);

(3) The candidate was the subject of any order, judgment, or decree, not subsequently reversed, suspended, or vacated, by any court of competent jurisdiction, permanently or temporarily enjoining or otherwise limiting the candidate from engaging in any type of business practice.

[53 FR 50399, Dec. 15, 1988. Redesignated at 56 FR 29421, June 27, 1991]

Subpart F—Annual Report of Condition of the Federal Agricultural Mortgage Corporation

§620.40 Content, timing, and distribution of Federal Agricultural Mortgage Corporation's annual report of condition.

(a) The Federal Agricultural Mortgage Corporation shall prepare and publish an annual report of its condition that is equivalent in content to the annual report to shareholders required by section 14 of the Securities and Exchange Act of 1934.

(b) The Corporation shall distribute the annual report of condition to its shareholders within 120 days of its fiscal year-end.

(c) Upon receiving a request for an annual report of condition, the Corporation shall promptly mail or otherwise furnish to the requestor a copy of the most recent annual report described in this section.

(d) The Corporation shall file three copies of the annual report of condition with the Farm Credit Administration's Office of Secondary Market Oversight within 120 days of its fiscal year-end.

[58 FR 48791, Sept. 20, 1993]

PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

Subpart A—Purpose and Definitions

Sec.
621.1 Purpose and applicability.
621.2 Definitions.

Subpart B—General Rules

621.3 Application of generally accepted accounting principles.
621.4 Audit by qualified public accountant.
621.5 Accounting for the allowance for loan losses and chargeoffs.

Subpart C—Loan Performance and Valuation Assessment

621.6 Performance categories and other property owned.
621.7 Rule of aggregation.

621.8 Application of payments and income recognition on nonaccrual loans.
621.9 Reinstatement to accrual status.
621.10 Monitoring of performance categories and other property owned.

Subpart D—Report of Condition and Performance

621.12 Applicability and general instructions.
621.13 Content and standards—general rules.
621.14 Certification of correctness.

Subpart E—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

621.20 Form and content.

AUTHORITY: Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa–11).

SOURCE: 58 FR 48786, Sept. 20, 1993, unless otherwise noted.

Subpart A—Purpose and Definitions

§ 621.1 Purpose and applicability.

This part sets forth accounting and reporting requirements to be followed by all banks, associations, and service organizations chartered under the Act; the Federal Farm Credit Banks Funding Corporation; and, where specifically indicated, the Federal Agricultural Mortgage Corporation. The requirements set forth in this part are of both general and specific applicability. Certain requirements focus on areas of financial condition and operating performance that are of special importance for generating, presenting, and disclosing accurate and reliable information.

§ 621.2 Definitions.

For the purposes of this part, the following definitions shall apply:

(a) *Accrual basis of accounting* means the accounting method in which expenses are recorded when incurred, whether paid or unpaid, and income is reported when earned, whether received or not received.

(b) *Borrowing entity* means the individual(s), partnership, joint venture, trust, corporation, or other business entity, or any combination thereof, that is primarily obligated on the loan instrument.

(c) *Generally accepted accounting principles* means that body of conventions, rules, and procedures necessary to define accepted accounting practices at a particular time, as promulgated by the Financial Accounting Standards Board (FASB) and other authoritative sources recognized as setting standards for the accounting profession in the United States. Generally accepted accounting principles include not only broad guidelines of general application but also detailed practices and procedures that constitute standards by which financial presentations are evaluated.

(d) *Generally accepted auditing standards* means the standards and guidelines adopted by the Auditing Standards Board of the American Institute of Certified Public Accountants (AICPA) to govern the overall quality of audit performance.

(e) *Institution* means any bank, association, or service organization chartered under the Act; the Federal Farm Credit Banks Funding Corporation, and where specifically noted, the Federal Agricultural Mortgage Corporation.

(f) *Loan* means any extension of credit or lease that is recorded as an asset of a reporting institution, whether made directly or purchased from another lender. The term ''loan'' includes, but is not limited to:

(1) Loans originated through direct negotiations between the reporting institution and a borrower;

(2) Purchased loans or interests in loans, including participation interests, retained subordinated participation interests in loans sold, and interests in pools of subordinated participation interests that are held in lieu of retaining a subordinated participation interest in loans sold;

(3) Contracts of sale; notes receivable; and

(4) Other similar obligations and lease financing.

(g) *Material* means the magnitude of an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement.

(h) *Net realizable value* means the net amount the lender would expect to be realized from the acquisition and subsequent sale or disposition of a loan's underlying collateral. Generally, net realizable value is equal to the estimated selling price in the ordinary course of business, less estimated costs of acquisition, completion, and disposal.

(i) *Qualified public accountant* means a person who:

(1) Holds a valid and unrevoked certificate, issued to such person by a legally constituted State authority, identifying such person as a certified public accountant;

(2) Is licensed to practice as a public accountant by an appropriate regulatory authority of a State or other political subdivision of the United States;

(3) Is in good standing as a certified and licensed public accountant under the laws of the State or other political subdivision of the United States in which is located the home office or corporate office of the institution that is to be audited;

(4) Is not suspended or otherwise barred from practice as an accountant or public accountant before the Securities and Exchange Commission (SEC) or any other appropriate Federal or State regulatory authority; and

(5) Is independent of the institution that is to be audited. For the purposes of this definition the term ''independent'' shall have the same meaning as under the rules and interpretations of the AICPA.

(j) *Recorded investment* means the face amount of the loan increased or decreased by applicable accrued interest and unamortized premium, discount, finance charges, or acquisition costs, and may also reflect a previous direct write-down of the investment.

Subpart B—General Rules

§621.3 Application of generally accepted accounting principles.

Each institution shall:

(a) Prepare and maintain, on an accrual basis, accurate and complete records of its business transactions as necessary to prepare financial statements and reports, including reports to the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements;

(b) Prepare its financial statements and reports, including reports to the shareholders, investors, boards of directors, institution management and the Farm Credit Administration, in accordance with generally accepted accounting principles, except as otherwise directed by statutory and regulatory requirements; and

(c) Prepare and maintain its books and records in such a manner as to facilitate reconciliation with financial statements and reports prepared from them.

§621.4 Audit by qualified public accountant.

(a) Each institution shall, at least annually, have its financial statements audited by a qualified public accountant in accordance with generally accepted auditing standards.

(b) The qualified public accountant's opinion of each institution's financial statements shall be included as a part of each annual report to shareholders.

(c) If an institution disagrees with the opinion of a qualified public accountant required by paragraph (b) of this section, the following actions shall be taken immediately:

(1) The institution shall prepare a brief but thorough written description of the scope and content of the disagreement, noting each point of disagreement and citing, in all cases, the specific provisions of generally accepted accounting principles and generally accepted auditing standards upon which the institution's position in the disagreement is based;

(2) A copy of the institution's final description of the disagreement shall be given to the accountant who provided the opinion with which the institution disagrees;

(3) The accountant shall have 10 business days to develop and provide a brief but thorough final response to the institution's description of the disagreement, including all items believed to be incorrect or incomplete, and citing, in all cases, the specific provisions of generally accepted accounting principles and generally accepted auditing

standards upon which the accountant's position in the disagreement is based;

(4) Both the institution's final description of the disagreement and the accountant's final response to it shall be included in the institution's annual report to shareholders directly following the accountant's opinion of the institution's financial statements; and

(5) The institution shall immediately notify the Chief Examiner, Farm Credit Administration, of any disagreement with its accountant and shall furnish the Farm Credit Administration with the written documentation required by paragraphs (c) (1) through (4) of this section.

(d) If an institution selects a qualified public accountant to audit its financial statements and provide an opinion thereon for its annual report who is different from the accountant whose opinion appeared in the institution's most recent annual report, the following items shall be sent to the Farm Credit Administration no later than 15 days after the end of the month in which the change took place and shall be included in the institution's annual meeting information statement and annual report to shareholders for the year in which the change of accountants took place:

(1) The name and address of the accountant whose opinion appeared in the institution's most recent annual report to shareholders;

(2) A brief but thorough statement of the reasons the accountant selected for the most recent annual report was not selected for the current annual report. If the change resulted from a disagreement with the accountant, the statement shall describe the institution's disagreement with the accountant's opinion and the accountant's final response to the institution's disagreement prepared pursuant to paragraph (c) of this section; and

(3) The identification of the highest ranking officer, committee of officers, or board of directors, as appropriate, that recommended, approved, or otherwise made the decision to change qualified public accountants.

§ 621.5 Accounting for the allowance for loan losses and chargeoffs.

Each institution shall:

(a) Maintain at all times an allowance for loan losses that is adequate to absorb all probable and estimable losses that may reasonably be expected to exist in the loan portfolio.

(b) Develop, adopt, and consistently apply policies and procedures governing the establishment and maintenance of the allowance for loan losses which, at a minimum, conform to the rules, definitions, and standards set forth in this part and any other applicable requirements.

(c) Charge-off loans, wholly or partially, as appropriate, at the time they are determined to be uncollectible.

(d) Ensure that when an institution or the Farm Credit Administration determines that the value of a loan or other asset recorded on its books and records exceeds the amount that can reasonably be expected to be collectible, or when the documentation supporting the recorded asset value is inadequate, the institution shall immediately charge off the asset in the amount determined to be uncollectible. If the amount determined to be uncollectible by the institution is different from the amount determined to be uncollectible by the Farm Credit Administration, the institution shall charge off such amount as the Farm Credit Administration shall direct.

Subpart C—Loan Performance and Valuation Assessment

§ 621.6 Performance categories and other property owned.

Each institution shall employ the following practices with respect to categorizing high-risk loans and loan-related assets. No loan shall be put into more than one performance category. At a minimum, loans meeting the criteria for both nonaccrual and another performance category shall be classified as nonaccrual.

(a) *Nonaccrual loans.* A loan shall be considered nonaccrual if it meets any of the following conditions:

(1) Collection of any amount of outstanding principal and all past and future interest accruals, considered over the full term of the asset, is not expected;

(2) Any portion of the loan has been charged off, except in cases where the

prior chargeoff was taken as part of a formal restructuring of the loan; or

(3) The loan is 90 days past due and is not both adequately secured and in process of collection.

(i) A loan is considered adequately secured only if:

(A) It is secured by real or personal property having a net realizable value sufficient to discharge the debt in full; or

(B) It is guaranteed by a financially responsible party in an amount sufficient to discharge the debt in full.

(ii) A loan is considered in process of collection only if collection efforts are proceeding in due course and, based on a probable and specific event, are expected to result in the prompt repayment of the debt or its restoration to current status. There must be documented evidence that collection in full of amounts due and unpaid is expected to occur within a reasonable time period, not to exceed 180 days from the date that payment was due. The commencement of collection efforts through legal action, including bankruptcy or foreclosure, or through collection efforts not involving legal action, including ongoing workouts and reamortizations, do not, in and of themselves, provide sufficient cause to keep a loan out of nonaccrual status. If full collection of the debt or its restoration to current status is dependent upon completion of any action by the borrower, the institution must obtain the borrower's written agreement to complete all such actions by the specific dates set forth in agreement.

(b) *Formally restructured loans.* A loan is considered formally restructured if it meets the ''troubled debt restructuring'' definition set forth in Statement of Financial Accounting Standards No. 15, Accounting by Debtors and Creditors for Troubled Debt Restructurings, as promulgated by the FASB.

(c) *Loans 90 days past due still accruing interest.* (1) Loans 90 days past due still accruing interest means loans that are 90 days or more contractually past due, and that are both adequately secured and in process of collection, as described in this section.

(2) A loan shall be considered contractually past due when any principal repayment or interest payment required by the loan instrument is not received on or before the due date. A loan shall remain contractually past due until it is formally restructured or until the entire amount past due, including principal, accrued interest, and penalty interest incurred as the result of past due status, is collected or otherwise discharged in full.

(d) *Other property owned* means any real or personal property, other than an interest-earning asset, that has been acquired as a result of full or partial liquidation of a loan, through foreclosure, deed in lieu of foreclosure, or other means.

§621.7 Rule of aggregation.

(a) When one loan to a borrower is placed in nonaccrual, an institution must immediately evaluate whether its other loans to that borrower, or related borrowers, should also be placed in nonaccrual. All loans on which a borrowing entity, or a component of a borrowing entity, is primarily obligated to the reporting institution shall be considered as one loan unless a review of all pertinent facts supports a reasonable determination that a particular loan constitutes an independent credit risk and such determination is adequately documented in the loan file.

(1) A loan shall be considered an independent credit risk if a substantial portion of the loan is guaranteed as to principal and interest by a government agency.

(2) Other loans shall be considered independent credit risks if and so long as:

(i) The primary sources of repayment are independent for each loan;

(ii) The loans are not cross-collateralized; and

(iii) The principal obligors are different person(s) and/or entity(ies). Related loans will not be considered independent credit risks if the operations of a related borrower are so financially interdependent with the borrower's operations that the economic survival of one will materially affect the economic survival of the other, determined in accordance with §614.4358(a)(2) of this chapter.

(b) If the evaluation required by paragraph (a) of this section results in a determination that the borrower's

other loans with the institution do not represent an independent credit risk, and full collection of such loans is not expected, then all of the borrower's loans must be aggregated and classified as nonaccrual. If such other loans represent an independent credit risk and are fully collectible, then they may remain in their current performance category.

(c) When an institution becomes aware that a borrower has a loan that has been classified nonaccrual by any other lender, the institution must reevaluate the credit risk in its loan to the borrower and then determine whether an independent credit risk exists.

§ 621.8 Application of payments and income recognition on nonaccrual loans.

Each institution shall employ the following practices with respect to application of cash payments on nonaccrual loans:

(a) If the ultimate collectibility of the recorded investment, in whole or in part, is in doubt, any payment received on such loan shall be applied to reduce the recorded investment to the extent necessary to eliminate such doubt.

(b) Once the ultimate collectibility of the recorded investment is no longer in doubt, payments received in cash on such loan may qualify for recognition as interest income if all of the following characteristics are met at the time the payment is received:

(1) The loan does not have a remaining unrecovered prior chargeoff associated with it, except in cases where the prior chargeoff was taken as part of a formal restructuring of the loan;

(2) The payment received has come from a source of repayment detailed in the plan of collection;

(3) The loan, after considering the payment, is not contractually past due more than 90 days and is not expected to become 90 days past due, or a repayment pattern has been established that reasonably demonstrates future repayment capacity.

(c) The institution shall employ the following practices with respect to earned but uncollected interest income on loans, leases, contracts, and similar assets that are determined not to be fully collectible:

(1) Earned but uncollected interest income that was accrued in the current fiscal year and is determined to be uncollectible shall be reversed from interest income; and

(2) Earned but uncollected interest income that was accrued in prior fiscal years and is determined to be uncollectible shall be charged off against the allowance for loan losses.

§ 621.9 Reinstatement to accrual status.

A loan may be reinstated to accrual status, when each of the following criteria are met:

(a) All contractual principal and interest due on the loan is paid and the loan is current;

(b) Prior chargeoffs are recovered, except for troubled debt restructures;

(c) No reasonable doubt remains regarding the willingness and ability of the borrower to perform in accordance with the contractual terms of the loan agreement; and

(d) Reinstatement is supported by a period of sustained performance in accordance with the contractual terms of the note and/or loan agreement. Sustained performance will generally be demonstrated by 6 consecutive monthly payments, 4 consecutive quarterly payments, 3 consecutive semi-annual payments, or 2 consecutive annual payments.

§ 621.10 Monitoring of performance categories and other property owned.

(a) Each institution shall:

(1) Account for, report, and disclose to shareholders, investors, boards of directors, and the Farm Credit Administration all material items with respect to performance categories and other property owned in accordance with the rules and definitions set forth in this part and any other applicable requirements;

(2) In accordance with § 620.5(g)(1)(iv)(A) of this chapter, disclose to shareholders, investors, boards of directors, and the Farm Credit Administration the nature and extent of

significant potential credit risks within the loan portfolio, or other information that could adversely impact performance of the loan portfolio in the near future;

(3) Develop, adopt, and consistently apply policies and procedures governing performance categories and other property owned, which, at a minimum, conform to the definitions, rules, and standards set forth in this part and such other requirements and procedures as may be required by the Farm Credit Administration;

(4) Review the loan portfolio at least quarterly to ensure that all high-risk loans have been assigned the appropriate performance category; and

(5) Review all high-risk loans in the loan portfolio at least quarterly to determine the collectibility of accrued but uncollected income, if any.

(b) Measures taken to enhance the collectibility of a loan shall not be deemed to relieve an institution of the requirement to monitor and evaluate the loan for the purpose of determining its performance status.

Subpart D—Report of Condition and Performance

§621.12 Applicability and general instructions.

(a) Each institution, including the Federal Agricultural Mortgage Corporation, shall prepare and file such reports of condition and performance as may be required by the Farm Credit Administration.

(b) Reports of condition and performance shall be filed four times each year, and at such other times as the Farm Credit Administration may require. The reports shall be prepared on the accrual basis of accounting and shall fairly represent the financial condition and performance of each institution at the end of, and over the period of, each calendar quarter, provided that such additional reports as may be necessary to ensure timely, complete, and accurate monitoring and evaluation of the affairs, condition, and performance of Farm Credit institutions may be required, as determined by the Chief Examiner, Farm Credit Administration.

(c) All reports of condition and performance shall be filed with the Farm Credit Administration, Office of Examination, 1501 Farm Credit Drive, McLean, Virginia, 22102–5090.

§621.13 Content and standards—general rules.

Each institution, including the Federal Agricultural Mortgage Corporation, shall prepare reports of condition and performance:

(a) In accordance with all applicable laws, regulations, standards, and such instructions and specifications and on such media as may be prescribed by the Farm Credit Administration;

(b) In accordance with generally accepted accounting principles and such other accounting requirements, standards, and procedures as may be prescribed by the Farm Credit Administration; and

(c) In such manner as to facilitate their reconciliation with the books and records of reporting institutions.

§621.14 Certification of correctness.

Each report of financial condition and performance filed with the Farm Credit Administration shall be certified as having been prepared in accordance with all applicable regulations and instructions and to be a true and accurate representation of the financial condition and performance of the institution to which it applies. The reports shall be certified by the officer of the reporting institution named for that purpose by action of the reporting institution's board of directors. If the board of directors of the institution has not acted to name an officer to certify the correctness of its reports of condition and performance, then the reports shall be certified by the president or chief executive officer of the reporting institution.

Subpart E—Reports Relating to Securities Activities of the Federal Agricultural Mortgage Corporation

§621.20 Form and content.

(a) The Federal Agricultural Mortgage Corporation (Corporation) shall provide the Office of Secondary Market

Oversight with three copies of any filings made with the SEC pursuant to the Securities Act of 1933 or the Securities and Exchange Act of 1934. Such copies shall be filed with the FCA no later than 1 business day after any SEC filing.

(b) The Corporation shall make the following filings with the Office of Secondary Market Oversight for securities either issued or guaranteed by the Corporation that are not registered under the Securities Act of 1933.

(1) Three copies of any offering circular, private placement memorandum, or information statement prepared in connection with the securities offering shall be filed with the Office of Secondary Market Oversight at or before the time of the securities offering.

(2) For securities backed by qualified loans as defined in section 8.0(9)(A) of the Act, the Corporation shall file one copy of the following within 1 business day of the finalization of the transaction:

(i) The private placement memoranda for securities sold to investors; and

(ii) The pooling and servicing agreement when the security is purchased by the Corporation as authorized by section 8.6(g) of the Act.

(3) For securities backed by qualified loans as defined in section 8.0(9)(B) of the Act, the Corporation shall provide summary information on such securities issued during each calendar quarter in the form prescribed by the Office of Secondary Market Oversight. Such summary information shall be provided with each report of condition and performance filed pursuant to § 621.12, and at such other times as the Office of Secondary Market Oversight may require.

(c) The Corporation shall file with the Office of Secondary Market Oversight copies of all substantive correspondence between the Corporation and the Securities and Exchange Commission and the Department of the Treasury relating to securities activities or regulatory compliance. Such correspondence should be filed no later than the date of filing of the report of condition and performance for the calendar quarter in which the correspondence was received or sent.

(d) The Corporation shall promptly notify the Office of Secondary Market Oversight if it becomes exempt or claims exemption from the filing requirements of the Securities and Exchange Act of 1934.

[58 FR 48786, Sept. 20, 1993]

PART 622—RULES OF PRACTICE AND PROCEDURE

Subpart A—Rules Applicable to Formal Hearings

Sec.
622.1 Scope of regulations.
622.2 Definitions.
622.3 Appearance and practice.
622.4 Commencement of proceedings.
622.5 Answer.
622.6 Opportunity for informal settlement.
622.7 Conduct of hearings.
622.8 Rules of evidence.
622.9 Subpoenas.
622.10 Depositions.
622.11 Motions.
622.12 Proposed findings and conclusions; recommended decision.
622.13 Exceptions.
622.14 Briefs.
622.15 Oral argument before the Board.
622.16 Notice of submission to the Board.
622.17 Decision of the Board.
622.18 Filing.
622.19 Service.
622.20 Documents in proceedings confidential.
622.21 Computing time.
622.22 Retained authority.
622.23—622.50 [Reserved]

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

622.51 Definitions.
622.52 Purpose and scope.
622.53 Notification of alleged violations.
622.54 Relevant considerations.
622.55 Notice of assessment of civil money penalty.
622.56 Request for formal hearing on assessment.
622.57 Waiver of hearing; consent.
622.58 Hearing on assessment.
622.59 Assessment order.
622.60 Payment of civil money penalty.
622.61 Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Improvement Act of 1996.
622.62—622.75 [Reserved]

Subpart C—Rules and Procedures Applicable to Suspension or Removal of an Individual Where Certain Crimes are Charged or Proven

622.76 Definitions.
622.77 Purpose and scope.
622.78 Suspension, prohibition or removal.
622.79 Petition for informal hearing.
622.80 Informal hearing.
622.81 Default.
622.82 Decision of the Board.
622.83—622.100 [Reserved]

Subpart D—Rules and Procedures Applicable to Formal Investigations

622.101 Definitions.
622.102 Scope.
622.103 Formal investigations are confidential.
622.104 Order to conduct formal investigation.
622.105 Conduct of investigation.
622.106 Service of subpoena and payment of witness fees.
622.107 Transcripts.

AUTHORITY: Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273); Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321–358.

SOURCE: 51 FR 21139, June 11, 1986, unless otherwise noted.

Subpart A—Rules Applicable to Formal Hearings

§622.1 Scope of regulations.

This subpart prescribes rules of practice and procedure in connection with any formal hearing before the Farm Credit Administration (FCA) that is required by the Farm Credit Act of 1971, as amended (Act) or is ordered for other reasons by the FCA. In connection with any particular matter, reference should also be made to any special requirements of practice and procedure that may be contained in applicable provisions of the Act or the rules adopted by the FCA in subpart B of this part, which special requirements are controlling. The rules in subpart A do not apply to the informal hearings described in subpart C of this part, to any other informal hearing that may be ordered by the FCA, or to formal investigations described in subpart D of this part.

§622.2 Definitions.

As used in this part:

(a) *Act* means the Farm Credit Act of 1971, as amended. 12 U.S.C. 2001, *et seq.*

(b) *FCA* means the Farm Credit Administration.

(c) *Board* means the Farm Credit Administration Board.

(d) The terms *institution in the System*, *System institution* and *institution* mean all institutions enumerated in section 1.2 of the Act, any institution chartered pursuant to or established by the Act, except for the Farm Credit System Assistance Board and the Farm Credit System Insurance Corporation, and any service organization chartered under part E of title IV of the Act.

(e) *Party* means the FCA or a person or institution named as a party in any notice that commences a proceeding, or any person or institution who is admitted as a party or who has filed a written request and is entitled as of right to be a party.

(f) *Presiding officer* means an administrative law judge or any FCA employee or other person designated by the Board to conduct a hearing.

(g) *Ex parte communication* means an oral or written communication not on the record with respect to which reasonable prior notice to all parties is not given. It does not include requests for status reports.

[51 FR 21139, June 11, 1986, as amended at 53 FR 27284, July 19, 1988]

§622.3 Appearance and practice.

(a) *Appearance before the Board or a presiding officer*—(1) *By nonattorneys.* An individual may appear in his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer or other agent of a corporation, trust association or other entity not specifically listed herein may represent the corporation, trust association, or other entity; and a duly authorized officer or employee of any government unit, agency or authority may represent that unit, agency or authority. Any person appearing in a representative capacity shall file a written notice of appearance with the Board which shall contain evidence of his or her authority to act in such capacity.

(2) *By attorneys.* A party may be represented by an attorney who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth or the District of Columbia, and who has not been suspended or debarred from practice before the FCA in accordance with the provisions of part 623 of this chapter. Prior to appearing, an attorney representing a person in a proceeding shall file a written notice of appearance with the Board, which shall contain a declaration that he or she is currently qualified as provided by paragraph (a)(2) of this section and is authorized to represent the party on whose behalf he or she acts.

(3) *Representation of multiple interests.* A person shall not represent more than one party without informing each party of any actual or potential conflict of interest that may be involved in such representation. Such person shall file a statement with the Board indicating that such disclosure has been made. The presiding officer has authority to take protective measures at any stage of a proceeding, including the authority to prohibit multiple representation when deemed appropriate.

(b) *Summary suspension.* Dilatory, obstructionist, egregious, contemptuous, contumacious, or other unethical or improper conduct at any proceeding before the Board or a presiding officer shall be grounds for exclusion therefrom and suspension for the duration of the proceeding, or other appropriate action by the Board or presiding officer.

§ 622.4 Commencement of proceedings.

Proceedings under this subpart are commenced by the issuance of a notice by the Board. Such notice shall state the time, place, and nature of the hearing, the name and address of the presiding officer if one has been designated, and a statement of the matters of fact and law constituting the grounds for the hearing. The matters of fact and law alleged in a notice may be amended by the Board at any stage of the proceeding and such amended notice may require an answer from the party or parties served and may set a new hearing date. A copy of any notice served by the FCA on any System association, director, officer or other person participating in the conduct of the affairs of the association will also be sent to the supervisory bank.

§ 622.5 Answer.

(a) *Answer is required.* Unless a different period is specified by the Board, a party who does not wish to consent to a final order must file an answer within 20 days after being served with a notice that commences the proceeding. Any subsequent notice which contains amended allegations and by its terms requires an answer must similarly be answered within 20 days after service.

(b) *Requirements of answer; effect of failure to deny.* An answer filed under this section shall concisely state any defenses and specifically admit or deny each allegation in the notice. A party who lacks information or knowledge sufficient to form a belief as to the truth of any particular allegation shall so state and this shall have the effect of a denial. Any allegation not denied shall be deemed to be admitted. A party who intends in good faith to deny only a part of or to qualify an allegation shall specify so much of it as is true and shall deny only the remainder.

(c) *Admitted allegations.* If a party filing an answer under this section elects not to contest any of the allegations of fact set forth in the notice, the answer shall consist of a statement admitting all of the allegations to be true. Such answer constitutes a waiver of hearing as to the facts alleged in the notice, and together with the notice will provide a record basis on which the presiding officer shall file with the Board a recommended decision in accordance with 5 U.S.C. 557. The recommended decision shall be served on the party, who may file exceptions thereto within the time provided in § 622.13.

(d) *Effect of failure to answer.* Failure of a party to file an answer required by this section within the time provided constitutes a waiver of the party's right to appear and contest the allegations in the notice and authorizes the presiding officer, without further notice to the party, to find the facts to be as alleged in the notice and to file with

the Board a recommended decision containing such findings and appropriate conclusions. The Board or the presiding officer may, for good cause shown, permit the filing of a delayed answer after the time for filing and the answer has expired.

§622.6 Opportunity for informal settlement.

Any interested party may at any time submit to the Board for consideration written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No offer or proposal shall be admissible into evidence over the objection of any party in any hearing in connection with such proceeding. The foregoing provisions of this section shall not preclude settlement of any proceeding through the regular adjudicatory process by the filing of an answer as provided in §622.5(c), or by submission of the case to the presiding officer on a stipulation of facts and an agreed order.

§622.7 Conduct of hearings.

(a) *Authority of presiding officer.* All hearings governed by this subpart shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The presiding officer designated by the Board to preside at any such hearing shall have complete charge of the hearing, shall have the duty to conduct it in a fair and impartial manner and shall take all necessary action to avoid delay in the disposition of the proceeding. Such officer shall have all powers necessary to that end, including the following:

(1) To administer oaths and affirmations;

(2) To issue subpoenas and subpoenas duces tecum, as authorized by law, and to revoke, quash, or modify any such subpoena;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold conferences for the settlement or simplification of issues or for any proper purpose; and

(7) To consider and rule upon, as justice may require, all procedural and other motions appropriate in a proceeding under this subpart, except that a presiding officer shall not have power to decide any motion to dismiss the proceeding or other motion which results in a final determination of the merits of the proceeding. This power rests only with the Board. Without limitation on the foregoing, the presiding officer shall, subject to the provisions of this subpart, have all the authority set forth in 5 U.S.C. 556(c).

(b) *Prehearing conference.* The presiding officer may, on his or her own initiative or at the request of any party, direct counsel for all parties to meet with him or her at a specified time and place prior to the hearing, or to submit suggestions to him or her in writing, for the purpose of considering any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact and of the contents and authenticity of documents;

(3) Matters of which official notice will be taken; and

(4) Such other matters as may aid in the orderly disposition of the proceeding.

At the conclusion of such conference(s) the presiding officer shall enter an order which recites the results of the conference. Such order shall include the presiding officer's rulings upon matters considered at the conference, together with appropriate directions, if any, to the parties. Such order shall control the subsequent course of the proceeding, unless modified at the hearing for good cause shown.

(c) *Exchange of information.* Thirty (30) days prior to the hearing, parties shall exchange a list of the names of witnesses with a general description of their expected testimony, and a list and one copy of all documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

(d) *Attendance at hearings.* All hearings shall be private and shall be attended only by the parties, their counsel or authorized representatives, witnesses while testifying, and other persons having an official interest in the proceeding. However, if the Board, in its discretion, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest, the Board may in its sole discretion order that the hearing be public.

(e) *Transcript of testimony.* Hearings shall be recorded. A copy of the transcript of the testimony taken at any hearing, duly certified by the reporter, together with all exhibits accepted into evidence shall be filed with the presiding officer. The presiding officer shall promptly serve notice upon all parties of such filing. The parties shall make their own arrangements with the person recording the testimony for copies of the testimony and exhibits. The presiding officer shall have authority to correct the record sua sponte with notice to all parties and to rule upon motions to correct the record. In the event the hearing is public, transcripts will be furnished to interested persons upon payment of the cost thereof.

(f) *Continuances and changes or extensions of time and changes of place of hearing.* Except as otherwise provided by law, the presiding officer may extend time limits prescribed by these rules or by any notice or order issued in the proceedings, may change the time for beginning any hearing, continue or adjourn a hearing from time to time, and/or change the location of the hearing. Prior to the appointment of a presiding officer and after the filing of a recommended decision pursuant to §622.12, the Board may grant such extensions or changes. Subject to the approval of the presiding officer, the parties may by stipulation change the time limits specified by these rules or any notice or order issued hereunder.

(g) *Closing of hearing.* The record of the hearing shall be closed by an announcement to that effect by the presiding officer when the taking of evidence has been concluded. In the discretion of the presiding officer, the record may be closed as of a future date in order to permit the admission into the record, under circumstances determined by the presiding officer, of exhibits to be prepared.

(h) *Call for further evidence, oral arguments, briefs, reopening of hearing.* The presiding officer may call for the production of further evidence upon any issue, may permit oral argument and submission of briefs at the hearing and, upon appropriate notice, may reopen any hearing at any time prior to the filing of his or her recommended decision. The Board may reopen the record at anytime permitted by law.

(i) *Order of procedure.* The FCA shall open and close.

(j) *Ex parte communications.* (1) No person shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to the presiding officer or anyone who is or may reasonably be expected to be involved in the decisional process.

(2) No person who is or may reasonably be expected to be involved in the decisional process shall make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any person.

(3) Except as authorized by law, the presiding officer shall not consult anyone on any fact in issue, unless upon notice and opportunity for all parties to participate. The presiding officer shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent of the FCA engaged in the performance of investigative or prosecuting functions. An officer, employee or agent engaged in the performance of such functions in any case shall not, in that case or a factually related case, participate or advise in the decision of the presiding officer, except as a witness or counsel in the proceedings, or as otherwise authorized by law.

(4) If an ex parte communication is made or knowingly caused to be made, all such communications, and any responses, shall be placed in the record.

(5) Upon receipt of a communication knowingly made or caused to be made in violation of paragraph (j) of this section, the responsible party may be required to show cause why such party's

claim or interest should not be dismissed, denied, or otherwise adversely affected. To the extent consistent with the interests of justice, a knowing violation of paragraph (j) of this section may be grounds for a decision adverse to a party in violation.

(6) The prohibitions against ex parte communications apply from the time a proceeding is noticed for hearing. However, when the person responsible for the communication has knowledge that the proceeding will be noticed, the prohibitions apply from the time such knowledge is acquired.

§622.8 Rules of evidence.

(a) *Evidence.* Every party shall have the right to present a case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

(b) *Objections.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objection relied upon but no argument thereon shall be permitted, except as ordered, allowed, or requested by the presiding officer. Rulings on such objections and all other matters shall be part of the transcript. Failure to object timely to the admission or exclusion of evidence or to any ruling constitutes a waiver of such objection.

(c) *Stipulations.* Independently of the orders or rulings issued as provided by §622.7(b), the parties may stipulate as to any relevant matters of fact or the authenticity of any relevant documents. Such stipulations may be received in evidence at the hearing, and when so received shall be binding on the parties with respect to the matters therein stipulated.

(d) *Official notice.* All matters officially noticed by the presiding officer shall appear on the record.

§622.9 Subpoenas.

(a) *Issuance.* The presiding officer or, in the event he or she is unavailable, the Board may issue subpoenas and subpoena duces tecum at the request of any party requiring the attendance of witnesses or the production of documents at a designated place. The person seeking the subpoena may be required, as a condition precedent to the issuance of the subpoena, to show the general relevance and reasonable scope of the testimony or other evidence sought. Where it appears to the presiding officer that a subpoena may be unreasonable, oppressive, excessive in scope, unduly burdensome, or delay the proceeding, the presiding officer has discretion to refuse to issue a subpoena or to issue it only upon such conditions as fairness requires.

(b) *Motions to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance but in no event more than 10 days after the date the subpoena was served, with notice to the party requesting the subpoena, apply to the presiding officer, or in the event he or she is unavailable to the Board, to quash or modify the subpoena, accompanying such application with a brief statement of the reasons therefor. The presiding officer may deny the application or, upon notice to the party on whose behalf the subpoena was issued and after affording that party an opportunity to reply, may quash or modify the subpoena or impose reasonable conditions including, in the case of a subpoena duces tecum, a requirement that the party on whose behalf the subpoena was issued pay in advance the reasonable cost of copying and transporting the documentary evidence to the designated place.

(c) *Service of subpoena.* A subpoena may be served upon the person named therein by personal service or certified mail with a return receipt to the last known address of the person. The fees for one day's attendance and mileage as specified in paragraph (d) of this section must be tendered at the time of service unless the subpoena is issued on behalf of the FCA. If personal service is made by a U.S. marshal, a deputy U.S. marshal, or an employee of the FCA, such service shall be evidenced by the return thereon. If personal service is made by any other person, such person shall sign an affidavit describing the manner in which service is made, and return such affidavit with a copy of the subpoena. In case of failure to make service, reasons for the failure shall be

stated on the original subpoena. The original or a copy of the subpoena, bearing or accompanied by the required return, affidavit, statement or return receipt, shall be returned without delay to the presiding officer.

(d) *Attendance of witnesses.* The attendance of witnesses at a designated place may be required from any place in any State or territory subject to the jurisdiction of the United States. Witnesses who are subpoenaed shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Fees required by this paragraph shall be paid by the party upon whose application the subpoena is issued.

(e) *Production of documents.* The production of documents at a designated place may be required from any place in any State or territory subject to the jurisdiction of the United States. In lieu of an original document, a certified or authenticated copy may be produced. However, any party has the right to inspect the original document.

§ 622.10 Depositions.

(a) *Application to take deposition.* Any party desiring to take the deposition of any person shall make written application to the presiding officer setting forth the name and address of the witness, the subject matter concerning which the witness is expected to testify, its relevance, the time and place of the deposition, and the reasons why such deposition should be taken. The application may include a request that specified documents be produced at the deposition. A copy of the application shall be served on the other parties at the same time the application is filed with the presiding officer.

(b) *Subpoena; notice to other parties.* Upon a showing that the testimony or other evidence sought will be material, and the taking of the deposition will not result in any undue burden to the witness or any party or undue delay of the proceedings, the presiding officer may issue a subpoena or subpoena duces tecum. Notice of the issuance of such subpoena shall be served upon all parties at least 10 days in advance of the date set for deposition.

(c) *Deposition by notice.* The requirements of paragraphs (a) and (b) of this section may be waived by agreement of the parties and the witness whose testimony or documentary evidence is sought. Such agreement shall be embodied in a stipulation which becomes part of the record and may provide for the taking of depositions upon notice without leave of the presiding officer.

(d) *Procedure on deposition.* Depositions may be taken before any person having the power to administer oaths. Each witness whose testimony is taken by deposition shall be duly sworn before any question is propounded. Examination and cross-examination of deponents may proceed as permitted at the hearing. Objections to questions or documents shall be in short form, stating the grounds relief upon for the objection. Failure to object to questions or evidence is deemed a waiver if the ground of the objection is one which might have been obviated or removed if presented at that time. The questions propounded and the answers thereto, together with all objections made (but not including argument or debate) shall be recorded by or under the direction of the person before whom the deposition is taken. The deposition shall be signed by the witness, unless the parties by stipulation waive the signing or the witness is physically unable to sign, cannot be found, or refuses to sign. The deposition shall also be certified as a true and complete transcript by the person recording the testimony. If the deposition is not signed by the witness, the person recording the testimony shall state this fact and the reason therefor on the record. The person before whom the deposition is taken shall promptly file the transcript and all exhibits with the presiding officer. Interested parties shall make their own arrangements with the person recording the testimony for copies of the testimony and exhibits.

(e) *Introduction as evidence.* Subject to appropriate rulings by the presiding officer on such objections and answers as were noted at the time the deposition was taken or as would be valid were the witness personally present and testifying at the hearing, the deposition or any part thereof may be received in evidence by the presiding officer in his or her discretion. Only such part of a deposition as is received in evidence at

a hearing shall constitute a part of the record upon which a decision may be based.

(f) *Payment of fees.* Deponents whose depositions are taken and the reporter taking the same shall be entitled to the same fees as are paid for like services in the district courts of the United States, which fees shall be paid by the party upon whose application the deposition is taken.

§622.11 Motions.

(a) *How made.* An application or request for an order or ruling not otherwise specifically provided for in this subpart, unless made during a hearing, shall be made by written motion supported by a memorandum which concisely states the grounds therefor.

(b) *Opposition.* Within 10 days after service of any written motion, or within such other period of time as may be fixed by the presiding officer, any party may file a memorandum in opposition thereto. The moving party has no right to reply except as permitted by the presiding officer. The presiding officer has discretion to waive the requirements of this section as to motions for extension of time and may rule upon such motions ex parte.

(c) *Oral argument.* No oral argument will be heard on motions except as otherwise directed by the presiding officer or the Board.

(d) *Rulings and orders.* Except as otherwise provided in this subpart, the presiding officer shall rule on all motions and may issue appropriate orders, except that motions may be referred to the Board if the presiding officer is unavailable or determines that such motion should be referred to the Board. Prior to the appointment of a presiding officer and after a recommended decision is filed pursuant to §622.12, the Board shall rule on motions filed by the parties.

(e) *Appeal from rulings on motions.* All answers, motions, objections and rulings shall become part of the record. Rulings of a presiding officer on any motion may not be appealed to the Board prior to its consideration of the presiding officer's recommended decision, except by special permission of the Board. However, such rulings shall be considered by the Board in reviewing the record. Requests to the Board for special permission to appeal from a ruling of the presiding officer shall be filed in writing within 5 days of the ruling, and shall briefly state the grounds relied on. The moving party shall immediately serve a copy thereof on every other party to the proceeding who may then respond to such request within 5 days after service.

(f) *Continuation of hearing.* Unless otherwise ordered by the presiding officer or the Board, the hearing shall continue pending the determination of any request or motion by the Board.

§622.12 Proposed findings and conclusions; recommended decision.

(a) *Proposed findings and conclusions by parties.* Within 30 days after the hearing transcript has been filed, any party may file proposed findings of fact and conclusions of law. Such proposals shall be supported by citation of such statutes, decisions, and other authorities, and by specific page references to such portions of the record as may be relevant. All such proposals shall become a part of the record.

(b) *Recommended decision by presiding officer.* Within 30 days after the expiration of time allowed under paragraph (a) of this section, or within such further time as the Board for good cause allows, the presiding officer shall file the entire hearing record, including a recommended decision and findings and conclusions, the transcript, exhibits (including on request of any of the parties any exhibits excluded from evidence or tender of proof), exceptions, rulings and all briefs and memoranda filed in connection with the hearing. Promptly upon such filing, the presiding officer shall serve a copy of the recommended decision, findings and conclusions upon each party to the proceeding.

(c) *Board as presiding officer.* In proceedings in which the Board or one or more of its members has presided at the reception of evidence, the presiding officer's recommended decision, findings of fact, and conclusions of law will be omitted. In such proceedings the proposed findings and conclusions, briefs, and other submissions permitted under paragraph (a) of this section

shall be filed with the Board for consideration.

§ 622.13 Exceptions.

(a) *Filing.* Within 15 days after service of the recommended decision of the presiding officer, any party may file exceptions thereto or to any portion thereof, or to the failure of the presiding officer to make any recommendation, finding, or conclusion, or to the admission or exclusion of evidence, or to any other ruling of the presiding officer.

(b) *Contents.* Each exception shall be supported by a concise argument and by citation of such statutes, decisions and other authorities, and by page references to such portions of the record as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief with appropriate references to the transcript.

(c) *Waiver.* Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed shall be a waiver of objection thereto.

§ 622.14 Briefs.

(a) *Contents.* Any brief filed in a proceeding shall be confined to the particular matters in issue, citing statutes, decisions, and other authorities, and page references to such portions of the record or the recommended decision of the presiding officer as may be relevant.

(b) *Reply briefs.* Reply briefs may be filed within 10 days after service of original briefs of opposing parties, and shall be confined to matters in such briefs. Further briefs may be filed only with permission of the presiding officer or the Board with respect to a matter before the Board.

(c) *Delayed filing.* Briefs not filed on or before the time fixed in this subpart or by the presiding officer will be received only upon special permission of the Board.

§ 622.15 Oral argument before the Board.

Upon its own initiative or upon written request by any party, the Board, in its discretion, may order the matter to be set down for oral argument before the Board or one or more members thereof. Any request for oral argument by a party filing exceptions shall be made within the time prescribed for filing such exceptions, or by any other party, within the time prescribed for the filing of a reply brief. Oral argument before the Board shall be recorded unless otherwise ordered by the Board.

§ 622.16 Notice of submission to the Board.

Upon the filing of the record with the Board, and upon the expiration of the time for the filing of exceptions and all briefs, including reply briefs or any further briefs permitted by the presiding officer or the Board, and upon the hearing of oral argument by the Board, if ordered by the Board, the Board shall notify the parties in writing that the case has been submitted for final decision.

§ 622.17 Decision of the Board.

Any person who has not engaged in the performance of investigative or prosecuting functions in the case, or in a factually related case, may advise and assist the Board in the consideration of the case. Copies of the decision and order of the Board shall be served upon the parties. A copy of the order will also be sent to the supervisory bank if the order relates to a System association, director, officer, or other person participating in the conduct of the affairs of the association.

§ 622.18 Filing.

(a) *Filing.* Papers required or permitted to be filed with the Board shall be filed with the Chairman of the Board, FCA, 1501 Farm Credit Drive, McLean, VA 22102–5090 or with the person designated to receive papers for the agency in a proceeding. Papers sent by mail must be postmarked or received within the prescribed time limit for filing. Papers sent by any other means must be received within the prescribed time limit for filing.

(b) *Formal requirements.* All filed papers shall be printed, typewritten, or otherwise reproduced, and copies shall be clear and legible. The original of all papers filed by a party shall be signed

and dated as of the date of execution by the party filing the same, or a duly authorized agent or attorney. The signer's address and telephone number must appear on the original. Counsel for the FCA shall sign the original of all papers filed on behalf of the FCA. All papers filed must name in the heading or on a title page, the parties, the docket number and the subject of the papers.

(c) *Copies.* Parties shall file an original and three copies of all documents and papers required or permitted to be filed under this subpart (except the transcript of testimony and exhibits), unless otherwise specifically provided by the Board.

§622.19 Service.

(a) *Service.* Except as otherwise provided in these rules, each party who files papers is responsible for serving a copy thereof upon the presiding officer and upon every other party or the attorney or representative of record of that party. A copy of all papers filed by the presiding officer or the Board, except for the transcript of testimony and exhibits, shall be served upon each of the parties. Service may be by personal service, private delivery service, or by express, certified or regular first-class mail. If a party is not represented, service shall be made at the last known address of the party or an officer thereof as shown on the records of the FCA.

(b) *Proof of service.* Proof of service of papers filed by a party shall be filed before action is to be taken thereon. The proof shall show the date and manner of service, and may be by written acknowledgment of service, by declaration of the person making service, or by certificate of an attorney or other representative of record. Failure to make proof of service shall not affect the validity of service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§622.20 Documents in proceedings confidential.

Unless otherwise ordered by the Board or required by law, the entire record in any proceeding under this subpart, including the notice of hearing, transcript, exhibits, proposed findings and conclusions, recommended decision of the presiding officer, exceptions thereto, decision and order of the Board, and any other papers which are filed in connection with the proceeding shall not be made public, and shall be for the confidential use only of the FCA and its staff, the presiding officer, the parties, and other appropriate supervisory authorities.

§622.21 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act or event from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday or Federal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or Federal holiday. When the period of time prescribed or allowed is 10 days or less, intermediate Saturdays, Sundays, and Federal holidays shall not be included in the computation.

(b) *Service by mail.* Whenever any party has the right or is required to do some act within the period of time prescribed in this subpart after the service upon the party of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period from the date when the matter served is deposited in the United States mail.

§622.22 Retained authority.

Nothing is this part is in derogation of powers of examination and investigation conferred on the FCA by any provision of law.

§§622.23—622.50 [Reserved]

Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

SOURCE: 53 FR 27284, July 19, 1988, unless otherwise noted.

§ 622.51 Definitions.

Unless noted otherwise, the definitions set forth in § 622.2 of subpart A shall apply to this subpart.

§ 622.52 Purpose and scope.

The rules and procedures specified in this subpart and in subpart A are applicable to proceedings by the FCA to assess and collect civil money penalties:

(a) For a violation of the terms of a final cease and desist order issued under section 5.25 or 5.26 of the Act, or

(b) For violation of any provision of the Act or any regulation issued under the Act.

§ 622.53 Notification of alleged violations.

Before determining whether to assess a civil money penalty and determining the amount of such penalty, the FCA shall notify the institution or person to be assessed of the violation(s) alleged to have occurred or to be occurring, and shall solicit the written views of the institution or person regarding the imposition of such penalty.

§ 622.54 Relevant considerations.

In determining the amount of any penalty assessed, the FCA shall consider the financial resources and good faith of the institution or person charged, the gravity of the violation, any previous violations, and such other matters as justice may require.

§ 622.55 Notice of assessment of civil money penalty.

(a) *Notice of assessment.* After considering any written materials submitted in accordance with § 622.53 and the factors stated in § 622.54, the FCA shall commence a civil money penalty proceeding with the issuance of a notice of assessment of a civil money penalty. The notice of assessment shall state:

(1) The legal authority for the assessment;

(2) The amount of the civil money penalty being assessed;

(3) The date by which the civil money penalty shall be paid;

(4) The matter of fact or law constituting the grounds for assessment of the civil money penalty;

(5) The right of the institution or person being assessed to a formal hearing to challenge the assessment in accordance with 12 U.S.C. 2268(c) and (d);

(6) That failure to request a hearing constitutes a waiver of the opportunity for a hearing and the notice of assessment shall constitute a final and unappealable order in accordance with 12 U.S.C. 2268(c); and

(7) The time limit to request such a formal hearing.

(b) *Service.* The notice of assessment may be served upon the institution or person being assessed by personal service or by certified mail with a return receipt to the institution's or the person's last known address. Such service constitutes issuance of the notice.

§ 622.56 Request for formal hearing on assessment.

An institution or person being assessed may request a formal hearing to challenge the assessment of a civil money penalty. The request must be filed in writing, within 10 days of the issuance of the notice of assessment, with the Chairman of the Board, FCA, 1501 Farm Credit Drive, McLean, VA 22102–5090.

§ 622.57 Waiver of hearing; consent.

(a) *Waiver.* Failure to request a hearing pursuant to § 622.56 constitutes a waiver of the opportunity for a hearing and the notice of assessment issued pursuant to § 622.55 shall constitute a final and unappealable order.

(b) *Consent.* Any party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative is deemed to have consented to the issuance of an assessment order.

§ 622.58 Hearing on assessment.

(a) *Time and place.* An institution or person requesting a hearing shall be informed by order of the Board of the time and place set for hearing.

(b) *Answer; procedures.* The hearing order may require the institution or person requesting the hearing to file an answer as prescribed in § 622.5 of subpart A. The procedures of the Administrative Procedure Act (5 U.S.C. 554–557) and subpart A of these rules shall apply to the hearing.

§622.59 Assessment order.

(a) *Consent.* In the event of consent of the parties concerned to an assessment, or if, upon the record made at a hearing ordered under this subpart, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue an order of assessment of civil money penalty. In its assessment order, the Board may reduce the amount of the penalty specified in the notice of assessment.

(b) *Effective date and period.* An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and shall remain effective and enforceable unless it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.

(c) *Service.* An assessment order may be served by personal service or by certified mail with a return receipt to the last known address of the institution or person being assessed. Such service constitutes issuance of the order.

§622.60 Payment of civil money penalty.

(a) *Payment date.* Generally, the date designated in the notice of assessment for payment of the civil money penalty will be 60 days from the issuance of the notice. If, however, the Board finds, in a specific case, that the purposes of the statute would be better served if the 60-day period were changed, the Board may shorten or lengthen the period or make the civil money penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of a civil money penalty is filed, payment of the penalty shall not be required unless and until the Board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date by which the civil money penalty is to be paid or collected.

(b) *Method of payment.* Checks in payment of civil money penalties should be made payable to the ''Farm Credit Administration.'' Upon collection, the FCA shall forward the amount of the penalty to the Treasury of the United States.

§622.61 Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Improvement Act of 1996.

(a) A civil money penalty imposed pursuant to section 5.32 of the Act for a violation occurring after October 23, 1996 of a final cease and desist order issued under section 5.25 or 5.26 of the Act shall not exceed $1,100 per day for each day the violation continues.

(b) A civil money penalty imposed pursuant to section 5.32 of the Act for a violation occurring after October 23, 1996 of any provision of the Act or any regulation issued under the Act shall not exceed $550 per day for each day the violation continues.

[61 FR 54729, Oct. 22, 1996]

§§622.62—622.75 [Reserved]

Subpart C—Rules and Procedures Applicable to Suspension or Removal of an Individual Where Certain Crimes Are Charged or Proven

§622.76 Definitions.

Unless noted otherwise, the definitions set forth in §622.2 of subpart A shall apply to this subpart.

§622.77 Purpose and scope.

The rules and procedures set forth in this subpart apply to informal hearings afforded to any officer, director, or other person participating in the conduct of the affairs of a System institution who has been suspended or removed from office or prohibited from further participation in any manner in the conduct of the institution's affairs by a notice or order issued by the Board upon the grounds set forth in section 5.29 of the Act.

§622.78 Suspension, prohibition or removal.

(a) *Content.* The Board may serve a notice of suspension or prohibition or order of removal upon a director, officer or other person participating in the conduct of the affairs of an institution. A copy of such notice or order shall also be served upon the institution, whereupon the individual concerned

shall immediately cease service to the institution or participation in the affairs of the institution. Any notice or order shall indicate the basis for the suspension, prohibition, or removal and shall inform the individual of the right to request in writing, within 30 days of being served with such notice or order, an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of the institution does not, or is not likely to, pose a threat to the interests of the institution's shareholders or the investors in Farm Credit System obligations or threaten to impair public confidence in the institution or the Farm Credit System.

(b) *Service.* A notice or order of suspension, removal or prohibition may be served by personal service or by certified mail with a return receipt to the last known address of the person being served.

§ 622.79 Petition for informal hearing.

(a) *Filing.* To obtain a hearing, the subject individual must file an original and three copies of a petition with the Board within 30 days of being served with the notice or order.

(b) *Content.* The petition shall:

(1) State whether the petitioner is requesting termination or modification of the notice or order;

(2) State with particularity how the petitioner intends to show that his or her continued service to or participation in the conduct of the affairs of the institution would not, or is not likely to, pose a threat to the interests of the institution's shareholders or the investors in Farm Credit System obligations or threaten to impair public confidence in the institution or the Farm Credit System;

(3) Include a request to present oral testimony or witnesses at the hearing, if the petitioner desires to do so. The request should specify the names of the witnesses and a summary of their expected testimony; and

(4) Indicate whether the petitioner desires oral argument or elects to have the matter determined solely on the basis of written submissions.

§ 622.80 Informal hearing.

(a) *Time and place.* Upon receipt of a timely petition for a hearing, the Board shall notify the petitioner of the time and place fixed for the hearing and shall designate one or more Board members or FCA employees to preside (''designated FCA representative''). The hearing shall be scheduled to be held no later than 30 days from the date a petition for hearing is received unless the time is extended at the request of the petitioner. Notice of the hearing shall also be sent to the FCA's Office of General Counsel.

(b) *Appearance.* A petitioner may appear personally or through counsel to submit relevant written materials and oral argument. An attorney is subject to all the requirements and limitations imposed on attorneys in § 622.3 of subpart A. A representative(s) of the FCA's Office of General Counsel may participate in the hearing to the extent such representative deems appropriate.

(c) *Written material.* Any written material the petitioner wishes to have considered must be submitted to the designated FCA representative and the FCA's Office of General Counsel at least 10 days prior to the date of the hearing.

(d) *Oral testimony.* Oral testimony may be presented only if expressly permitted by the Board in the notice of hearing. The designated FCA representative may ask questions of any witness.

(e) *Transcripts.* Oral testimony, if any, and oral argument shall be recorded. A copy of the transcript shall be filed with the designated FCA representative, who shall have authority to correct the record sua sponte upon notice, or upon the motion of the petitioner or the representative of the FCA's Office of General Counsel. The designated FCA representative shall promptly serve notice upon the petitioner and the FCA's Office of General Counsel of such filing. Such parties shall make arrangements with the person recording the testimony or argument for copies of the transcript.

(f) *Closing of record.* Upon the request of the petitioner or representative of the FCA's Office of General Counsel, the record shall remain open for a period of 5 business days following the

hearing, during which time additional submissions for the record may be made. Thereafter, the record shall be closed.

(g) *Rules of evidence and procedure.* Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554–557) or subpart A of these rules shall apply to the informal hearing ordered under this subpart unless the Board orders that they apply in whole or in part.

§622.81 Default.

If the subject individual fails to file a petition for a hearing, or fails to appear at a hearing, either in person or by an attorney, or fails to submit a written argument where oral argument has been waived, the notice shall remain in effect until the information, indictment, or complaint is finally disposed of and the order shall remain in effect until terminated by the Board.

§622.82 Decision of the Board.

(a) *Recommended decision.* Within 30 days of the hearing, the designated FCA representative shall make a recommendation with findings and conclusions to the Board concerning the notice or order of suspension, removal, or prohibition.

(b) *Final decision.* Within 60 days of the hearing, the Board shall notify the subject individual and the FCA's Office of General Counsel whether the suspension or removal from office, or prohibition from participation in any manner in the affairs of the institution, will be continued, terminated, or otherwise modified. The Board's final decision, if adverse to the individual, shall contain a statement of the basis thereof. The Board may satisfy this requirement where it adopts the recommended decision of the designated FCA representative.

(c) *Guilt not an issue.* In deciding upon any suspension of prohibition by notice, the ultimate question of the guilt or innocence of the individual with respect to the criminal charge that is outstanding will not be considered. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting removal proceedings pursuant to section 5.28 of the Act.

(d) *Effective period.* A removal or prohibition by order remains in effect until terminated by the Board. A suspension or prohibition by notice remains in effect until the criminal charge is finally disposed of or until terminated by the Board.

(e) *Reconsideration.* A suspended or removed individual may petition the Board to reconsider the decision any time after the expiration of a 12-month period from the date of the decision, but no petition for reconsideration may be made within 12 months of a previous petition. A petition shall state with particularity the relief sought and the grounds therefor and may be accompanied by a supporting memorandum and any other documentation the petitioner wishes to have considered. No hearing need be granted on the petition for reconsideration.

§§622.83—622.100 [Reserved]

Subpart D—Rules and Procedures Applicable to Formal Investigations

§622.101 Definitions.

Unless noted otherwise, the definitions set forth in §622.2 of subpart A shall apply to this subpart.

§622.102 Scope.

The rules in this subpart apply to formal investigations initiated by order of the Board and pertain to the exercise of powers specified in section 5.37 of the Act. These rules do not restrict or in any way affect the authority of the FCA, including but not limited to the powers enumerated in section 5.37 of the Act, to conduct examinations of System institutions.

§622.103 Formal investigations are confidential.

Information or documents obtained or testimony recorded in the course of a formal investigation shall be confidential and shall be disclosed only in accordance with the provisions of 12 CFR part 602.

§ 622.104 Order to conduct formal investigation.

A formal investigation begins with the issuance of an order by the Board. The order shall designate the person or persons who will conduct the investigation, issue, revoke, quash or modify subpoenas and subpoenas duces tecum, take or cause to be taken depositions, administer oaths, and receive affirmations as to any matter under investigation by the FCA. Upon application and for good cause shown, the Board may limit, modify, or withdraw the order at any stage of the proceeding.

§ 622.105 Conduct of investigation.

(a) *Review of order.* Any person who is compelled or requested to furnish testimony, documentary evidence, or other information with respect to any matter under formal investigation shall upon request be shown the order initiating such investigation.

(b) *Right to counsel.* Any person who, in a formal investigation, is compelled to appear and testify or who appears and testifies by request or permission of the Board may be accompanied, represented, and advised by counsel. The right to be accompanied, represented, and advised by counsel shall mean the right of a person testifying to have an attorney present at all times while testifying and to have this attorney:

(1) Advise such person before, during and after the conclusion of testimony;

(2) Question such person briefly at the conclusion of testimony to clarify any of the answers given; and

(3) Make summary notes during the testimony solely for the use of such person.

(c) *Appearance.* The provisions of § 622.3 are applicable to this subpart.

(d) *Exclusion.* (1) Any person who has given or will give testimony, and counsel representing such person, may be excluded from the taking of testimony of any other witness in the discretion of the designated FCA representative conducting the investigation.

(2) The designated FCA representative conducting the investigation shall report to the Board any instances where any person has been guilty of dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper conduct during the course of the proceeding or any other instance involving a violation of these rules. The Board may thereupon take such action as the circumstances may warrant, including exclusion of the offending individual or individual from participation in the proceeding.

§ 622.106 Service of subpoena and payment of witness fees.

(a) *Service.* A subpoena may be served upon the person named therein by personal service or certified mail with a return receipt to the last known address of the person. Witnesses who are subpoenaed shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. The fees and mileage need not be tendered at the time a subpoena is served.

(b) *Motions to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 5 days after the date of service of such subpoena, apply to the FCA representative authorized in the order, or if unavailable to the Board, to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefor. The FCA representative, or the Board, may:

(1) Deny the application;

(2) Quash or revoke the subpoena;

(3) Modify the subpoena; or

(4) Condition the granting of the application on such terms as the FCA representative or the Board, determines in his, her, or its discretion, to be just, reasonable, and proper.

§ 622.107 Transcripts.

Transcripts, if any, of an investigative proceeding shall be recorded by any means authorized by the designated FCA representative conducting the investigation. A person who has given testimony in an investigative proceeding (or counsel for such person) upon proper identification shall have the right to inspect the transcript of the person's testimony but may not obtain a copy if the FCA's representative conducting the investigation has cause to believe that the contents should not be disclosed.

PART 623—PRACTICE BEFORE THE FARM CREDIT ADMINISTRATION

Sec.
623.1 Scope of part.
623.2 Definitions.
623.3 Who may practice.
623.4 Suspension and debarment.
623.5 Reinstatement.
623.6 Duty to file information concerning adverse judicial or administrative action.
623.7 Proceeding under this part.

AUTHORITY: Secs. 5.9, 5.10, 5.17, 5.25–5.37; 12 U.S.C. 2243, 2244, 2252, 2261–2273.

SOURCE: 51 FR 21147, June 11, 1986, unless otherwise noted.

§623.1 Scope of part.

This part prescribes rules with regard to persons who may practice before the Farm Credit Administration and the circumstances under which attorneys, accountants, appraisers, or other persons may be suspended or debarred, either temporarily or permanently, from practicing before the Farm Credit Administration. In connection with any particular matter, reference also should be made to any special requirements of procedure and practice that may be contained in the particular statute involved or the rules and forms adopted by the Farm Credit Administration thereunder, which special requirements are controlling. In addition to any suspension hereunder, a person may be excluded from further participation in a particular adjudicative proceeding in accordance with §622.3 or in a formal investigation in accordance with §622.105.

§623.2 Definitions.

As used in this part:

(a) *FCA* means the Farm Credit Administration.

(b) *Board* means the Farm Credit Administration Board.

(c) *Act* means the Farm Credit Act of 1971, as amended. 12 U.S.C. 2001, et seq.

(d) The terms *institution in the System*, *System institution* and *institution* mean all institutions enumerated in section 1.2 of the Act, any institution chartered pursuant to or established by the Act, except for the Farm Credit System Assistance Board and the Farm Credit System Insurance Corporation and any service organization chartered under part E of title IV of the Act.

(e) The term *presiding officer* includes the Board, one or more members thereof, FCA employees, or an administrative law judge. As used in this part, the term shall be construed to refer to whichever of the above-identified individuals presides at a hearing or other proceeding, except as otherwise specified in the text;

(f) The term *attorney* means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth or the District of Columbia;

(g) The term *practice* means transacting any business with the FCA, including but not limited to:

(1) The representation of another person at any adjudicatory, investigatory, removal or rulemaking proceeding conducted before the FCA or a presiding officer;

(2) The preparation or certification of any statement, opinion, report of financial condition and performance, financial statement, appraisal report, audit report, or other document or report by any attorney, accountant, appraiser or other person which is filed with or submitted to the FCA, with such person's consent or knowledge in connection with any filing with the FCA;

(3) A presentation to the FCA or a presiding officer at a conference or meeting relating to an institution's or person's rights, privileges or liabilities under the laws administered by the FCA and rules and regulations promulgated thereunder;

(4) Any business correspondence or communication with the FCA or a presiding officer; and

(5) The transaction of any other business with the FCA on behalf of another, in the capacity of an attorney, accountant, appraiser, licensed expert or any other capacity.

[51 FR 21147, June 11, 1986, as amended at 53 FR 27285, July 19, 1988]

§623.3 Who may practice.

(a) *By nonattorneys.* (1) An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a bona fide and duly authorized officer or other designated

representative of a corporation, trust, association or other entity not specifically listed herein may represent the corporation, trust, association or other entity; and an authorized officer or other designated representative of any government unit, agency or authority may represent that unit, agency or authority.

(2) Any accountant, appraiser or licensed expert may practice before the FCA in a professional capacity.

(b) *By attorneys.* Any entity noted in paragraph (a) of this section may be represented in any proceeding or other matter before the FCA by an attorney.

(c) Any person transacting business with the FCA in a representative capacity may be required to show evidence of his or her authority to act in such capacity and certification of credentials.

§ 623.4 Suspension and debarment.

(a) *Grounds.* The Board may censure any person practicing before the FCA or may deny, temporarily or permanently, the privilege of any person to practice before the FCA if such person is found by the Board, after notice of and opportunity for hearing in the matter:

(1) Not to possess the requisite qualifications to represent others;

(2) To be lacking in character or professional integrity;

(3) To have engaged in any dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper conduct before FCA; or

(4) To have willfully violated, or willfully aided and abetted the violation of, any provision of the laws administered by the FCA or the rules and regulations promulgated thereunder.

(b) *Automatic suspension.* (1) Any person who, after being licensed as a professional or expert by any competent authority, has been convicted by a Federal or State court of a felony, or of a misdemeanor involving moral turpitude, personal dishonesty or breach of trust, shall be suspended automatically from practicing before the FCA without a hearing.

(2) Any accountant, appraiser or licensed expert whose license to practice has been revoked in any State, possession, territory, Commonwealth or the District of Columbia, or who has been suspended or otherwise barred from practice before any Federal or State regulatory authority, shall be suspended automatically from practicing before the FCA without a hearing.

(3) Any attorney who has been suspended or disbarred by a court of the United States or in any State, possession, territory, Commonwealth or the District of Columbia, shall be suspended automatically from practicing before the FCA without a hearing.

(4) A conviction (including a judgment or order on a plea of nolo contendere), revocation, suspension or disbarment under paragraphs (b)(1), (2) and (3) of this section shall be deemed to have occurred when the convicting, revoking, suspending or disbarring agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken.

(5) For purposes of this section, it shall be irrelevant that any attorney, accountant, appraiser or licensed expert who has been suspended, disbarred or otherwise disqualified from practice before a court, regulatory authority, or in a jurisdiction continues in professional good standing before other courts, regulatory authorities, or in other jurisdictions.

(c) *Temporary suspension.* (1) The Board, with due regard to the public interest and without preliminary hearing, by order, may temporarily suspend any person from appearing or practicing before it who by name, has been:

(i) Permanently enjoined (whether by consent, default or summary judgment or after trial) by any court of competent jurisdiction or by the Board in a final administrative order, by reason of his or her misconduct in any action brought by the FCA based upon violations of, or aiding and abetting the violation of any provision of any law that is administered by the FCA or of any rule or regulation promulgated thereunder; or

(ii) Found by any court of competent jurisdiction (whether by consent, default, upon summary judgment or after hearing) or in any administrative proceeding in which the FCA is a complainant and he or she is a party, to have willfully committed, caused,

aided or abetted a violation of any provision of any law that is administered by the FCA, or of any rule or regulation promulgated thereunder.

(2) An order of temporary suspension shall become effective when served by certified mail with a return receipt directed to the last known business or residential address of the person involved. No order of temporary suspension shall be entered by the Board pursuant to paragraph (c)(1) of this section more than 3 months after the final judgment or order entered in a judicial or administrative proceeding described in paragraph (c)(1) (i) or (ii) of this section has become effective and all review or appeal procedures have been completed or are no longer available.

(3) Any person temporarily suspended from appearing and practicing before the FCA in accordance with paragraph (c)(1) of this section may, within 30 days after service of the order of temporary suspension, petition the Board to lift such suspension. If no petition is received by the Board within 30 days, the suspension shall become permanent.

(4) Within 30 days after the filing of a petition in accordance with paragraph (c)(3) of this section, the Board shall either lift the temporary suspension or set the matter down for hearing at a time and place to be designated by the Board, or both. After opportunity for hearing, the Board may censure the petitioner or may suspend the petitioner from appearing or practicing before the FCA temporarily or permanently. In any case in which the temporary suspension has not been lifted, the hearing and any other action taken pursuant to this paragraph shall be expedited by the Board in order to ensure the petitioner's right to address the allegations.

(5) In any hearing held on a petition filed in accordance with paragraph (c)(3) of this section, a showing that the petitioner has been enjoined or has been found to have committed, caused, aided or abetted violations as described in paragraph (c)(1) of this section, without more, may be a basis for suspension or debarment; that showing having been made, the burden shall then be on the petitioner to show why the petitioner should not be censured or be temporarily or permanently suspended or debarred. A petitioner will not be permitted to contest any findings against the petitioner or any admissions made by the petitioner in the judicial or administrative proceedings upon which the proposed censure, suspension or debarment is based. A petitioner who has consented to the entry of a permanent injunction or order as described in paragraph (c)(1)(i) of this section, without admitting the facts set forth in the complaint, shall nevertheless be presumed for all purposes under this section to have been enjoined or ordered by reason of the misconduct alleged in the complaint.

§623.5 Reinstatement.

(a) Any person who is suspended from practicing before the FCA under §623.4 (a) or (c) of this part may file an application for reinstatement at any time. Denial of the privilege of practicing before the FCA shall continue unless and until the applicant has been reinstated by order of the Board for good cause shown.

(b) Any person suspended under §623.4(b) shall be reinstated by the Board, upon appropriate application, if all of the grounds for application of the provisions of that paragraph are removed subsequently by a reversal of the conviction or termination of the suspension, disbarment of revocation. An application for reinstatement on any other grounds by any person suspended under §623.4(b) may be filed at any time. Such application shall state with particularity the relief requested and the grounds therefor and shall include supporting evidence, when available. The applicant shall be accorded an opportunity for an informal hearing in the matter, unless the applicant has waived a hearing in the application and, instead, has elected to have the matter determined on the basis of written submissions. Such hearing shall utilize the procedures established in part 622, subpart C. However, such suspension shall continue unless and until the applicant has been reinstated by order of the Board for good cause shown.

§ 623.6 Duty to file information concerning adverse judicial or administrative action.

Any person appearing or practicing before the FCA who has been or is the subject of a conviction, suspension, debarment, license revocation, injunction or other finding of the kind described in § 623.4(b) or (c) of this part is an action not instituted by the FCA shall promptly file a copy of the relevant order, judgment or decree with the Board together with any related opinion or statement of the agency or tribunal involved. Any person who fails to file a copy of such an order, judgment or decree within 30 days after the later of the entry of the order, judgment or decree, or the date such person initiates practice before the FCA, for that reason alone may be disqualified from practicing before the FCA until such time as the appropriate filing shall be made, but neither the filing of these documents nor the failure of a person to file them shall in any way impair the operation of any other provision of this part.

§ 623.7 Proceeding under this part.

(a) *Rules.* All hearings required or permitted to be held under paragraphs (a) and (c) of § 623.4 of this part shall be held before a presiding officer utilizing the procedures established in the rules of practice and procedure under part 622, subpart A.

(b) *Closed hearings.* All hearings held under this part shall be closed to the public unless the Board directs otherwise on its own motion or upon the request of a party.

(c) *Collateral proceedings.* Any proceeding brought under any section of this part shall not preclude a proceeding under any other section of this part or any other part of the FCA's regulations.

PART 624—REGULATORY ACCOUNTING PRACTICES

Sec.

624.100 General.
624.101 Definitions.
624.102 Deferral of interest costs on debt.
624.103 Deferral of the provisions for loan losses.
624.104 Interest rate evaluation.
624.105 Financial reporting and disclosure.

AUTHORITY: Secs. 1.1, 1.5, 2.2, 2.12, 3.1, 4.8, 5.17, 5.19; 12 U.S.C. 2001, 2013, 2073, 2093, 2122, 2159, 2252, 2254.

SOURCE: 53 FR 40050, Oct. 13, 1988, unless otherwise noted.

§ 624.100 General.

(a) The regulations contained in this part implement the provisions of the Act relating to the authorities, terms, conditions, and restrictions pursuant to which a Farm Credit System institution may use regulatory accounting practices to defer and capitalize a portion of its interest costs, provisions for loan losses, and premiums paid to retire debt instruments, and to amortize such amounts.

(b) Notwithstanding the provisions of this part, if an institution requests that the Farm Credit System Assistance Board (Assistance Board) certify the institution to issue preferred stock in accordance with title VI of the Act, the Assistance Board may further restrict the continued use of regulatory accounting practices by the institution as provided in section 6.6 of the Act.

(c) The authority to defer and capitalize costs is effective until December 31, 1992. Amounts capitalized through December 31, 1992 may be amortized over the full amortization period of 20 years, but in no instance beyond December 31, 2012.

§ 624.101 Definitions.

For the purpose of this part, the following definitions apply:

(a) *Generally accepted accounting principles (GAAP)* means that body of conventions, rules and procedures necessary to define accepted accounting practice at a particular time, as promulgated by the Financial Accounting Standards Board and other authoritative sources recognized as setting standards for the accounting profession in the United States. Generally accepted accounting principles shall include not only broad guidelines of general application but also detailed practices and procedures that constitute standards against which financial presentations are evaluated.

(b) *Institution* means any bank or association chartered under the Act.

(c) *Loans outstanding* means gross loans outstanding net of any participations sold at the end of each reporting period. The term *loan* includes loans, participations purchased, contracts of sale, notes receivable, and other similar obligations and lease financings. The term *loan* includes loans originated through direct negotiations between the reporting institution and a borrowing entity and loans or interest in loans purchased from another lender that are recorded as assets of a reporting institution.

(d) *Regulatory accounting practices (RAP)* means those accounting methods and practices directed by statutory and regulatory requirements provided for in the Act and in this part and that are not in accordance with GAAP.

§ 624.102 Deferral of interest costs on debt.

(a) A bank may capitalize any premium paid to repurchase the bank's obligations on consolidated Systemwide notes and bonds issued on or before January 1, 1985, and may contract with a third party, including a service corporation chartered by the Farm Credit Administration, in order to perform a defeasance of these same obligations. The premium paid shall be the excess of the cost to repurchase or redeem an obligation over the recorded net book value for such obligation.

(b) A bank may capitalize a portion of its interest expenses which have been paid or will be paid during the period July 1, 1986, through December 31, 1992, on Systemwide and consolidated notes and bonds issued on or before January 1, 1985. The amount of a bank's interest expense on an obligation that may be capitalized shall be limited to the excess of the bank's cost on the obligation over the market price for the obligation on October 21, 1986.

(c) An institution that defers any expenses associated with actions taken in accordance with this section shall amortize such expenses over a period not to exceed 20 years using straight-line amortization. The unamortized portion of debt-related costs that are deferred or are eligible to be deferred shall not be considered as capital of the institution.

§ 624.103 Deferral of the provisions for loan losses.

An institution is authorized during the period July 1, 1986, through December 31, 1992, to capitalize the amount of its provision for loan losses made on an annual basis in excess of 1/2 of 1 percent of loans outstanding. An institution that defers a portion of its provision for loan losses in accordance with this section shall amortize such amount over a period to not exceed 20 years, using straight-line amortization. Institutions using RAP to defer their provisions for loan losses shall maintain an allowance for loan losses determined in accordance with GAAP.

§ 624.104 Interest rate evaluation.

An institution may take into consideration the use of RAP, among other factors, for purposes of evaluating the interest rates charged on loans. Such other factors include the institution's cost of funds, overhead, expected losses, margin to provide for adequate capital, return to stockholders, and any other relevant factors. In no event shall such an institution charge a rate of interest which is less than the competitive interest rates charged by other lending institutions in the same area, for a loan with similar terms, to a borrower of equivalent creditworthiness and access to alternative credit.

§ 624.105 Financial reporting and disclosure.

Each institution that uses RAP in accordance with the provisions of this part shall prepare and issue its financial statements to stockholders in accordance with part 620 of this chapter. In addition, each such institution shall disclose clearly in the management commentary to its financial statements the purpose and use of the regulatory accounting practices adopted by the institution and shall reconcile the differences between the application of GAAP and RAP.

PART 625—APPLICATION FOR AWARD OF FEES AND OTHER EXPENSES UNDER THE EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

Sec.
625.1 Purpose.
625.2 Proceedings covered.
625.3 Eligibility of applicants.
625.4 Standards for awards.
625.5 Allowable fees and expenses.
625.6 Rulemaking on maximum rates for attorney fees.
625.7 Awards against other agencies.

Subpart B—Applicant Information Required

625.10 Contents of application.
625.11 Net worth exhibit.
625.12 Documentation of fees and expenses.
625.13 When an application may be filed.

Subpart C—Procedures for Considering Applications

625.20 Settlement.
625.21 Filing and service of documents.
625.22 Answer to application.
625.23 Reply.
625.24 Comments by other parties.
625.25 Further proceedings.
625.26 Recommended decision.
625.27 Board decision.
625.28 Judicial review.
625.29 Payment of award.

AUTHORITY: 5 U.S.C. 504, 12 U.S.C. 2252.

SOURCE: 57 FR 60109, Dec. 18, 1992, unless otherwise noted.

Subpart A—General Provisions

§ 625.1 Purpose.

These rules implement the Equal Access to Justice Act, 5 U.S.C. 504 (EAJA). The EAJA provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (designated by the EAJA as ''adversary adjudications'') before Federal agencies. An eligible party may receive an award when it prevails over an agency, unless the agency's position was substantially justified or special circumstances make an award unjust. The rules in this part explain how the EAJA applies to Farm Credit Administration (FCA) proceedings. The rules describe the parties eligible for awards, how such parties may apply for awards, and the procedures and standards that govern FCA consideration of applications.

§ 625.2 Proceedings covered.

(a) The EAJA applies to adversary adjudications conducted by the FCA either on its own behalf or in connection with any other agency of the United States that participates in or in any way is a part of the adversary adjudication. Adversary adjudications are:

(1) Adjudications under 5 U.S.C. 554 in which the position of the FCA or other agency is presented by an attorney or other representative who enters an appearance and participates in the proceeding; and

(2) Enforcement proceedings under 12 U.S.C. 2261–2273.

(b) The failure of the FCA to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes that the proceeding is covered by the EAJA; whether the proceeding is covered shall then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered and excluded from coverage by the EAJA, any award made will include only fees and expenses related to covered issues.

(d) Proceedings under this part may be conducted by the FCA Board (Board) or by the presiding officer (referred to as the ''adjudicative officer'' in the EAJA), as defined in § 622.2(f) of this chapter. If the Board conducts proceedings, reference to the ''presiding officer'' in this part shall mean the Board, in applicable context. Where the Board presides, the recommended decision under § 625.26 of this part will be omitted and the Board will make a final decision on the application in accordance with § 625.27 of this part.

(e) If a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to 28 U.S.C. 2412(d)(3).

§ 625.3 Eligibility of applicants.

(a) To be eligible for an award under the EAJA, an applicant must be a prevailing party named or admitted to the adversary adjudication for which an

award is sought. The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B of this part.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of $2 million or less;

(2) The sole owner of an unincorporated business who has both a net worth of $7 million or less (including personal and business interests), and 500 or fewer employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with 500 or fewer employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of $7 million or less and 500 or fewer employees.

(c) For eligibility purposes, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated.

(d) An applicant who owns an unincorporated business will be considered as an ''individual'' rather than a ''sole owner of an unincorporated business'' if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for that applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility unless the presiding officer determines that aggregation would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities.

(1) For purposes of this part, an affiliate is:

(i) Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the applicant; or

(ii) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interests.

(2) The presiding officer may determine that financial relationships of the applicant other than those described in paragraph (f)(1) of this section constitute special circumstances that would make an award unjust.

(g) An applicant that participates in an adversary adjudication primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§625.4 Standards for awards.

(a) If an eligible applicant prevails over the FCA in an adversary adjudication, or in a significant and discrete substantive portion thereof, the applicant may receive an award for fees and expenses incurred in the adjudication, or portion thereof, unless the position of the FCA over which the applicant prevailed was substantially justified.

(b) The position of the FCA includes:

(1) The position taken by the FCA in the adversary adjudication; and

(2) The action or inaction of the FCA upon which the adversary adjudication is based.

(c) Except as provided in paragraph (d) of this section, the FCA must prove that its position was substantially justified before an award may be denied to an otherwise eligible applicant.

(d) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the adversary adjudication or if special circumstances make the award sought unjust.

§625.5 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the FCA pays expert witnesses. However, an award also may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the presiding officer shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services, or, if an employee of the applicant, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, audit, engineering report, test, project, or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for the preparation of the applicant's case.

§ 625.6 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the FCA may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in some or all of the types of proceedings covered by this part. The FCA will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the FCA a petition for rulemaking to increase the maximum rate for attorney fees. The petition should identify the rate the petitioner believes the FCA should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The FCA will respond to the petition within 90 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

§ 625.7 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in or in any way is a part of an adversary adjudication before the FCA and that agency's position is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

Subpart B—Applicant Information Required

§ 625.10 Contents of application.

(a) An application for an award of fees and other expenses under the EAJA shall identify the applicant and the adversary adjudication for which an award is sought. The application shall show that the applicant has prevailed in the adversary adjudication. If the application is made on the basis of significant and discrete substantive issues on which the applicant prevailed, the issues must be specifically identified. The application also shall identify each position of the FCA or other agencies that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall describe briefly the type and purpose of its organization or business and state the number of persons employed.

(b) The application shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It states that it has 500 employees or fewer and attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with 500 or fewer employees.

(c) The application shall state the total amount of fees and other expenses for which an award is sought.

(d) The application may include any other relevant matters that the applicant wishes the FCA to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. The application must contain a written verification under oath or under penalty of perjury that the information provided in the application and any supporting documents is accurate.

§625.11 Net worth exhibit.

(a) Each applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in §625.3(f)(1) of this part) as of the date when the adversary adjudication was initiated. The exhibit may be in any convenient form that provides full disclosure of the assets and liabilities of the applicant and its affiliates and is otherwise sufficient to demonstrate that the applicant qualifies under the standards in this part. The presiding officer may require an applicant to file additional information supporting its eligibility for an award.

(b) An applicant that objects to public disclosure of information in any portion of the net worth exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the presiding officer in a sealed envelope labeled ''Confidential Financial Information,'' accompanied by a motion under §622.11 of this chapter to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the FCA, but need not be served on any other party to the application proceeding. If the presiding officer, or the FCA Board pursuant to §622.11(e) of this chapter, finds that the information should not be withheld from disclosure, it shall be placed in the public record of the application proceeding. Otherwise, any request to inspect or copy the exhibit shall be treated in accordance with the FCA's procedures regarding release of information (12 CFR part 602).

§625.12 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, audit, engineering report, test, project, or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rates at which each fee has been computed, any expenses for which reimbursement is sought, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. Under §625.25 of this part, the presiding officer may require the applicant to provide vouchers, receipts, logs, or other substantiation for any fees or expenses claimed.

§ 625.13 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the adversary adjudication, or in a significant and discrete substantive portion thereof, but in no case later than 30 days after the FCA's final disposition of the adversary adjudication.

(b) For purposes of this rule, final disposition means the date on which a decision or order disposing of the merits of the adversary adjudication is issued or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, becomes final and is unreviewable by the FCA, any other administrative body, or the courts.

(c) If review, reconsideration, or appeal is sought or taken of an adversary adjudication decision as to which an applicant believes it has prevailed, application proceedings for any award of fees and other expenses shall be stayed pending final disposition of the underlying controversy.

Subpart C—Procedures for Considering Applications

§ 625.20 Settlement.

A prevailing party and the FCA through its counsel may agree on a proposed settlement of an award at any time, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If a prevailing party and the FCA counsel agree on a proposed settlement of an award, the proposed settlement must be submitted to the presiding officer for a recommended decision pursuant to § 625.26 of this part. If it has not been previously filed, the application must be submitted to the presiding officer along with the proposed settlement.

§ 625.21 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the adversary adjudication in the same manner as other pleadings in the adversary adjudication (*see* §§ 622.18 and 622.19 of this chapter), except as provided in § 625.11(b) of this part for confidential financial information.

§ 625.22 Answer to application.

(a) Within 30 days after service, counsel for the FCA may file an answer to the application. Unless the FCA counsel requests an extension of time for filing or a statement of intent to negotiate under paragraph (c) of this section is filed, the presiding officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's fees and other expenses under the EAJA.

(b) The answer shall set forth any objections to the requested award and identify the facts relied on in support of the FCA's position. If the answer is based on any alleged facts not already in the record of the adversary adjudication, the FCA counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 625.25 of this part.

(c) If the FCA counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by the FCA counsel and the applicant.

§ 625.23 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 625.25 of this part.

§ 625.24 Comments by other parties.

Any party to a proceeding other than the applicant and FCA counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the presiding officer determines that the public interest requires such

participation in order to permit full exploration of matters raised in the comments.

§625.25 Further proceedings.

(a) The determination of an award shall be made on the basis of the written record unless the presiding officer finds that further proceedings are necessary for full and fair resolution of the issues arising from the application. Such further proceedings may be at the request of either the applicant or the FCA counsel, or on the presiding officer's own initiative, and shall be conducted as promptly as possible. Further proceedings may include an informal conference, oral argument, additional written submissions, or other actions required by the presiding officer, but may not include discovery or an evidentiary hearing with respect to the issue of whether the agency's position was substantially justified.

(b) Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(c) A request that the presiding officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§625.26 Recommended decision.

The presiding officer shall file a recommended decision within 30 days after completion of proceedings on the application, and, promptly upon filing, shall serve a copy of the recommended decision upon each party to the proceedings. The decision shall include written findings and conclusions on the applicant's eligibility, status as a prevailing party, the recommended amount of the award, if any, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the FCA's position was substantially justified, whether the applicant unduly protracted the adversary adjudication, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§625.27 Board decision.

Following filing of the recommended decision with the Board, the Board shall render a final decision on the application. The Board maintains full discretion to uphold, reverse, remand, or alter the recommended decision. The Board may order further proceedings (including those set forth in §§622.11 and 622.13 through 622.16 of this chapter) upon request by any party to the application proceeding or on its own initiative, but such proceedings may not include discovery or an evidentiary hearing with respect to the issue of whether the agency's position was substantially justified.

§625.28 Judicial review.

Judicial review of final FCA decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§625.29 Payment of award.

(a) An applicant seeking payment of an award shall submit to the Secretary to the Board a copy of the final decision granting the award, accompanied by a certification that the applicant will not seek judicial review of the decision. The required submission and certification should be sent to: Secretary to the Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

(b) The FCA will pay the amount awarded to the applicant within 60 days of receipt of the applicant's submission and certification.

PART 627—TITLE V CONSERVATORS AND RECEIVERS

Subpart A—General

Sec.

627.2700 General—applicability.
627.2705 Definitions.
627.2710 Grounds for appointment of conservators and receivers.

627.2715 Action for removal of conservator or receiver.

Subpart B—Receivers and Receiverships

627.2720 Appointment of receiver.
627.2725 Powers and duties of the receiver.
627.2730 Preservation of equity.
627.2735 Notice to holders of uninsured accounts and stockholders.
627.2740 Creditors' claims.
627.2745 Priority of claims—associations.
627.2750 Priority of claims—banks.
627.2752 Priority of claims—other Farm Credit institutions.
627.2755 Payment of claims.
627.2760 Inventory, audit, and reports.
627.2765 Final discharge and release of the receiver.

Subpart C—Conservators and Conservatorships

627.2770 Conservators.
627.2775 Appointment of a conservator.
627.2780 Powers and duties of conservators.
627.2785 Inventory, examination, audit, and reports to stockholders.
627.2790 Final discharge and release of the conservator.

AUTHORITY: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58 of the Farm Credit Act; 12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7.

SOURCE: 57 FR 46482, Oct. 9, 1992, unless otherwise noted.

Subpart A—General

§ 627.2700 General—applicability.

The provisions of this part shall apply to conservatorships and receiverships of Farm Credit institutions for which the Farm Credit System Insurance Corporation is appointed as conservator or receiver.

§ 627.2705 Definitions.

For purposes of this part the following definitions apply:

(a) *Act* means the Farm Credit Act of 1971, as amended.

(b) *Farm Credit institution(s)* or *institution(s)* means all associations, banks, service corporations chartered under title IV of the Act, the Federal Farm Credit Banks Funding Corporation, and the Farm Credit System Financial Assistance Corporation.

(c) *Conservator* means the Farm Credit System Insurance Corporation acting in its capacity as conservator.

(d) *Insurance Corporation* means the Farm Credit System Insurance Corporation.

(e) *Receiver* means the Insurance Corporation acting in its capacity as receiver.

§ 627.2710 Grounds for appointment of conservators and receivers.

(a) Upon a determination by the Farm Credit Administration Board of the existence of one or more of the factors set forth in paragraph (b) of this section, with respect to any bank, association, or other institution of the System, the Farm Credit Administration Board may, in its discretion, appoint a conservator or receiver for such institution. After January 5, 1993, the Insurance Corporation shall be the sole entity to be appointed as conservator or receiver.

(b) The grounds for the appointment of a conservator or receiver for a System institution are:

(1) The institution is insolvent. For purposes of this paragraph, ''insolvent'' means that the FCA has confirmed that the assets of the institution are less than its obligations to its creditors and others, including its members.

(2) There has been a substantial dissipation of the assets or earnings of the institution due to the violation of any law, rule, or regulation, or the conduct of an unsafe or unsound practice;

(3) The institution is in an unsafe or unsound condition to transact business;

(4) The institution has committed a willful violation of a final cease-and-desist order issued by the Farm Credit Administration Board; or

(5) The institution is concealing its books, papers, records, or assets, or is refusing to submit its books, papers, records, assets, or other material relating to the affairs of the institution for inspection to any examiner or to any lawful agent of the Farm Credit Administration Board.

(6) The institution is unable to make a timely payment of principal or interest on any insured obligation (as defined in section 5.51(3) of the Act) issued by the institution individually, or on which it is primarily liable.

[51 FR 32443, Sept. 12, 1986, as amended at 54 FR 1148, Jan. 12, 1989. Redesignated and amended at 46487, Oct. 9, 1992]

§627.2715 Action for removal of conservator or receiver.

Upon the appointment of a conservator or receiver for a Farm Credit institution by the Farm Credit Administration Board pursuant to §627.2710 of this part, the institution may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the home office of the institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration Board to remove such conservator or receiver and, if the charter has been canceled, to rescind the cancellation of the charter. Notwithstanding any other provision of subpart B or C of this part, the institution's board of directors is empowered to meet subsequent to such appointment and authorize the filing of an action for removal. An action for removal may be authorized only by such institution's board of directors.

Subpart B—Receivers and Receiverships

§627.2720 Appointment of receiver.

(a) The board of directors of a Farm Credit institution, by the adoption of an appropriate resolution, may vote to liquidate the institution, and upon approval of the resolution by the Farm Credit Administration Board, the Board may, by order, place the Farm Credit institution in receivership. If the institution seeking to liquidate is an association, the Farm Credit Administration may, in its discretion, consult with the district bank prior to approving the association's resolution to liquidate.

(b) The Farm Credit Administration Board may, in its discretion, appoint ex parte and without notice a receiver for any Farm Credit institution in accordance with the grounds for appointment set forth in §627.2710 of this part.

(c) The voluntary or involuntary liquidation of a Farm Credit institution shall be conducted by the receiver. After January 5, 1993, the Insurance Corporation shall be the sole entity to be appointed as receiver.

(d) Upon the appointment of the Insurance Corporation as receiver, the Chairman of the Farm Credit Administration Board shall immediately notify the institution, and its district bank in the case of an association, and shall publish a notice of the appointment in the FEDERAL REGISTER.

(e) In the case of the voluntary or involuntary liquidation of an association, the district bank shall institute appropriate measures to minimize the adverse effect of the liquidation on those borrowers whose loans are purchased by or otherwise transferred to another System institution.

(f) Upon the issuance of the order placing a Farm Credit institution into liquidation and appointing the Insurance Corporation as receiver, all rights, privileges, and powers of the board of directors, officers, and employees of the institution shall be vested exclusively in the receiver. The Farm Credit Administration Board may simultaneously, or any time thereafter, cancel the charter of the institution.

§627.2725 Powers and duties of the receiver.

(a) *General.* (1) Upon appointment as receiver, the receiver shall take possession of a Farm Credit institution pursuant to 12 U.S.C. 2183 and §627.2710 of this part in order to wind up the business operations of such institution, collect the debts owed to the institution, liquidate its property and assets, pay its creditors, and distribute the remaining proceeds to stockholders. The receiver is authorized to exercise all powers necessary to the efficient termination of an institution's operation as provided for in this subpart.

(2) Upon its appointment as receiver, the receiver automatically succeeds to—

(i) All rights, titles, powers and privileges of the institution and of any stockholder, officer, or director of such

institution with respect to the institution and the assets of the institution; and

(ii) Title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

(3) The receiver of a Farm Credit institution serves as the trustee of the receivership estate and conducts its operations for the benefit of the creditors and stockholders of the institution.

(b) *Specific powers.* The receiver may:

(1) Exercise all powers as are conferred upon the officers and directors of the institution under law and the charter, articles, and bylaws of the institution.

(2) Take any action the receiver considers appropriate or expedient to carry on the business of the institution during the process of liquidating its assets and winding up its affairs.

(3) Extend credit to existing borrowers as necessary to honor existing commitments and to effectuate the purposes of the receivership.

(4) Borrow such sums as necessary to effectuate the purposes of the receivership.

(5) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the institution's assets or property or rehabilitate or improve such property and assets.

(6) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the institution has a lien or in which the institution has a financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property.

(7) Investigate any matter related to the conduct of the business of the institution, including, but not limited to, any claim of the institution against any individual or entity, and institute appropriate legal or other proceedings to prosecute such claims.

(8) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by or against the institution or in which the institution or its creditors or members have any interest, and represent in every way the institution, its members, and creditors.

(9) Employ attorneys, accountants, appraisers, and other professionals to give advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs.

(10) Hire any agents or employees necessary for proper administration of the receivership.

(11) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effective as if it had been executed by the institution's officers by authority of its board of directors.

(12) Sell for cash or otherwise any mortgage, deed of trust, chose in action, note contract, judgment or decree, stock, or debt owed to the institution, or any property (real or personal, tangible or intangible).

(13) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership.

(14) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome.

(15) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the institution or receiver.

(16) Pay, out of the assets of the institution, all expenses of the receivership and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(17) Pay out of the assets of the institution all approved claims of indebtedness in accordance with priorities established in this subpart.

(18) Take all actions and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(19) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm

Credit Administration Board authorizes by order or by amendment of any order or by regulation.

(c) *Authority to pay claims.* The receiver of a bank is also empowered to pay claims of holders of notes, bonds, debentures, or other obligations issued by the bank under 12 U.S.C. 2153(c) or (d) in accordance with procedures specified by the Insurance Corporation pursuant to §627.2740(d) of this part.

§627.2730 Preservation of equity.

(a) Except as provided for upon final distribution of the assets of the institution, no capital stock, participation certificates, equity reserves, or other allocated equities of an institution in receivership shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities.

(b) Immediately upon the adoption of a resolution by its board of directors to liquidate voluntarily the institution, the capital stock, participation certificates, equity reserves, and allocated equities of the institution shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities until such time as the stockholders of the institution or the Farm Credit Administration Board disapproves such resolution. In the event the resolution is approved by the stockholders of the institution and the Farm Credit Administration Board, and the institution is placed in receivership, the provisions of paragraph (a) of this section shall govern further disposition of the equities of the institution.

(c) Notwithstanding paragraphs (a) and (b) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

§627.2735 Notice to holders of uninsured accounts and stockholders.

(a) Upon the placing of an institution in liquidation, the receiver shall immediately notify every borrower who has an uninsured account (voluntary or involuntary) as described in §614.4513 of this chapter that the funds ceased earning interest when the receivership was instituted and will be applied against the outstanding indebtedness of any loans of such borrower unless, within 15 days of such notice, the borrower directs the receiver to otherwise apply such funds in the manner provided for in existing loan documents.

(b) As soon as practicable after the receiver takes possession of the institution, the receiver shall notify, by first class mail, each holder of stock and participation certificates of the following matters:

(1) The number of shares such holder owns;

(2) That the stock and other equities of the institution may not be retired or transferred until the liquidation is completed, whereupon the receiver will distribute a liquidating dividend, if any, to the owners of such equities; and

(3) Such other matters as the receiver or the Farm Credit Administration deems necessary.

§627.2740 Creditors' claims.

(a) The receiver shall publish promptly a notice to creditors to present their claims against the institution, with proof thereof, to the receiver by a date specified in the notice, which shall be not less than 90 calendar days after the first publication. The notice shall be republished approximately 30 days and 60 days after the first publication. The receiver shall promptly send, by first class mail, a similar notice to any creditor shown on the institution's books at the creditor's last address appearing thereon. Claims filed after the specified date shall be disallowed, except as the receiver may approve them for full or partial payment from the institution's assets remaining undistributed at the time of approval.

(b) The receiver shall allow any claim that is timely received and proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority which is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Sending the notice of disallowance by first class mail to the claimant's address appearing on the proof of claim shall be sufficient notice. The disallowance shall be final, unless, within 30 days after the notice

of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance. The receiver shall reconsider any claim upon the timely request of the claimant and may approve or disapprove such claim in whole or in part.

(c) Creditors' claims that are allowed shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established in this subpart and in such manner and amounts as the receiver deems appropriate. In the event the institution has a claim against a creditor of the institution, the receiver shall offset the amount of such claim against the claim asserted by such creditor.

(d) The claims of holders of notes, bonds, debentures, or other obligations issued by a bank under 12 U.S.C. 2153 (c) or (d) shall be made, if deemed necessary or appropriate, in accordance with procedures formulated by the Insurance Corporation. In the formulation of such procedures, the Insurance Corporation shall consult with the Farm Credit Administration.

§ 627.2745 Priority of claims—associations.

The following priority of claims shall apply to the distribution of the assets of an association in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the association, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the association.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the association whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the association not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors, including the district bank, which are secured by assets or equities of the association in accordance with applicable Federal or State law.

(g) All claims of the district bank other than those provided for in paragraph (f) of this section, based on the financing agreement between the association and the bank, including interest accrued before and after the appointment of the receiver, minus any setoff for stock or other equity of the district bank owned by the association made in accordance with this paragraph or paragraph (f) of this section. Prior to making such setoff, the district bank must obtain the approval of the Farm Credit Administration Board for the retirement of such equities.

(h) All claims of general creditors.

§ 627.2750 Priority of claims—banks.

The following priority of claims shall apply to the distribution of the assets of a bank in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the bank, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services

actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the bank.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the bank whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the bank not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets or equities of the bank, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(g) All claims of holders of bonds issued by the bank individually to the extent such are collateralized in accordance with 12 U.S.C. 2154.

(h) All claims of holders of consolidated and Systemwide bonds and claims of the other Farm Credit banks arising from their payments pursuant to 12 U.S.C. 2155.

(i) All claims of general creditors.

§627.2752 Priority of claims—other Farm Credit institutions.

The following priority of claims shall apply to the distribution of the assets of an institution, other than a bank or association, in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership.

(b) Administrative expenses of the institution, provided that such expenses were incurred within 60 days prior to the receiver's taking possession, and that such expenses shall be limited to reasonable expenses incurred for services actually provided by accountants, attorneys, appraisers, examiners, or management companies, or reasonable expenses incurred by employees which were authorized and reimbursable under a pre-existing expense reimbursement policy, that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the institution.

(c) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver by an employee of the institution whom the receiver determines it is in the best interest of the receivership to engage or retain for a reasonable period of time.

(d) If authorized by the receiver, claims for wages and salaries, including vacation pay, earned prior to the appointment of the receiver, up to a maximum of three thousand dollars ($3,000) per person as adjusted for inflation, by an employee of the institution not engaged or retained by the receiver. The adjustment for inflation shall be the percentage by which the Consumer Price Index (as prepared by the Department of Labor) for the calendar year preceding the appointment of the receiver exceeds the Consumer Price Index for the calendar year 1992.

(e) All claims for taxes.

(f) All claims of creditors which are secured by specific assets or equities of the institution, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(g) All claims of general creditors.

§627.2755 Payment of claims.

(a) All claims of each class described in §627.2745, §627.2750, or §627.2752 of this part, respectively, shall be paid in full, or provisions shall be made for

such payment, prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay in full any class of claims described in § 627.2745, distribution on such class shall be on a pro rata basis.

(b) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the institution to the owners of stock, participation certificates, and other equities in accordance with the priorities for impairment set forth in the bylaws of the institution.

(c) Notwithstanding this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

§ 627.2760 Inventory, audit, and reports.

(a) As soon as practicable after taking possession of an institution, the receiver shall make an inventory of the assets and liabilities as of the date possession was taken.

(b) The institution in receivership shall be audited on an annual basis by a certified public accountant selected by the receiver.

(c) With respect to each receivership, the receiver shall make an annual accounting or report, as appropriate, available upon request to any stockholder of the institution in receivership or any member of the public, with a copy provided to the Farm Credit Administration.

(d) Upon the final liquidation of the institution, the receiver shall send to each stockholder of record a report summarizing the disposition of the assets of the receivership and claims against the receivership.

§ 627.2765 Final discharge and release of the receiver.

After the receiver has made a final distribution of the assets of the receivership, the receivership shall be terminated, the charter shall be canceled by the Farm Credit Administration Board if such cancellation has not previously occurred, and the receiver shall be finally discharged and released.

Subpart C—Conservators and Conservatorships

§ 627.2770 Conservators.

(a) The Insurance Corporation shall be appointed as conservator by the Farm Credit Administration Board pursuant to section 4.12 of the Act and § 627.2710 of this part to take possession of an institution in accordance with the terms of the appointment. Upon appointment, the conservator shall direct the institution's further operation until the Farm Credit Administration Board decides whether to place the institution into receivership. Upon correction or resolution of the problem or condition that provided the basis for the appointment and upon a determination by the Farm Credit Administration Board that the institution can be returned to normal operations, the Farm Credit Administration Board may turn the institution over to such management as the Farm Credit Administration Board may direct.

(b) The conservator shall exercise all powers necessary to continue the ongoing operations of the institution, to conserve and preserve the institution's assets and property, and otherwise protect the interests of the institution, its stockholders, and creditors as provided in this subpart.

§ 627.2775 Appointment of a conservator.

(a) The Farm Credit Administration Board may appoint ex parte and without notice a conservator for any Farm Credit institution provided that one or more of the grounds for appointment as set forth in § 627.2710 exist.

(b) Upon the appointment of a conservator, the Chairman of the Farm Credit Administration shall immediately notify the institution and, in the case of an association, the district bank, and notice of the appointment shall be published in the FEDERAL REGISTER. As soon as practicable after the conservator takes possession of the institution, the conservator shall notify, by first class mail, each holder of stock and participation certificates in the institution of the establishment of the conservatorship and shall describe the

effect of the conservatorship on the institution's operations and on the borrower's loan and equity holdings.

(c) Upon the issuance of the order placing a Farm Credit institution in conservatorship, all rights, privileges, and powers of the members, board of directors, officers, and employees of the institution are vested exclusively in the conservator.

(d) The conservator is responsible for conserving and preserving the assets of the institution and continuing the ongoing operations of the institution until the conservatorship is terminated by order of the Farm Credit Administration Board.

(e) The Board may, at any time, terminate the conservatorship and direct the conservator to turn over the institution's operations to such management as the Board may designate, in which event the provisions of this subpart shall no longer apply.

§627.2780 Powers and duties of conservators.

(a) The conservator of an institution serves as the trustee of the institution and conducts its operations for the benefit of the creditors and stockholders of the institution.

(b) The conservator may, with respect to Farm Credit institutions, exercise the powers that a receiver of an institution may exercise under any of the provisions of §627.2725(b) of this part, except paragraphs §627.2725 (b)(2) and (b)(17). In interpreting the applicable paragraphs for purposes of this section, the terms ''conservator'' and ''conservatorship'' shall be read for ''receiver'' and ''receivership.''

(c) The conservator may extend credit to new and existing borrowers as is necessary to the continuing operation of the institution and to effectuate the purposes of the conservatorship.

(d) The conservator may also take any other action the conservator considers appropriate or expedient to the continuing operation of the institution.

§627.2785 Inventory, examination, audit, and reports to stockholders.

(a) As soon as practicable after taking possession of a Farm Credit institution the conservator shall make an inventory of the assets and liabilities of the institution as of the date possession was taken. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The institution in conservatorship shall be examined by the Farm Credit Administration in accordance with section 5.19 of the Act. The institution shall also be audited by a certified public accountant in accordance with part 621 of this chapter.

(c) Each institution in conservatorship shall prepare and file with the Farm Credit Administration financial reports in accordance with the requirements of part 621 of this chapter. The conservator of the institution shall provide the certification required in §621.14 of this chapter.

(d) Each institution in conservatorship shall prepare and issue published financial reports in accordance with provisions of part 620 of this chapter, and the certifications and signatures of the board of directors or management provided for in §§620.2(b), 620.2(c), and 620.5(m)(2) of this chapter shall be provided by the conservator of the institution.

[57 FR 46482, Oct. 9, 1992, as amended at 58 FR 48791, Sept. 20, 1993]

§627.2790 Final discharge and release of the conservator.

At such time as the conservator shall be relieved of its conservatorship duties, the conservator shall file a report on the conservator's activities with the Farm Credit Administration. The conservator shall thereupon be completely and finally released.

PART 630—DISCLOSURE TO INVESTORS IN SYSTEMWIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

Subpart A—General

Sec.

630.1 Purpose.
630.2 Definitions.
630.3 Publishing and filing the report to investors.
630.4 Responsibilities for preparing the report to investors.
630.5 Prohibition against incomplete, inaccurate, or misleading disclosure.

630.6 Farm Credit System audit committee and bank audit committees.

Subpart B—Annual Report to Investors

630.20 Contents of the annual report to investors.

Subpart C—Quarterly Reports to Investors

630.40 Contents of the quarterly report to investors.

APPENDIX A TO PART 630—SUPPLEMENTAL INFORMATION DISCLOSURE GUIDELINES

AUTHORITY: Secs. 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2252, 2254); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

SOURCE: 59 FR 46742, Sept. 12, 1994, unless otherwise noted.

Subpart A—General

§ 630.1 Purpose.

This part sets forth the requirements for preparation and publication by the Farm Credit System (FCS or System) of annual and quarterly reports to investors and potential investors in Systemwide and consolidated bank debt obligations of the System and to other users of the reports in the general public.

§ 630.2 Definitions.

For purposes of this part, the following definitions shall apply:

(a) *Bank* means any bank chartered under the Farm Credit Act of 1971, as amended (Act).

(b) *Combined financial statements* means financial statements prepared on a combined basis by a group of affiliated entities that share the same financial interest, regardless of whether any of the entities has the ability to exercise control over another. For purposes of this part, unless otherwise specified, combined financial data of a bank and its related associations includes financial data of the bank's consolidated subsidiaries.

(c) *Disclosure entity* means any bank, the Farm Credit System Financial Assistance Corporation (Financial Assistance Corporation), and the Federal Farm Credit Banks Funding Corporation (Funding Corporation).

(d) *Engagement letter* means the proposal, contract, letter, and other documents reflecting the understandings between the audit committee or board of directors of a bank or an association and its independent public accountant regarding the scope, terms, and nature of the audit services to be performed.

(e) *Farm Credit System* means, collectively, the banks, associations, and such other institutions that are or may be made a part of the System under the Act, all of which are chartered by and subject to regulation by the Farm Credit Administration (FCA). For purposes of this part, the System does not include the Federal Agricultural Mortgage Corporation (Farmer Mac).

(f) *FCS debt obligation* means, collectively, notes, bonds, debentures, and other debt securities issued by banks pursuant to section 4.2(c) (consolidated bank debt securities) and section 4.2(d) (Systemwide debt securities) of the Act.

(g) *Report to investors* or *report* means a report that presents the Systemwide combined financial statements, supplemental financial statement information, and related financial and nonfinancial information pertaining to the System required by this part.

(h) *Systemwide combined financial statements* means the combined financial statements required by this part.

§ 630.3 Publishing and filing the report to investors.

(a) The disclosure entities shall jointly publish the following reports in order to provide meaningful information pertaining to the financial condition and results of operations of the System to investors and potential investors in FCS debt obligations and other users of the report:

(1) An annual report to investors within 90 days after the end of each fiscal year;

(2) A quarterly report to investors within 60 days after the end of each quarter, except for the quarter that coincides with the end of the fiscal year.

(b) Each report to investors shall present Systemwide combined financial statements and related footnotes deemed appropriate for the purpose of the report to provide investors with the most meaningful presentation pertaining to the financial condition and results of operations of the System.

(c) All items of essentially the same character as items required to be reported in the reports of condition and performance pursuant to part 621 of this chapter shall be prepared in accordance with the rules set forth in part 621 of this chapter.

(d) Each report to investors shall contain the information required by subparts B and C of this part, as applicable, and such other information as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

(e) Information in any part of the report may be referenced or incorporated in answer or partial answer to any other item of the report. Information required by this part may be presented in any order deemed suitable by the Funding Corporation.

(f) The report shall include a statement in a prominent location that Systemwide debt securities and consolidated bank debt obligations are joint and several liabilities of individual banks and that copies of each bank's recent periodic reports to shareholders are available upon request. The report shall also include addresses and telephone numbers where copies of the report to investors and the periodic reports of individual banks can be obtained. Copies of the report to investors shall be available for public inspection at the Funding Corporation.

(g) Three complete copies of the report shall be filed with the Chief Examiner, Farm Credit Administration, McLean, Virginia 22102–5090, within the applicable period prescribed under paragraphs (a)(1) and (a)(2) of this section.

(1) At least one copy of the report filed with the FCA shall be dated and manually signed by the following officers and director(s) of the Funding Corporation on its behalf:

(i) The officer(s) designated by the board of directors to certify the report;

(ii) The chief executive officer; and

(iii) Each member of the board or, at a minimum, one of the following board members formally designated by action of the board to certify on behalf of individual board members: the chairperson of the board or a board member designated by the chairperson of the board.

(2) The name and position title of each person signing the report shall be typed or printed beneath his or her signature. Signers of the report shall attest as follows:

> The undersigned certify that this report has been prepared in accordance with all applicable statutory or regulatory requirements and that the information contained herein is true, accurate, and complete to the best of his or her knowledge and belief.

§630.4 Responsibilities for preparing the report to investors.

(a) *Responsibilities of the Funding Corporation.* The Funding Corporation shall:

(1) Prepare the reports to investors required by §630.3(a), including the Systemwide combined financial statements and notes thereto, and such other disclosures, supplemental information, and related analysis as are required by this part to make the reports meaningful and not misleading.

(2) Establish a system of internal controls sufficient to reasonably ensure that any information it releases to investors and the general public concerning any matter required to be disclosed by this part is true and that there are no omissions of material information. The system of internal controls, at a minimum, shall require that the Funding Corporation:

(i) Maintain written policies and procedures, approved by the System Audit Committee, to be carried out by the disclosure entities for preparation of the report to investors;

(ii) Provide instructions to the disclosure entities regarding the information needed for preparation of the Systemwide combined financial statements and disclosures required to be presented in the report to investors;

(iii) Review the information submitted to it for preparation of the report to investors, and make reasonable inquiries to ascertain whether the information is reliable, accurate, and complete; and

(iv) Specify procedures for monitoring interim disclosures of System institutions and disclose, in a timely

manner, any material changes in information contained in the most recently published report to investors.

(3) Collect from each disclosure entity financial data and related analyses and other information needed for preparation of the report to investors, including any information that is material to the disclosure entity.

(4) File the reports with the FCA in accordance with § 630.3(g).

(5) Ensure prompt delivery of sufficient copies of each report to selling group dealers for distribution to investors and potential investors in FCS debt obligations.

(6) Make the report available to the general public upon request.

(7) Notify the FCA if it is unable to prepare and publish the report to investors in compliance with the requirements of this part because one or more banks have failed to comply with the requirements of paragraph (c) of this section. A notification, signed by the officer(s) designated by the board of directors of the Funding Corporation to certify the report to investors and by the chief executive officer, shall be made to the FCA as soon as the Funding Corporation becomes aware of its inability to comply. The Funding Corporation shall explain the reasons for the notification and may request that the FCA extend the due date for the report to investors.

(8) Include in the report a statement that briefly explains the respective responsibilities of the disclosure entities and states that the Funding Corporation has policies and procedures in place to ensure, to the best of the knowledge and belief of management and the board of the Funding Corporation, that the information contained in the report is true, accurate, and complete. The statement shall be signed by the chief executive officer and the chairperson of the board of the Funding Corporation.

(9) Request the FCA to provide information regarding the content of the latest Reports of Examination of any banks and related associations, if such information is necessary for preparation of a report that is meaningful and not misleading and is not forthcoming from a bank in accordance with paragraph (c) of this section. The request shall be made to the Chief Examiner, Farm Credit Administration, McLean, Virginia 22102–5090.

(b) *Responsibilities of the Financial Assistance Corporation.* The Financial Assistance Corporation shall provide to the Funding Corporation such information as may be required by the Funding Corporation to prepare the report.

(c) *Responsibilities of banks.* Each bank shall:

(1) Provide to the Funding Corporation annual, quarterly, and interim financial and other information in accordance with instructions of the Funding Corporation for preparation of the report to investors, including:

(i) Financial data of the bank or, if the bank is required under generally accepted accounting principles (GAAP) to prepare its financial statements on a consolidated basis with its subsidiaries, consolidated financial data of the bank and its consolidated subsidiaries; and

(ii) Combined financial data of the bank (including any consolidated subsidiaries of the bank) and related associations of the bank.

(2) Respond to Funding Corporation inquiries and provide any followup information requested by the Funding Corporation in connection with the preparation of the report to investors in accordance with instructions of the Funding Corporation.

(3) Notify the Funding Corporation promptly of any events occurring subsequent to publication of the report that may be material either to the financial condition and results of operations of the bank or to the combined financial condition and results of operations of the bank and its related associations. Furnish the Funding Corporation with any information necessary to provide interim Systemwide disclosure to investors to make the most recently published report to investors not misleading.

(4) Provide in the engagement letter with its external auditor that the external auditor shall, after notifying the bank, respond to inquiries from the Funding Corporation relating to preparation of the report.

(5)(i) Certify to the Funding Corporation that:

(A) All information needed for preparation of the report to investors has

been submitted in accordance with the instructions of the Funding Corporation;

(B) The information submitted is prepared in accordance with all applicable statutory and regulatory requirements; and

(C) The information submitted is true, accurate, and complete to the best of management's knowledge and belief.

(ii) The certification required by paragraph (c)(5)(i) of this section shall be prepared as specified by the Funding Corporation and shall be manually signed and dated on behalf of the bank by:

(A) The officer(s) designated by the board of directors to certify the information submitted to the Funding Corporation; and

(B) The chief executive officer.

(d) *Responsibilities of associations.* Each association shall:

(1) Provide its related bank with the information necessary to allow the bank to provide accurate and complete information regarding the bank and its related associations to the Funding Corporation for preparation of the report.

(2) Provide in the engagement letter with its external auditor that the external auditor of the association shall, after notifying the association, respond to inquiries of the related bank pertaining to preparation of the combined financial data of the association and its related bank.

§630.5 Prohibition against incomplete, inaccurate, or misleading disclosure.

Neither the Funding Corporation, nor any institution supplying information to the Funding Corporation under this part, nor any employee, officer, director, or nominee for director of the Funding Corporation or of such institutions, shall make or cause to be made any disclosure to investors and the general public required by this part that is incomplete, inaccurate, or misleading. When any such institution or person makes or causes to be made disclosure under this part that, in the judgment of the FCA, is incomplete, inaccurate, or misleading, whether or not such disclosure is made in published statements required by this part, such institution or person shall promptly furnish to the Funding Corporation, and the Funding Corporation shall promptly publish, such additional or corrective disclosure as is necessary to provide full and fair disclosure to investors and the general public. Nothing in this section shall prevent the FCA from taking additional actions to enforce this section pursuant to its authority under title V, part C of the Act.

§630.6 Farm Credit System audit committee and bank audit committees.

(a) *Farm Credit System audit committee.* (1) The board of the Funding Corporation shall establish and maintain a System Audit Committee and adopt a written charter describing the committee's composition, authorities, and responsibilities.

(2) The System Audit Committee shall consist of no fewer than three members. Members shall be independent of management of any disclosure entity and association and free from any relationship that, in the opinion of the board of directors of the Funding Corporation, would interfere with the exercise of independent judgment as a committee member. Members shall be knowledgeable in public and corporate finance, and financial reporting and disclosure.

(3) The System Audit Committee shall report to the board of the Funding Corporation and shall be given adequate resources and authorities to discharge its responsibilities, including the ability to consult the Funding Corporation's legal counsel.

(4) *Responsibilities.* At a minimum, the System Audit Committee shall:

(i) Make recommendations to the board of the Funding Corporation regarding the selection of an independent auditor of the Systemwide combined financial statements;

(ii) Oversee the Funding Corporation management's preparation of the report to investors;

(iii) Review the impact of any significant accounting and auditing developments, and review accounting policy changes relating to preparation of the Systemwide combined financial statements;

(iv) Review the System's annual and quarterly reports to investors prior to their release; and

(v) Oversee the Funding Corporation's system of internal controls relating to preparation of the report, including controls relating to the System's compliance with applicable laws and regulations.

(b) *Farm Credit System bank audit committees.* (1) Each System bank shall establish and maintain a bank audit committee that shall report to the board of the bank.

(2) The bank audit committee shall consist of no fewer than three members. Members shall be independent of management and free from any relationship that, in the opinion of the board of directors of the bank, would interfere with the exercise of independent judgment as a committee member. Members shall be knowledgeable in public and corporate finance, and financial reporting and disclosure.

(3) *Responsibilities.* At a minimum, the bank audit committee shall:

(i) Review the bank's financial statements and significant accounting policies;

(ii) Oversee the bank's financial reporting regarding its disclosure to shareholders and to the Funding Corporation for disclosure to investors;

(iii) Oversee the audit activities of the external auditor; and

(iv) Monitor internal controls, including those relating to compliance with laws and regulations.

Subpart B—Annual Report to Investors

§ 630.20 Contents of the annual report to investors.

The annual report shall contain the following:

(a) *Description of business.* (1) The description shall include a brief discussion of the following:

(i) The System's overall organizational structure, its lending institutions by type and their respective authorities, the relationships between different types of institutions, and the overall geographic area and eligible borrowers served by those institutions;

(ii) The types of lending activities engaged in and financial services offered by System institutions;

(iii) Any significant developments within the last 5 years that have had or could have a material impact on the System's organizational structure and the manner in which System institutions conduct business, including, but not limited to, statutory or regulatory changes, mergers or liquidations of System institutions, terminations of System institution status, and financial assistance provided by or to System institutions through loss-sharing or capital preservation agreements or from any other source;

(iv) Any acquisition or disposition of material assets during the last fiscal year that took place outside the ordinary course of business;

(v) Any concentrations of more than 10 percent of total assets in particular types of agricultural activities or businesses, and any dependence of an institution or a group of institutions of the System upon a specific activity or business, a single customer, or a few customers, including other financing institutions (OFIs), as defined in § 614.4540(e) of this chapter, the loss of any one of which would have a material effect on the System; and

(vi) The authority of System institutions to purchase and sell interests in loans in secondary markets and the risk involved in such activities.

(2) List the address of the headquarters of each disclosure entity and service organization of the System.

(b) *Federal regulation and insurance*—(1) *Farm Credit Administration.* Describe the regulatory and enforcement authority of the FCA over System institutions under the Act.

(2) *Farm Credit System Insurance Corporation.* (i) Describe the role and authorities of the Farm Credit System Insurance Corporation (FCSIC) under part E of title V of the Act. Describe specifically the role of the FCSIC in insuring the timely payment of principal and interest on FCS debt obligations and in providing assistance to System institutions.

(ii) Describe the FCSIC's status as a Government corporation and state that System institutions have no control over the management of the FCSIC or

the discretionary expenditures from the Farm Credit Insurance Fund (Insurance Fund), which are the sole prerogative of the FCSIC.

(3) *Farm Credit System Financial Assistance Corporation.* Describe the role and authorities of the Financial Assistance Corporation under title VI of the Act, debt obligations of the Financial Assistance Corporation issued to provide financial assistance to the System, and statutory repayment obligations of System institutions.

(c) *Description of legal proceedings and enforcement actions.* (1) Describe any material pending legal proceedings in which one or more System institutions are a party, or that involve claims that a System institution(s) may be required by contract or operation of law to satisfy, and the potential impact of such proceedings, to the extent known, on the System.

(2) Provide a summary of the types of enforcement actions in effect during the year, and any material impact of such proceedings on the System.

(d) *Description of liabilities.* (1) Describe how the System funds its lending operations, including:

(i) System banks' authority to borrow, and issue notes, bonds, debentures, and other obligations, and limitations thereof under section 4.2 of the Act;

(ii) A description of the types of debt obligations authorized to be issued under the Act, the types of debt obligations currently issued, the manner and form in which they are issued, rights of securities holders, risk factors, use of proceeds, tax effects of holding securities, market information, and other pertinent information;

(iii) For each of the types of obligations that may be issued, whether it is insured, and the extent of any joint and several liability for the obligations; and

(iv) Any applicable statutory and regulatory requirements affecting a bank's ability to incur debt.

(2) Describe agreements among System banks and the Funding Corporation affecting a bank's ability to incur debt.

(3) Describe agreements among System institutions regarding capital preservation, loss sharing, or any other forms of financial assistance.

(e) *Description of capital.* (1) Describe the capitalization of the System, including capital structure, types of stock and participation certificates, and voting rights of holders of stock and participation certificates.

(2) Describe the statutory requirement that a borrower purchase stock as a condition of obtaining a loan; how such stock is purchased, transferred, and retired; and how earnings are distributed.

(3) Describe any statutory or other authority of a System institution to require additional capital contributions from stockholders.

(4) Describe regulatory minimum permanent capital standards and capital adequacy requirements for banks and associations. State the number of institutions, if any, categorized by banks and associations, that are not currently in compliance with such standards and include a brief discussion of the reasons for the noncompliance.

(5) Describe any statutory and regulatory restrictions on retirement of stock and distribution of earnings by System institutions. State the number of System institutions, if any, categorized by banks and associations, that are currently affected by such restrictions and provide a summary of the causes of such prohibitions.

(f) *Selected financial data.* At a minimum, furnish the following combined financial data of the System in comparative columnar form for each of the last 5 fiscal years.

(1) *Balance sheet.*

(i) Loans.

(ii) Allowance for losses.

(iii) Net loans.

(iv) Cash and investments.

(v) Other property owned.

(vi) Total assets.

(vii) FCS debt obligations and other bonds, notes, debentures, and obligations, presented by type, with a descriptive title.

(viii) Total liabilities.

(ix) Capital stock and surplus.

(2) *Statement of income.*

(i) Net interest income.

(ii) Net other expenses.

(iii) Provision for loan losses.

(iv) Extraordinary items.

(v) Provision for income taxes.

(vi) Net income (loss).

(3) *Key financial ratios.* (i) Return on average assets.

(ii) Return on average capital stock and surplus.

(iii) Net interest income as a percentage of average earning assets.

(iv) Net loan chargeoffs as a percentage of average loans.

(v) Allowance for loan losses as a percentage of gross loans outstanding at yearend.

(vi) Capital stock and surplus as a percentage of total assets at yearend.

(vii) Debt to capital stock and surplus at yearend.

(g) *Discussion and analysis.* Fully discuss any material aspects of financial condition, changes in financial condition, and results of operations of System institutions, on a combined basis, for the comparative years required by paragraph (g)(6)(ii) of this section or such other time periods specified in the following paragraphs of this section. Identify favorable and unfavorable trends, and significant events or uncertainties necessary to understand the financial condition and results of operations of the System. At a minimum, the discussion shall include the following:

(1) *Loan portfolio*—(i) *Categorization.* Describe the loan portfolio of the System by major loan purpose category, indicating the amount and approximate percentage of the total dollar portfolio represented by each major category.

(ii) *Risk exposure.* (A) Describe and analyze all high-risk assets, including an analysis of the nature and extent of significant current and potential credit risks within the loan portfolio and of other information that could adversely affect the loan portfolio and other property owned.

(B) Provide an analysis of the allowance for loan losses that includes the ratios of the allowance for loan losses to loans (outstanding at yearend) and net chargeoffs to average loans, and a discussion of the adequacy of the allowance for loan losses to absorb the risk inherent in the loan portfolio and the basis for such determination.

(iii) *Secondary market activities.* (A) If material, quantify System institutions' secondary market activities and the risk involved in such activities.

(B) If material, provide an analysis of historical loss experience and the amount provided for risk of loss associated with secondary market activities.

(2) *Results of operations.* (i) Describe, on a comparative basis, changes in the major components of net interest income. Include a discussion of significant factors that contributed to the changes and quantify the amount of change(s) due to an increase or decrease in volume and the amount due to changes in interest rates earned and paid, based on averages for each period.

(ii) Describe any unusual or infrequent events or transactions, or any significant economic changes that materially affected reported income and, in each case, indicate the extent to which income was so affected.

(iii) Discuss the factors underlying any material changes in the return on average assets and return on average capital stock and surplus.

(iv) Describe, on a comparative basis, the major components of operating expense and any other significant components of income or expense, indicating the reasons for any significant increases or decreases.

(v) Describe any known trends or uncertainties that have had, or that are reasonably expected to have, a material impact on net interest income or net income. Disclose any known events that will cause a material change in the relationship between costs and revenues.

(vi) Explain the changes that have taken place, by major components on a comparative basis, in Insurance Fund assets and related restricted capital and how such changes affected reported income.

(3) *Funding sources and liquidity*—(i) *Funding sources.*

(A) Provide, in tabular form, the component amounts and the total amount of FCS debt obligations, debt obligations issued by banks individually, and Financial Assistance Corporation debt obligations outstanding at yearend for each of the past 2 fiscal years. List debt obligations issued by System institutions separately by

type, also separating insured obligations from uninsured obligations. For each type of debt obligation listed, provide the following, at a minimum, for each fiscal year listed:

(*1*) The beginning balance, the total amount of debt issued, the total amount of debt retired, and the year-end balance; and

(*2*) The average maturities and average interest rates on debt outstanding at yearend, and the average maturities and average interest rates of new debt issued during the year.

(B) Summarize any other sources of funds, including lines of credit with commercial lenders, and their terms.

(ii) *Liquidity.* (A) Include a brief overview of any FCA regulations or System policies with regard to liquidity and liquidity reserves.

(B) Identify any known trends, demands, commitments, events, or uncertainties that will result in, or that are reasonably likely to result in, System liquidity increasing or decreasing in any material way. If a material liquidity deficiency is identified, indicate the course of action that has been taken or is proposed to be taken by management of affected System institutions to remedy the deficiency.

(iii) *Investment.* Provide a brief overview of the System's investment policies and objectives, any regulatory limitations thereon, and the contents of the System's existing investment portfolio.

(iv) *Interest rate sensitivity.* (A) Provide a brief overview of the System's asset and liability management practices, including interest rate risk measurement systems, and methods used to control interest rate risk, such as the use of investments, derivatives, and other off-balance-sheet transactions.

(B) Provide an analysis of the System's exposure to interest rate risk and its ability to control such risk.

(4) *Capital resources.* (i) Describe any material commitments to purchase capital assets and the anticipated sources of funding.

(ii) Describe any material trends, favorable or unfavorable, in the System's capital resources, including any material changes in the mix of capital and debt, the relative cost of capital resources, and any off-balance- sheet financing arrangements.

(iii) Provide a general discussion of any trends, commitments, contingencies, or events that are reasonably likely to have a material adverse effect on System institutions' ability to comply with regulatory capital standards.

(5) *Insurance Fund.* (i) Describe the purposes for which expenditures from the Insurance Fund may be made and the statutory requirements for making such expenditures.

(ii) Provide a schedule itemizing the amount of Insurance Fund assets that have been specifically identified by the FCSIC for payment of estimated obligations of the FCSIC and the amount of Insurance Fund assets for which no specific use has been identified or designated by the FCSIC. Information provided shall be as of the end of the most recent fiscal year.

(iii) Explain how FCSIC expenditures or designations of Insurance Fund assets for payment of future obligations affect the combined assets and capital of the System, and quantify the effect, if any.

(6) *Instructions for discussion and analysis.* (i) The purpose of the discussion and analysis (D&A) shall be to provide to investors and other users information relevant to an assessment of the combined financial condition and results of operations of System institutions as determined by evaluating the amounts and certainty of cashflows from operations and from outside sources. The information provided pursuant to this section need only include that which is available to System institutions and which does not clearly appear in the combined financial statements.

(ii) The D&A of the financial statements and other statistical data shall be presented in a manner designed to enhance a reader's understanding of the combined financial condition, results of operations, cashflows, and changes in capital of System institutions. Unless otherwise specified in § 630.20(g), the discussion shall cover the period covered by the financial statements and shall use year-to-year comparisons or any other understandable format. Where trend information

is relevant, reference to the 5-year selected financial data required by paragraph (f) of this section may be necessary.

(iii) The D&A shall focus specifically on material events and uncertainties known at the time of reporting that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This should include descriptions and amounts of:

(A) Matters that would have an impact on future operations but that have not had an impact in the past; and

(B) Matters that have had an impact on reported operations but are not expected to have an impact on future operations.

(h) *Directors and management*—(1) *Board of directors.* Briefly describe the composition of boards of directors of the disclosure entities. List the name of each director of such entities, including the director's term of office and principal occupation during the past 5 years, or state that such information is available upon request pursuant to § 630.3(f).

(2) *Management.* List the names of chief executive officers and presidents of disclosure entities, including position title, length of service at current position, and positions held during the past 5 years.

(i) *Compensation of directors and senior officers.* State that information on the compensation of directors and senior officers of System banks is contained in each bank's annual report to shareholders and that the annual report of each bank is available to investors upon request pursuant to § 630.3(f).

(j) *Related party transactions.* (1) Briefly describe how System institutions, in the ordinary course of business and subject to regulation by the FCA, may enter into loan transactions with related parties, including their directors, officers, and employees, the immediate family members (as defined in § 620.1(e) of this chapter) of such persons, and any organizations with which such persons and their immediate family members are affiliated.

(2) On a comparative basis for each of the fiscal years covered by the balance sheet, state the aggregate amount of the following:

(i) Loans made to related parties;

(ii) Loans outstanding at yearend to related parties;

(iii) Loans outstanding at yearend to related parties that are made on more favorable terms than those prevailing at the time for comparable transactions with unrelated borrowers; and

(iv) Loans outstanding at yearend to related parties that involve more than a normal risk of collectibility (as defined in § 620.1(i) of this chapter).

(k) *Relationship with independent public accountant.* If a change in the accountant who has previously examined and expressed an opinion on the Systemwide combined financial statements has taken place since the last annual report to investors or if a disagreement with an accountant has occurred that the Funding Corporation would be required to report to the FCA under part 621 of this chapter, disclose the information required by § 621.4(c) and (d) of this chapter.

(l) *Financial statements.* Furnish Systemwide combined financial statements and related footnotes prepared in accordance with GAAP, and accompanied by supplemental information prepared in accordance with the requirements of § 630.20(m). The Systemwide combined financial statements shall provide investors and potential investors in FCS debt obligations with the most meaningful presentation pertaining to the financial condition and results of operations of the System. The Systemwide combined financial statement and accompanying supplemental information shall be audited in accordance with generally accepted auditing standards by a qualified public accountant (as defined in § 621.2(i) of this chapter). The Systemwide combined financial statements shall include the following:

(1) A balance sheet as of the end of each of the 2 most recent fiscal years; and

(2) Statements of income, statements of changes in capital stock and surplus (or, if applicable, statements of changes in protected borrower capital and capital stock and surplus), and statements of cash flows for each of the 3 most recent fiscal years.

(m) *Supplemental information.* Furnish supplemental information regarding

the components of the Systemwide combined financial statements that has been prepared in accordance with the requirements of this paragraph and any additional guidance or instructions provided by the FCA.

(1) At a minimum, the supplemental information shall include the following:

(i) Supplemental balance sheet information as of the end of the most recent fiscal year; and

(ii) Supplemental income statement information for the most recently completed fiscal year.

(2) At a minimum, the report shall present supplemental information showing combined financial data for the following components on a standalone basis:

(i) Banks;

(ii) Associations;

(iii) Financial Assistance Corporation;

(iv) Combined financial data of the System without the Insurance Fund;

(v) The Insurance Fund and related combination entries; and

(vi) Combined financial data of the System with the Insurance Fund.

(3) The supplemental information shall be presented in a columnar format and include, at a minimum, the selected financial data listed in the schedules in appendix A of this part. The prescribed components shall be designated as column headings and they may be abbreviated in the schedules. The financial data required by §630.20(m)(2)(i) shall include the financial data required to be submitted by each bank pursuant to the requirement of §630.4(c)(1)(i).

(4) The supplemental information may be presented separately or in accompanying notes to the Systemwide combined financial statements and shall contain additional disclosures sufficient to explain the basis of the presentation of the supplemental information, the components, and any adjustments contained therein to enable readers to understand the effect of each component on the Systemwide combined financial statements.

(n) List the names of the System Audit Committee members in the report to investors.

(o) Include a detailed index setting forth the major disclosure captions of this subpart and the page or pages on which the required information appears in the report.

Subpart C—Quarterly Reports to Investors

§630.40 Contents of the quarterly report to investors.

(a) *General.* The quarterly report to investors shall contain the information specified in this section along with any other material information necessary to make the required disclosures, in light of the circumstances under which they are made, not misleading. The quarterly report must be presented in a format that is easily understandable and not misleading.

(b) *Rules for condensation.* For purposes of this subpart, major captions to be provided in interim financial statements are the same as those provided in the financial statements contained in the annual report to investors, except that the financial statements included in the quarterly report may be condensed into major captions in accordance with the rules prescribed under this paragraph.

(1) *Interim balance sheets.* When any major balance sheet caption is less than 10 percent of total assets and the amount in the caption has not increased or decreased by more than 25 percent since the end of the preceding fiscal year, the caption may be combined with others.

(2) *Interim statements of income.* When any major income statement caption is less than 15 percent of average net income for the 3 most recent fiscal years and the amount in the caption has not increased or decreased by more than 20 percent since the corresponding interim period of the preceding fiscal year, the caption may be combined with others. In calculating average net income, loss years should be excluded. If losses were incurred in each of the 3 most recent fiscal years, the average loss shall be used for purposes of this test.

(3) The interim financial information shall include disclosure either on the face of the financial statements or in accompanying footnotes sufficient to

make the interim information presented not misleading. It may be presumed that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year, and the adequacy of additional disclosure needed for a fair presentation may be determined in that context. Accordingly, footnote disclosure that would substantially duplicate the disclosure contained in the most recent audited financial statements (such as a statement of significant accounting policies and practices) and details of accounts that have not changed significantly in amount or composition since the end of the most recently completed fiscal year may be omitted.

(4) Interim reports shall disclose events that have occurred subsequent to the end of the most recently completed fiscal year that have a material impact on the System. Disclosures should encompass, for example, significant changes since the end of the most recently completed fiscal year in such items as accounting principles and practices, estimates used in the preparation of financial statements, status of long-term contracts, capitalization, significant new indebtedness or modification of existing financing agreements, financial assistance received, significant business combinations and liquidations of System institutions, and terminations of System institution status. Notwithstanding the provisions of this paragraph, where material contingencies exist, disclosure of such matters shall be provided even though a significant change since yearend may not have occurred.

(5) In addition to meeting the reporting requirements specified by existing accounting pronouncements for accounting changes, state the date of any material accounting change and the reasons for making it.

(6) Any material prior period adjustment made during any period covered by the interim financial statements shall be disclosed, together with its effect upon net income and upon the balance of surplus for any prior period included. If results of operations for any period presented have been adjusted retroactively by such an item subsequent to the initial reporting of such period, similar disclosure of the effect of the change shall be made.

(7) Interim financial statements furnished shall reflect all adjustments that are necessary to a fair statement of the results for the interim periods presented. A statement to that effect shall be included. Furnish any material information necessary to make the information called for not misleading, such as a statement that the results for interim periods are not necessarily indicative of results to be expected for the year.

(8) If any amount that would otherwise be required to be shown by this section with respect to any item is not material, it need not be separately shown. The combination of insignificant items is permitted.

(c) *Discussion and analysis of interim financial condition and results of operations.* Discuss any material changes to the information disclosed to investors pursuant to § 630.20(g) that have occurred during the periods specified in paragraphs (d)(1) and (d)(2) of this section. Provide any additional information needed to enable the reader to assess material changes in financial condition and results of operations between the periods specified in paragraphs (d)(1) and (d)(2) of this section.

(1) *Material changes in financial condition.* Discuss any material changes in financial condition from the end of the preceding fiscal year to the date of the most recent interim balance sheet provided.

(2) *Material changes in results of operations.* Discuss any material changes in the combined results of operations of the System with respect to the most recent fiscal year-to-date period for which an income statement is provided and the corresponding year-to-date period of the preceding fiscal year. Such discussion shall also cover material changes with respect to the most recent fiscal quarter and the corresponding fiscal quarter in the preceding fiscal year.

(d) *Financial statements.* Interim combined financial statements shall be provided in the quarterly report to investors as set forth in paragraphs (d)(1) through (4):

(1) An interim balance sheet as of the end of the most recent fiscal quarter

and a balance sheet as of the end of the preceding fiscal year.

(2) Interim statements of income for the most recent fiscal quarter, for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable periods for the previous fiscal year.

(3) Interim statements of changes in capital stock and surplus (or, if applicable, interim statements of changes in protected borrower capital and capital stock and surplus) for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year.

(4) Interim statements of cash flows for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the comparable period for the preceding fiscal year.

(e) *Supplemental information.* The interim report shall present supplemental information in accordance with the requirements of §630.20(m)(2), (m)(3), and (m)(4), as well as other requirements and instructions of the FCA, and shall include, at a minimum, the following:

(1) Supplemental balance sheet information as of the end of the most recent quarter; and

(2) Supplemental income statement information for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter.

(f) *Review by independent public accountant.* Unless otherwise ordered by the FCA as a result of a supervisory action, the interim financial statements and supplemental information need not be audited or reviewed by an independent public accountant prior to filing. If, however, a review of the report is made in accordance with the established professional standards and procedures for such a review, a statement that the independent accountant has performed such a review may be included. If such a statement is made, the report of the independent accountant on such review shall accompany the interim financial information.

APPENDIX A TO PART 630—SUPPLEMENTAL INFORMATION DISCLOSURE GUIDELINES

Supplemental information required by §§630.20(m) and 630.40(e) shall contain, at a minimum, the current year financial data for the components listed in the following tables and be presented in the columnar format illustrated in the following tables:

TABLE A—SUPPLEMENTAL BALANCE SHEET INFORMATION

	Banks[1]	Associations[2]	Financial assistance corporation	Eliminations	Combined without insurance fund[3]	Insurance fund and related combination entries	Combined with insurance fund
Cash and investments Net loans Restricted assets Other Assets							
Total assets							
Total liabilities Protected borrower capital[4] Restricted capital Capital stock and surplus							
Total liabilities, protected borrower capital, and capital stock and surplus							

[1] Provide combined financial data of all FCS banks, including any consolidated subsidiaries of the banks.
[2] Provide association-only combined financial data of all FCS associations.
[3] Provide the combined financial data of all columns on the left.
[4] Any item that is no longer applicable, e.g., protected borrower stock, may be omitted.

TABLE B—SUPPLEMENTAL INCOME STATEMENT INFORMATION

	Banks[1]	Associations[2]	Financial assistance corporation	Eliminations	Combined without insurance fund[3]	Insurance fund and related combination entries	Combined with insurance fund
Net interest income Provision for loan losses Other income Other expenses							
Net income							

[1] Provide combined financial data of all FCS banks, including any consolidated subsidiaries of the banks.
[2] Provide association-only combined financial data of all FCS associations.
[3] Provide the combined financial data of all columns on the left.

PART 650—FEDERAL AGRICULTURAL MORTGAGE CORPORATION

Subpart A—Conflicts of Interest

Sec.
650.1 Definitions.
650.2 Conflict-of-interest policy.
650.3 Implementation of policy.
650.4 Director, officer, employee, and agent responsibilities.

Subpart B—[Reserved]

AUTHORITY: Secs. 5.9, 5.17, 8.11 of the Farm Credit Act; 12 U.S.C. 2243, 2252, 2279aa–11; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

SOURCE: 59 FR 9626, Mar. 1, 1994, unless otherwise noted.

Subpart A—Conflicts of Interest

§650.1 Definitions.

(a) *Agent* means any person (other than a director, officer, or employee of the Corporation) who represents the Corporation in contacts with third parties or who provides professional services such as legal, accounting, or appraisal services to the Corporation.

(b) *Affiliate* means any entity established under authority granted to the Corporation under section 8.3(b)(13) of the Farm Credit Act of 1971, as amended.

(c) *Corporation* means the Federal Agricultural Mortgage Corporation and its affiliates.

(d) *Employee* means any salaried individual working part-time, full-time, or temporarily for the Corporation.

(e) *Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust (business or otherwise), fund, or other organization or institution.

(f) *Material,* when applied to a potential conflict of interest, means the conflicting interest is of sufficient magnitude or significance that a reasonable observer with knowledge of the relevant facts would question the ability of the person having such interest to discharge official duties in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation.

(g) *Officer* means the salaried president, vice presidents, secretary, treasurer, and general counsel, or other person, however designated, who holds a position of similar authority in the Corporation.

(h) *Person* means individual or entity.

(i) *Potential conflict of interest* means a director, officer, or employee of the Corporation has an interest in a transaction, relationship, or activity that might adversely affect, or appear to adversely affect, the ability of the director, officer, or employee to perform his official duties on behalf of the Corporation in an objective and impartial manner in furtherance of the interest of the Corporation and its statutory purposes. For the purpose of determining whether a potential conflict of interest exists, the following interests shall be imputed to a person subject to this regulation as if they were that person's own interests:

(1) Interests of that person's spouse;

(2) Interests of that person's minor child;

(3) Interests of that person's general partner;

(4) Interests of an organization or entity that the person serves as officer, director, trustee, general partner or employee; and

(5) Interests of a person, organization, or entity with which that person is negotiating for or has an arrangement concerning prospective employment.

(j) *Resolved,* when applied to a potential conflict of interest that the Corporation has determined is material, means that circumstances have been altered so that a reasonable observer with knowledge of the relevant facts would conclude that the conflicting interest would not adversely affect the person's performance of official duties in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation.

§650.2 Conflict-of-interest policy.

The Corporation shall establish and administer a conflict-of-interest policy that will provide reasonable assurance that the directors, officers, employees, and agents of the Corporation discharge their official responsibilities in an objective and impartial manner in furtherance of the interests and statutory purposes of the Corporation. The policy shall, at a minimum:

(a) Define the types of transactions, relationships, or activities that could reasonably be expected to give rise to potential conflicts of interest.

(b) Require each director, officer, and employee to report in writing, annually, and at such other times as conflicts may arise, sufficient information about financial interests, transactions, relationships, and activities to inform the Corporation of potential conflicts of interest;

(c) Require each director, officer, and employee who had no transaction, relationship, or activity required to be reported under paragraph (b) of this section at any time during the year to file a signed statement to that effect;

(d) Establish guidelines for determining when a potential conflict is material in accordance with this subpart;

(e) Establish procedures for resolving or disclosing material conflicts of interest.

(f) Provide internal controls to ensure that reports are filed as required and that conflicts are resolved or disclosed in accordance with this subpart.

(g) Notify directors, officers, and employees of the conflict-of-interest policy and any subsequent changes thereto and allow them a reasonable period of time to conform to the policy.

§ 650.3 Implementation of policy.

(a) The Corporation shall disclose any unresolved material conflicts of interest involving its directors, officers, and employees to:

(1) Shareholders through annual reports and proxy statements; and

(2) Investors and potential investors through disclosure documents supplied to them.

(b) The Corporation shall make available to any shareholder, investor, or potential investor, upon request, a copy of its policy on conflicts of interest. The Corporation may charge a nominal fee to cover the costs of reproduction and handling.

(c) The Corporation shall maintain all reports of all potential conflicts of interest and documentation of materiality determinations and resolutions of conflicts of interest for a period of 6 years.

§ 650.4 Director, officer, employee, and agent responsibilities.

(a) Each director, officer, employee, and agent of the Corporation shall:

(1) Conduct the business of the Corporation following high standards of honesty, integrity, impartiality, loyalty, and care, consistent with applicable law and regulation in furtherance of the Corporation's public purpose;

(2) Adhere to the requirements of the conflict-of-interest policy established by the Corporation and provide any information the Corporation deems necessary to discharge its responsibilities under this subpart.

(b) Directors, officers, employees, and agents of the Corporation shall be subject to the penalties of part C of title V of the Farm Credit Act of 1971, as amended, for violations of this regulation, including failure to adhere to the conflict-of-interest policy established by the Corporation.

Subpart B—[Reserved]

CHAPTER VII—NATIONAL CREDIT UNION ADMINISTRATION

EDITORIAL NOTE: For FEDERAL REGISTER citations to interpretations and policy statements to Chapter VII, see the List of CFR Sections Affected in the Finding Aids section of this volume.

SUBCHAPTER A—REGULATIONS AFFECTING CREDIT UNIONS

Part		*Page*
700	Definitions	313
701	Organization and operation of Federal credit unions	314
702	Reserves	350
703	Investment and deposit activities	352
704	Corporate credit unions	356
705	Community Development Revolving Loan Program for Credit Unions	369
706	Credit practices	372
707	Truth in savings	374
708a	Mergers or conversions of Federally-insured credit unions: NCUA approval	423
708b	Mergers of federally-insured credit unions; voluntary termination or conversion of insured status	426
709	Involuntary liquidation of Federal credit unions and adjudication of creditor claims involving federally insured credit unions in liquidation	434
710	Voluntary liquidation	441
711	Management official interlocks	443
721	Federal credit union insurance and group purchasing activities	448
722	Appraisals	449
724	Trustees and custodians of pension plans	452
725	National Credit Union Administration Central Liquidity Facility	453
740	Advertising	460
741	Requirements for insurance	462
745	Share insurance and appendix	470

Part		Page
747	Administrative actions, adjudicative hearings, rules of practice and procedure, and investigations	485
748	Suspicious activity report; report of Catastrophic Act and Bank Secrecy Act compliance	523
749	Records Preservation Program	525
760	Loans in areas having special flood hazards	526

SUBCHAPTER B—REGULATIONS AFFECTING THE OPERATIONS OF THE NATIONAL CREDIT UNION ADMINISTRATION

790	Description of NCUA; requests for agency action	531
791	Rules of NCUA Board procedure; promulgation of NCUA rules and regulations; public observation of NCUA Board meetings	535
792	Requests for information under the Freedom of Information Act and Privacy Act, and by subpoena; security procedures for classified information	542
793	Tort claims against the Government	559
794	Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the National Credit Union Administration	563
795	OMB control numbers assigned pursuant to the Paperwork Reduction Act	569

SUBCHAPTER A—REGULATIONS AFFECTING CREDIT UNIONS

PART 700—DEFINITIONS

AUTHORITY: 12 U.S.C. 1752, 1757(6), 1766.

§ 700.1 Definitions.

As used in this chapter:

(a) *Act* means the Federal Credit Union Act (73 Stat. 628, 84 Stat. 944, 12 U.S.C. 1751 through 1790).

(b) *Administration* means the National Credit Union Administration.

(c) *Board* means the Board of the National Credit Union Administration.

(d) *Credit Union* means a credit union chartered under the Federal Credit Union Act or, as the context permits, under the laws of any State.

(e) *Regional Director* means the representative of the Administration in the designated geographical area in which the office of the Federal credit union is located.

(f) *Regional Office* means the office of the Administration located in the designated geographical areas in which the office of the Federal credit union is located.

(g) *State* means a State of the United States, the District of Columbia, any of the several Territories and possessions of the United States, the Panama Canal Zone, and the Commonwealth of Puerto Rico.

(h) *Remaining maturity* is the time period from the date of the required reserve transfer to the stated date of maturity of the instrument.

(i) For the purpose of establishing the reserves required by section 116 of the Federal Credit Union Act, all assets except the following shall be considered risk assets:

(1) Cash on hand.

(2) Deposits and/or shares in federally or state-insured banks, savings and loan associations, and credit unions that have a remaining maturity of 5 years or less.

(3) Assets that have a remaining maturity of 5 years or less and are insured by, fully guaranteed as to principal and interest by, or due from the U.S. Government, its agencies, the Federal National Mortgage Association. Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association. Collateralized mortgage obligations that are comprised of government guaranteed mortgage loans shall be included in this asset category.

(4) Loans to other credit unions that have a remaining maturity of 5 years or less.

(5) Student loans insured under the provisions of title IV, Part B of the Higher Education Act of 1965 (20 U.S.C. 1071, et seq.) or similar state insurance programs that have a remaining maturity of 5 years or less.

(6) Loans that have a remaining maturity of 5 years or less and are fully insured or guaranteed by the Federal or a state government or any agency of either.

(7) Shares or deposits in a corporate credit union that have a remaining maturity of 5 years or less, other than Membership Capital Share Deposit accounts as defined in part 704.

(i) Is operated primarily for the purpose of serving other credit unions;

(ii) Is designated by the National Credit Union Administration as a corporate credit union; and

(iii) Limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

(8) Common trust investments, including mutual funds, which deal exclusively in investments authorized by the Federal Credit Union Act that are either carried at the lower cost or market, or are marked to market value monthly.

(9) Prepaid expenses.

(10) Accrued interest on non-risk investments.

(11) Loans fully secured by a pledge of shares in the lending Federal credit union, equal to and maintained to at least the amount of the loan outstanding.

(12) Loans which are purchased from liquidating credit unions and guaranteed by the National Credit Union Administration.

(13) National Credit Union Share Insurance Fund Guaranty Accounts established with the authorization of the National Credit Union Administration

under the authority of section 208(a)(1) of the Federal Credit Union Act.

(14) Investments in shares of the National Credit Union Administration Central Liquidity Facility.

(15) Assets included in numbered items 2, 3, 4, 5, 6, and 7 with maturities greater than 5 years are exempt from risk assets if the asset is being carried on the credit union's records at the lower of cost or market, or are being marked to market value monthly.

(16) Assets included in numbered items 2, 3, 4, 5, 6, and 7, with remaining maturities greater than 5 years are exempt from risk assets provided they meet the following criteria, irrespective of whether or not the asset is being carried on the credit union's records at the lower of cost or market, or are being marked to market value monthly.

(17) Fixed Assets as defined in § 701.36(b).

(18) Deposit in the National Credit Union Share Insurance Fund representing a federally insured credit union's capitalization account balance of one percent of insured shares.

(j)(1) *Insolvency.* A credit union will be determined to be insolvent when the total amount of its shares exceeds the present cash value of its assets after providing for liabilities unless:

(i) It is determined by the Board that the facts that caused the deficient share-asset ratio no longer exist; and

(ii) The likelihood of further depreciation of the share-asset ratio is not probable; and

(iii) The return of the share-asset ratio to its normal limits within a reasonable time for the credit union concerned is probable; and

(iv) The probability of a further potential loss to the insurance fund is negligible.

(2) For purposes of this section, the following definitions are used:

(i) *Cash value of assets.* Recorded value will be considered the cash value of any asset account providing accepted accounting principles and practices are followed and the provisions of law, regulation, and bylaws are met.

(ii) *Liabilities.* Recorded liabilities which are due and payable, excluding shares of members and non-members, are considered liabilities.

(k) For purposes of determining the amount required to be transferred to regular reserves under sections 116 and 201(b)(6) of the Federal Credit Union Act, *gross income* means the total of the operating income accounts reduced by the following.

(1) Dividends received on shares in the National Credit Union Administration Central Liquidity Facility;

(2) Dividends received by credit unions on special share accounts held in Agent members of the Central Liquidity Facility authorized by § 725.7 of this chapter; and

(3) Interest received by an Agent member of the Central Liquidity Facility to the extent of interest paid to the Facility by the Agent member. In the case of an Agent member of the Central Liquidity Facility that is a group of central credit unions—

(i) Interest received by the Agent group representative, as defined in § 725.1(b) of this chapter, to the extent of interest paid to the Facility by the Agent group representative; and

(ii) Interest received by each central credit union in the Agent group (other than the Agent group representative) to the extent of interest paid by each such central credit union to the Agent group representative on Agent group representative loans, as defined in § 725.1(b) of this chapter. Non-operating gains and losses are not included in gross income.

[36 FR 23794, Dec. 15, 1971; 37 FR 329, Jan. 11, 1972, as amended at 37 FR 10342, May 20, 1972; 45 FR 47121, July 14, 1980; 54 FR 48234, Nov. 22, 1989; 54 FR 52015, Dec. 20, 1989; 55 FR 1794, Jan. 19, 1990; 57 FR 47985, Oct. 21, 1992; 58 FR 40042, July 27, 1993]

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

Sec.

701.1 Federal credit union chartering, field of membership modifications, and conversions.
701.2 Incorporation by reference.
701.3—701.5 [Reserved]
701.6 Fees paid by Federal credit unions.
701.7—701.11 [Reserved]
701.12 Supervisory committee audits and verifications.
701.13 Requirements for an outside audit.

701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.
701.15—701.18 [Reserved]
701.19 Retirement benefits for employees of Federal credit unions.
701.20 Fidelity bond and insurance coverage for Federal credit unions.
701.21 Loans to members and lines of credit to members.
701.22 Loan participation.
701.23 Purchase, sale, and pledge of eligible obligations.
701.24 Refund of interest.
701.25 [Reserved]
701.26 Credit union service contracts.
701.27 Investments in and loans to credit union service organizations.
701.28—701.29 [Reserved]
701.30 Safe deposit box service.
701.31 Nondiscrimination requirements.
701.32 Payment on shares by public units and nonmembers.
701.33 Reimbursement, insurance, and indemnification of officials and employees.
701.34 Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.
701.35 Share, share draft, and share certificate accounts.
701.36 FCU ownership of fixed assets.
701.37 Treasury tax and loan depositaries; depositaries and financial agents of the Government.
701.38 Borrowed funds from natural persons.

AUTHORITY: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, 1798. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration practice and procedure concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 94–1 Chartering and Field of Membership Policy (IRPS 94–1) as amended by IRPS 96–1 and IRPS 96–2. Copies may be obtained by contacting NCUA at the address found in §792.2(g)(1) of this chapter. The combined IRPS are incorporated into this section.

(Approved by the Office of Management and Budget under control number 3133–0015)

[61 FR 59308, Nov. 22, 1996]

§701.2 Incorporation by reference.

(a) The publication used by Federal credit unions, which is identified in this chapter, is hereby incorporated by reference pursuant to 5 U.S.C. 552(a)(1) and the regulation issued thereunder.

(b) Copies of the publication prescribed in this chapter may be obtained on request addressed to National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

(c) Revisions or amendments of the publication may be issued from time to time by the National Credit Union Administration. An historic file of such amendments or revisions is maintained and made available for inspection at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

(d) The publication listed below is hereby incorporated by reference:

(1) Federal Credit Union Bylaws. (Approved by the Office of the Federal Register through June 30, 1982.)

(e) Copies of this publication are on file with the Director, Office of Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408. The text of any changes in said publication will be filed with the Director, Office of the Federal Register, and a notice thereof will be periodically published in the FEDERAL REGISTER.

[47 FR 23686, June 1, 1982, as amended at 59 FR 36041, July 15, 1994]

§§701.3—701.5 [Reserved]

§701.6 Fees paid by Federal credit unions.

(a) *Basis for assessment.* Each calendar year or as otherwise directed by the Board, each Federal credit union shall pay to the Administration for the current National Credit Union Administration fiscal year (January 1 to December 31) an operating fee in accordance with a schedule as fixed from time to time by the National Credit Union Administration Board based on the total assets of each Federal credit union as of December 31 of the preceding year or as otherwise determined pursuant to paragraph (b) of this section.

(b) *Coverage.* The operating fee shall be paid by each Federal credit union

engaged in operations as of January 1 of each calendar year, except as otherwise provided by this paragraph.

(1) *New charters.* A newly chartered Federal credit union will not pay an operating fee until the year following the first full calendar year after the date chartered.

(2) *Conversions.* A state chartered credit union that converts to Federal charter will pay an operating fee in the year following the conversion. Federal credit unions converting to state charter will not receive a refund of the operating fee paid to the Administration in the year in which the conversion takes place.

(3) *Mergers.* A continuing Federal credit union that has merged with another credit union will pay an operating fee in the following year based on the combined total assets of the merged credit union and the continuing Federal credit union as of December 31 of the year in which the merger took place. For purposes of this requirement, a purchase and assumption transaction wherein the continuing Federal credit union purchases all or essentially all of the assets of another credit union shall be deemed a merger. Federal credit unions merging with other Federal or state credit unions will not receive a refund of the operating fee paid to the Administration in the year in which the merger took place.

(4) *Liquidations.* A Federal credit union placed in liquidation will not pay any operating fee after the date of liquidation.

(c) *Notification.* Each Federal credit union shall be notified at least 30 days in advance of the schedule of fees to be paid. A Federal credit union may submit written comments to the Board for consideration regarding the existing fee schedule. Any subsequent revision to the schedule shall be provided to each Federal credit union at least 15 days before payment is due.

(d) *Assessment of Administrative Fee and Interest for Delinquent Payment.* Each Federal credit union shall pay to the Administration an administrative fee, the costs of collection, and interest on any delinquent payment of its operating fee. A payment will be considered delinquent if it is postmarked later than the date stated in the notice to the credit union provided under § 701.6(c). The National Credit Union Administration may waive or abate charges or collection of interest if circumstances warrant.

(1) The administrative fee for a delinquent payment shall be an amount fixed from time to time by the National Credit Union Administration Board and based upon the administrative costs of such delinquent payments to the Administration in the preceding year.

(2) The costs of collection shall be the actual hours expended by Administration personnel multiplied by the average hourly salary and benefits costs of such personnel as determined by the National Credit Union Administration Board.

(3) The interest rate charged on any delinquent payment shall be the U.S. Department of the Treasury Tax and Loan Rate in effect on the date when the payment is due as provided in 31 U.S.C. 3717.

(4) If a credit union makes a combined payment of its operating fee and its share insurance deposit as provided in § 741.4 of this chapter and such payment is delinquent, only one administrative fee will be charged and interest will be charged on the total combined payment.

[44 FR 27380, May 10, 1979, as amended at 50 FR 20745, May 20, 1985; 55 FR 1799, Jan. 19, 1990; 59 FR 33421, June 29, 1994; 60 FR 58503, Nov. 28, 1995]

§§ 701.7—701.11 [Reserved]

§ 701.12 Supervisory committee audits and verifications.

(a) *Definitions.* As used in this chapter:

(1) *Agreed-upon procedures engagement* refers to the performance by an independent, licensed certified public accountant of an engagement in which the scope is limited to applying specified agreed-upon procedures to one or more specified elements, accounts or items of a financial statement. Such procedures are insufficient to express an opinion regarding either the financial statements taken as a whole, or the specified elements, accounts or items under examination.

(2) *Compensated auditor* refers to any accounting/auditing professional, excluding credit union employees, who is compensated for performing more than one compensated supervisory committee audit and/or verification of members' accounts, or opinion audit, per calendar year.

(3) *Financial statements* refers to a presentation of financial data, including accompanying notes, derived from accounting records of the credit union, and intended to disclose a credit union's economic resources or obligations at a appoint in time, or the changes therein for a period of time, in conformity with GAAP or RAP, as defined herein. Each of the following is considered to be a financial statement: a balance sheet or statement of financial condition; statement of income or statement of operations; statement of undivided earnings; statement of cash flows; statement of changes in members' equity; statement of assets and liabilities that does not include members' equity accounts; statement of revenue and expenses; and statement of cash receipts and disbursements.

(4) *GAAP* is an acronym for ''generally accepted accounting principles'' which refers to the conventions, rules, and procedures which define accepted accounting practice. GAAP includes both broad general guidelines and detailed practices and procedures, provides a standard by which to measure financial statement presentations, and encompasses not only accounting principles and practices but also the methods of applying them.

(5) *GAAS* is an acronym for ''generally accepted auditing standards'' which refers to the standards approved and adopted by the American Institute of Certified Public Accountants which apply when an ''independent, licensed certified public accountant'' audits financial statements. Auditing standards differ from auditing procedures in that ''procedures'' address acts to be performed, whereas ''standards'' measure the quality of the performance of those acts and the objectives to be achieved by use of the procedures undertaken. In addition, auditing standards address the auditor's professional qualifications as well as the judgment exercised in performing the audit and in preparing the report of the audit. Copies of GAAS may be obtained from the AICPA, Order Department, Harborside Financial Center, 201 Plaza Three, Jersey City, NJ 07311–3881, telephone (800) TO–AICPA or (800) 862–4272.

(6) *Independence* and *Independent* means the impartiality necessary for the reliability of the compensated auditor's findings. Independence requires the exercise of fairness toward credit union officials, members, creditors and others who may rely upon the supervisory committee audit report.

(7) *Internal controls* refers to the process, established by the credit union's board of directors, officers and employees, designed to provide reasonable assurance of reliable financial reporting and safeguarding of assets against unauthorized acquisition, use, or disposition. A credit union's internal control structure consists of five components: control environment; risk assessment; control activities; information and communication; and monitoring. Reliable financial reporting refers to preparation of financial statements that ''present fairly'' the financial position of the credit union and results of its operations and its cash flows, in conformity with GAAP or RAP, as defined herein. Internal control over safeguarding of assets against unauthorized acquisition, use, or disposition refers to prevention or timely detection of transactions involving such unauthorized access, use, or disposition of assets which could result in a loss that is material to the financial statements.

(8) *Licensed, certified public accountant* refers to an accounting/auditing professional who has received a certificate and license from a duly-appointed state licensing authority to practice accounting/auditing, and is independent as defined herein.

(9) *Opinion audit* refers to an examination of the financial statements performed by an independent, licensed, certified public accountant in accordance with GAAS. The objective of an ''opinion audit'' is to express an opinion as to whether those financial statements of the credit union present fairly, in all material respects, the financial position and the results of its operations and its cash flows in conformity with GAAP or RAP, as defined herein.

(10) *RAP* is an acronym for ''regulatory accounting practices'' which refer to the conventions, rules, and procedures governing accepted accounting practices, other than GAAP, for credit unions and having the substantial support of either the NCUA or the applicable state credit union supervisor.

(11) *Related party transactions* refers to transactions among or between parties where one party controls or can significantly influence the management or operating policies of the other so as to prevent the other party from pursuing exclusively its own interests. Examples of related parties include: executive management, board members, supervisory committee members, credit committee members, and employees, and their families. Examples of ''related party transactions'' include: interest-free loans or loans at below market rates; sale of real estate significantly below appraised value; nonmonetary exchange of property; below market fees, and making of loans lacking scheduled terms for repayment.

(12) *Reportable conditions* refers to a matter coming to the attention of the independent, compensated auditor which, in his or her judgment, represents a significant deficiency in the design or operation of the internal control structure of the credit union, which could adversely affect its ability to record, process, summarize, and report financial data consistent with the representations of management in the financial statements.

(13) *Specified elements, accounts or items of a financial statement* refers to accounting information that is a part of, but significantly less than, a financial statement. These may be directly identified in a financial statement or notes thereto; or they may be derived from a financial statement by analysis, aggregation, summarization, or mathematical computation.

(14) *Substantive testing* refers to testing of details and analytical procedures to detect material misstatements in the account balance, transaction class, and disclosure components of financial statements.

(15) *Supervisory committee* refers to a supervisory committee as defined in Section 111(b) of the Federal Credit Union Act, 12 U.S.C. 1786(r). For some federally-insured state chartered credit unions, the ''audit committee'' designated by state statute or regulation is the equivalent of a supervisory committee.

(16) *Supervisory committee audit* refers to an examination of specified elements, accounts or items of the credit union's financial statement to the full extent required in this part. An opinion audit as defined herein exceeds the requirements of a ''supervisory committee audit.''

(17) *Working papers* refers to the principal record, in any form, of the work performed by the auditor and/or supervisory committee to support its findings and/or conclusions concerning significant matters. Examples include the written record of procedures applied, tests performed, information obtained, and pertinent conclusions reached in the engagement, proprietary audit programs, analyses, memoranda, letters of confirmation and representation, abstracts of credit union documents, reviewer's notes, if retained, and schedules or commentaries prepared or obtained by the independent, compensated auditor.

(b) *Supervisory committee responsibilities.* (1) The supervisory committee is responsible for ensuring that:

(i) The financial condition of the credit union is accurately and fairly presented in the credit union's financial statements; and

(ii) The credit union's management practices and procedures are sufficient to safeguard members' assets.

(2) To meet its responsibilities, the supervisory committee shall determine whether:

(i) Internal controls are established and effectively maintained to achieve the credit union's financial reporting objectives which must be sufficient to satisfy the requirements of the supervisory committee audit, verification of members' accounts and its additional responsibilities;

(ii) The credit union's accounting records and financial reports are promptly prepared and accurately reflect operations and results;

(iii) The relevant plans, policies, and control procedures established by the

board of directors are properly administered; and

(iv) Policies and control procedures are sufficient to safeguard against error, carelessness, conflict of interest, self-dealing and fraud.

(c) *Supervisory committee audit.* (1) A supervisory committee audit of each Federal credit union shall occur at least once every calendar year and shall cover the period elapsed since the last audit period. The supervisory committee audit shall be performed by the supervisory committee or its designated representative, as prescribed in paragraph (c)(5) of this section.

(2) Standards for Performing Supervisory Committee Audit. The supervisory committee audit procedures/testing must be performed in accordance with the following standards:

(i) The audit is to be performed by a person or persons having adequate technical training and proficiency as an auditor commensurate with the level of sophistication and complexity of the credit union under audit.

(ii) Reasonable care is to be exercised in the performance of the audit and the preparation of the report.

(iii) The work is to be adequately planned and assistants, if any, are to be properly supervised.

(iv) The person or persons performing the audit must attain a sufficient understanding of the internal control structure to plan the audit and to determine the nature, timing, and extent of tests to be performed.

(v) The person or persons performing the audit must, through inspection, observation, inquiry, and confirmation obtain sufficient evidence to afford a reasonable basis for the financial statement elements, accounts or items under audit.

(3) Scope of Supervisory Committee Audit. The scope of the supervisory committee audit shall consist of:

(i) Attaining an understanding of the internal control structure;

(ii) Assessing the level of control risk; and

(iii) Based on the level of control risk, determining the nature, timing, and extent of substantive testing necessary to confirm the assertions made by management regarding each of assets, liabilities, equity, income, and expenses for the following attributes:

(A) Existence or occurrence;

(B) Completeness;

(C) Valuation or allocation;

(D) Rights and obligations; and

(E) Presentation and disclosures.

(4) In addition to scope requirements set forth in paragraph (c)(3) of this section, an audit performed by an independent, compensated auditor which includes any of the following areas must, with respect to audit scope but not with respect to reporting, satisfy GAAS for expressing an opinion on the financial statements taken as a whole:

(i) Internal controls;

(ii) Cash;

(iii) Loans and interest thereon;

(iv) Investments and interest thereon;

(v) Shares and dividends and/or interest thereon;

(vi) Related party transactions; and

(vii) The reporting of identified errors and irregularities with regard to each of the items in paragraphs (c)(4)(i) through (vi) of this section.

(5)(i) The requirements of the annual supervisory committee audit may be satisfied by one of the following:

(A) An opinion audit of the credit union's financial statements performed by an independent, licensed, certified public accountant;

(B) An ''agreed-upon procedures engagement'' performed by an independent, licensed, certified public accountant, which by itself or in combination with procedures performed by the supervisory committee, fulfills the required scope of the supervisory committee audit;

(C) A supervisory committee audit performed by an independent, compensated auditor other than an independent, licensed, certified public accountant which by itself or in combination with procedures performed by the supervisory committee, fulfills the scope of a supervisory committee audit; or

(D) A supervisory committee audit by the supervisory committee or its designated, uncompensated representative.

(ii) In all cases, an independent, compensated auditor is required to contract directly with the supervisory

committee for the audit engagement and to deliver its written reports directly to the supervisory committee.

(iii) For a supervisory committee audit performed by the supervisory committee or its designated, uncompensated representative, the supervisory committee shall prepare a written report of the supervisory committee audit.

(d) *Engagement letter.* (1) The engagement of an independent, compensated auditor to perform all or a portion of the scope of a supervisory committee audit shall be evidenced by an engagement letter. The engagement letter shall be signed by the compensated auditor and acknowledged therein by the supervisory committee prior to commencement of a supervisory committee audit. The engagement letter shall:

(i) Specify the terms, conditions, and objectives of engagement;

(ii) Identify the basis of accounting to be used, e.g., GAAP or RAP;

(iii) Include an appendix setting forth the procedures to be performed (if not an opinion audit);

(iv) Specify the rate of, or total, compensation to be paid for the audit;

(v) Provided that the audit shall, upon completion of the engagement, deliver to the supervisory committee:

(A) A written report of the supervisory committee audit; and

(B) Notice in writing, either within the report or communicated separately, of any internal control reportable conditions and/or irregularities or illegal acts which come to the auditor's attention during the normal course of the audit (i.e., no additional duty is imposed nor additional written communications beyond (A) is required if none of these is noted);

(vi) Specify a target date of delivery of the written reports;

(vii) Certify that NCUA staff or its designated representative will be provided unconditional access to the complete set of original working papers either at the credit union or at a mutually agreeable location, for purposes of inspection; and

(viii) Acknowledge that working papers shall be retained for a minimum of three years from the date of the written audit report.

(2) In the case of a supervisory committee audit engagement which addresses all of the financial statement elements, accounts or items and attributes prescribed in paragraphs (c)(3) and (c)(4) of this section, the engagement letter shall certify that the contracted scope of the audit satisfies the requirements of a complete supervisory committee audit.

(3) In the case of a supervisory committee audit engagement which excludes any financial statement elements, accounts or items and attributes prescribed in paragraphs (c)(3) and (c)(4) of this section, the engagement letter shall:

(i) Identify the elements, accounts or items and attributes excluded from the audit;

(ii) State that, because of the exclusion(s), the resulting audit will not, by itself, fulfill the scope of a supervisory committee audit; and

(iii) Caution that the supervisory committee will remain responsible for fulfilling the scope of a supervisory committee audit with respect to the excluded elements, accounts or items and attributes.

(e) *Audit reports and working paper access.* (1) Upon completion or receipt of the written supervisory committee audit reports, the supervisory committee shall provide the reports to the board of directors. The supervisory committee shall ensure that the independent, compensated audit and its reports comply with the terms of the engagement letter prescribed in this section. The supervisory committee shall, upon request, provide to the National Credit Union Administration a copy of the written reports received from the auditor.

(2) The supervisory committee shall be responsible for preparing and maintaining, or making available, a complete set of original working papers supporting each supervisory committee audit. The supervisory committee shall, upon request, provide NCUA staff unconditional access to such working papers either at the offices of the credit union or at a mutually agreeable location, for purposes of inspecting such working papers.

(f) *Sanctions.* (1) Failure of a supervisory committee and/or its independent compensated auditor to comply with the requirements of this section, or the terms of an engagement letter required by this section, is grounds for:

(i) The regional director to reject the supervisory committee audit;

(ii) The regional director to impose the remedies available in §701.13, provided any of the conditions specified in §701.13 is present; and

(iii) The NCUA to seek formal administrative sanctions against the supervisory committee and/or its independent, compensated auditor pursuant to section 206(r) of the Federal Credit Union Act, 12 U.S.C. 1786(r).

(2) In the case of a federally-insured state chartered credit union, NCUA shall provide the state regulator an opportunity to timely impose a remedy satisfactory to NCUA before seeking to impose a sanction permitted under (f)(1) of this section.

(g) Federal credit union compensated auditors, performing audits for supervisory committees, must be independent of the credit union's employees, members of the board of directors, supervisory and credit committees and/or the credit union's loan officers, and members of their immediate families. ''Members of their immediate families'' means a spouse, or a child, parent, grandchild, grandparent, brother or sister, or the spouse of any such individual.

(h)(1) The verification of members' accounts shall be made using any of the following methods:

(i) A controlled verification of 100 percent of members' share and loan accounts;

(ii) A sampling method that provides a random selection that is expected to be representative of the population from which the sample was selected, which will allow the auditor to test sufficient accounts in both number and scope to provide assurance that the General Ledger accounts are fairly stated in relation to the financial statements taken as a whole. When the auditor concludes that evidence provided by confirmations alone is not sufficient, additional procedures should be performed. That sampling procedure must provide each dollar in the population an equal chance of being selected;

(iii) *Independent, licensed, certified public accountants* are provided the additional option of sampling members' accounts using nonstatistical sampling methods consistent with *applicable* generally accepted auditing standards, provided the sampling method provides a selection that allows the auditor to test sufficient accounts in both number and scope to provide assurance that the General Ledger accounts are fairly stated in relation to the financial statements taken as a whole. When the auditor concludes that evidence provided by confirmations alone is not sufficient, additional procedures should be performed. Independent, licensed, certified public accountants will be responsible for documenting their sampling procedures, and providing evidence to NCUA, if requested, that the method used is consistent with applicable generally accepted auditing standards.

(2) Records of those accounts verified will be maintained and will be retained until the next verification of members' accounts is completed.

[50 FR 8710, Mar. 5, 1985, as amended at 58 FR 39433, July 23, 1993; 61 FR 41323, Aug. 8, 1996]

§701.13 Requirements for an outside audit.

(a) A Federal credit union shall obtain an outside, independent audit by a certified public accountant for any fiscal year during which any one of the following three conditions is present:

(1) The supervisory committee of the Federal credit union has not conducted an annual supervisory committee audit;

(2) The annual supervisory committee audit conducted did not meet the audit requirements of §701.12 including §701.12(h);

(3) The Federal credit union has experienced serious and persistent recordkeeping deficiencies as defined in paragraph (c) of this section.

(b) In the case of an audit required pursuant to paragraph (a)(1) or (2) of this section, the scope of the outside, independent audit conducted by a certified public accountant must fully encompass the requirements set forth in §701.12. In the case of an audit required

pursuant to paragraph (a)(3) of this section, the outside, independent audit by a certified public accountant must be an opinion audit as that term is understood under generally accepted auditing standards.

(c) As used in paragraph (a)(3) of this section, persistent recordkeeping deficiencies shall mean serious recordkeeping problems which continue to exist past a usual, expected, or normal period of time. Persistent recordkeeping deficiencies shall be considered serious if the Administration has a reasonable doubt that the financial condition of the credit union is accurately and fairly presented in the credit union's statements and that management practices and procedures are sufficient to safeguard members' assets.

[54 FR 51383, Dec. 15, 1989, as amended at 61 FR 41326, Aug. 8, 1996]

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

(a) *Statement of scope and purpose.* Section 212 of the Federal Credit Union Act (12 U.S.C. 1790a) sets forth conditions under which a credit union must notify NCUA in writing of any proposed changes in its board of directors, committee members or senior executive staff. The regulation only applies in cases of newly chartered credit unions and credit unions in troubled condition.

(b) *Definitions.* For the purposes of this section:

(1) *Committee member* means any individual who serves as an official of the credit union in the capacity of a credit committee member or supervisory committee member.

(2) *Senior executive officer* means a credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (e.g., any assistant president, any vice president or any assistant treasurer/manager) and the chief financial officer (controller). The term ''senior executive officer'' also includes employees of an entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation.

(3) *Troubled condition* means any insured credit union that has one or a combination of the following conditions:

(i) Has been assigned

(A) A 4 or 5 Camel composite rating by the NCUA in the case of a federal credit union, or

(B) An equivalent 4 or 5 Camel composite rating by the state supervisor in the case of a federally insured, state-chartered credit union, or

(C) A 4 or 5 Camel composite rating by NCUA based on core workpapers received from the state supervisor in the case of a federally insured, state-chartered credit union in a state that does ot use the Camel system. In this case, the state supervisor will be notified in writing by the Regional Director in the Region in which the credit union is located that the credit union has been designated by NCUA as a troubled institution;

(ii) Has been granted assistance as outlined under section 116 or 208 of the Federal Credit Union Act.

(c) *Prior notice requirement.* An insured credit union shall give NCUA written notice at least 30 days prior to the effective date of any addition or replacement of a member of the board of directors or committee member or the employment or change in responsibilities of any individual to a position as a senior executive officer if:

(1) The credit union has been chartered for less than 2 years; or

(2) The credit union meets the definition of troubled condition as set forth in paragraph (b)(3) of this section.

(d) *Procedures for notice of proposed change in official or senior executive officer.* (1) Filing and acceptance. Notices shall be filed with the appropriate Regional Director. State-chartered federally insured credit unions shall also file a copy of the notice with their state supervisor. The notice shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, subject to the authority of the Regional Director or his or her designee to require additional information. The information submitted must include the identity, personal history, business

background, and experience of the individual, including material business activities and affiliations during the past 5 years, and a description of any material pending legal or administrative proceedings in which the individual is a party and any criminal indictment or conviction of such person by a state or Federal court. Each individual on whose behalf the notice is filed must attest to the validity of the information filed. At the option of the individual, the information may be forwarded to the Regional Director by the individual; however, in such cases, the credit union must file a notice to that effect. The credit union submitting the notice shall be notified in writing of the date on which all required information is received and the notice is accepted for processing. Before the end of the 30-day period beginning on the date NCUA accepts the information for processing, the Regional Director will issue a written notice to the individual and the credit union of disapproval or approval of the proposed official or employee. If, after the 30-day period has ended, the individual has not been informed in writing of NCUA's disposition, the individual shall be considered approved.

(2) Waiver of prior notice requirement. Parties may petition the appropriate Regional Director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the credit union or the public interest. Any waiver shall not affect the authority of NCUA to issue a Notice of Disapproval within 30 days of the waiver, or within 30 days of any subsequent required notice.

(3) Election of directors or credit committee members. (i) In the case of the election of a new member of the board of directors or credit committee member at a meeting of the members of a federally insured credit union, prior notice is not required. However, a completed notice must be filed with the appropriate Regional Director within 48 hours of the election.

(ii) If a director or credit committee member is disapproved by NCUA, the board of directors of the credit union may appoint its own alternate, to serve until the next annual meeting, contingent upon NCUA approval.

(e) *Commencement of service.* A proposed director, committee member or senior executive officer may begin to serve temporarily until the credit union and the individual are notified in writing of NCUA's approval or disapproval of the proposed addition or employment.

(f) *Notice of disapproval.* NCUA may disapprove the individual's serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual with respect to whom a notice under this section is submitted indicates that it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by, or associated with, the credit union. The Notice of Disapproval will advise the parties of their rights of appeal pursuant to 12 CFR part 747 subpart J, of NCUA's Regulations.

[55 FR 43086, Oct. 26, 1990, as amended at 59 FR 36042, July 15, 1994; 60 FR 31911, June 19, 1995]

§§ 701.15—701.18 [Reserved]

§ 701.19 Retirement benefits for employees of Federal credit unions.

(a) A Federal credit union may make provision for reasonable retirement benefits for its employees and for officers who are compensated in conformance with the Act and the bylaws, either individually or collectively with other credit unions. In those cases where a Federal credit union is to be a plan trustee or custodian, the plan must be an individual retirement account maintained in accordance with the provisions of part 724. Where the trustee or custodian is to a party other than the Federal credit union, the employee benefit plan must be maintained in accordance with the applicable laws governing employee benefit plans and such rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other Federal or state authority exercising jurisdiction over such plans.

(b) No Federal credit union shall occupy the position of a fiduciary, as defined in the Employee Retirement Income Security Act of 1974 and rules and regulations promulgated thereunder by the Secretary of Labor, unless provision has been made for appropriate liability insurance as provided under section 410(b) of the Employee Retirement Income Security Act of 1974.

[40 FR 25582, June 17, 1975, as amended at 48 FR 55423, Dec. 13, 1983]

§ 701.20 Fidelity bond and insurance coverage for Federal credit unions.

(a) *Scope.* This part provides the requirements for fidelity bonds for Federal credit union employees and officials and for general insurance coverage for losses caused by persons outside of the credit union (protection for losses due to theft, holdup, vandalism, etc.).

(b) *Review of coverage.* The board of directors of each Federal credit union shall, at least annually, carefully review the bond and insurance coverage in force in order to ascertain its adequacy in relation to risk exposure and to the minimum requirements fixed from time to time by the NCUA Board.

(c) *Minimum coverage; approved forms.* Every Federal credit union will maintain bond and insurance coverage with a company holding a certificate of authority from the Secretary of the Treasury. Credit Union Blanket Bond Standard Form No. 23 of the Surety Association of America (revised to May, 1950) is considered the minimum coverage required and is approved. Credit Union Blanket Bond Forms 581 and 582 are also approved. Any other basic bond forms, and all riders and endorsements which limit the coverage provided by approved bond forms, must receive the prior written approval of the NCUA Board. Fidelity bonds must provide coverage for the fraud or dishonesty of all employees, directors, officers, and supervisory and credit committeee members. Notwithstanding the foregoing, effective January 1, 1990, all bonds must include a provision, in a form approved by the NCUA Board, requiring written notification by surety to the Board:

(1) When the bond of a credit union is terminated in its entirety; or

(2) When bond coverage is terminated, by issuance of a written notice, on an employee, director, officer, supervisory or credit committee member.

Said notification shall be sent to the Secretary of the NCUA Board or designee and shall include a brief statement of cause for termination.

(d) *Minimum coverage amounts.* The minimum amount of bond coverage required will be computed based on the Federal credit union's total assets. The following table lists the minimum requirements:

Assets	Minimum bond
$0 to $10,000	Coverage equal to the credit union's assets.
$10,001 to $1,000,000.	$10,000 for each $100,000 or fraction thereof.
$1,000,001 to $50,000,000.	$100,000 plus $50,000 for each million or fraction thereof over $1,000,000.
$50,000,001 to $295,000,000.	$2,550,000 plus $10,000 for each million or fraction thereof over $50,000,000.
Over $295,000,000	$5,000,000.

It is the duty of the board of directors of each Federal credit union to provide adequate protection to meet its unique circumstances by obtaining, when necessary, bond and insurance coverage in excess of the above minimums.

(e) *Increased coverage, cash on hand or in transit.* When either of the following amounts exceed a Federal credit union's minimum coverage limits as specified in paragraph (d) of this regulation, the minimum coverage limits for that Federal credit union will be increased to be equal to the greater of the following amounts within thirty days of the discovery of the need for such increase:

(1) The aggregate amount of the daily cash fund (change fund plus maximum anticipated daily money receipts) and food stamps (if any), on the Federal credit union's premises, or

(2) The aggregate amount of the Federal credit union's money and food stamps (if any) placed in transit in any one individual shipment.

For purposes of this section, the term ''money'' shall include currency, coin, banknotes, Federal Reserve notes, revenue stamps and postage stamps.

(f) *Increased cash coverage; exception.* Paragraph (e) notwithstanding, no increase in coverage will be required

where a Federal credit union temporarily increases its cash fund because of an extraordinary event which reasonably cannot be expected to recur.

(g) *Reduced coverage; NCUA approval.* Any proposal for reduced coverage must be approved in writing by the NCUA Board at least twenty days in advance of the proposed effective date of the reduction.

(h) *Deductibles.* (1) The maximum amount of deductibles allowed are based on the Federal credit union's total assets. The following table sets out the maximum deductibles:

Assets	Maximum deductibles
0–$100,000	No deductibles allowed.
$100,001–$250,000	$1,000.
$250,001–$1,000,000.	$2,000.
Over $1,000,001	$2,000 plus 1/1000 of total assets up to a maximum deductible of $200,000.

(2) A deductible may be applied separately to one or more insuring clauses in a blanket bond. Deductibles in excess of those shown in this section must have the written approval of the NCUA Board at least twenty days prior to the effective date of such deductibles.

(3) No deductible will exceed ten percent of a Federal credit union's Regular Reserve unless the credit union creates a segregated Contingency Reserve for the amount of the excess. Valuation allowance accounts, e.g., allowance for loan losses, may not be considered part of the Regular Reserve when determining the maximum deductible.

(i) *Additional coverage.* The NCUA Board may require additional coverage for any Federal credit union when, in the opinion of the Board, current coverage is insufficient. The board of directors of the Federal credit union must obtain additional coverage within thirty days after the date of written notice from the NCUA Board.

[49 FR 30681, Aug. 1, 1984, as amended at 54 FR 18470, May 1, 1989]

§701.21 Loans to members and lines of credit to members.

(a) *Statement of scope and purpose.* Section 701.21 complements the provisions of section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) authorizing Federal credit unions to make loans to members and issue lines of credit (including credit cards) to members. Section 107(5) of the Act contains limitations on matters such as loan maturity, rate of interest, security, and prepayment penalties. Section 701.21 interprets and implements those provisions. In addition, §701.21 states the NCUA Board's intent concerning preemption of state laws, and expands the authority of Federal credit unions to enforce due-on-sale clauses in real property loans. Also, while §701.21 generally applies to Federal credit unions only, its provisions may be used by state-chartered credit unions with respect to alternative mortgage transactions in accordance with 12 U.S.C. 3801 *et seq.*, and certain provisions apply to loans made by federally insured state-chartered credit unions as specified in §741.203 of this chapter. Part 722 of this chapter sets forth requirements for appraisals for certain real estate secured loans made under §701.21 and any other applicable lending authority. Finally, it is noted that §701.21 does not apply to loans by Federal credit unions to other credit unions (although certain statutory limitations in section 107 of the Act apply), nor to loans to credit union organizations which are governed by section 107(5)(D) of the Act and §701.27 of this part.

(b) *Relation to other laws*—(1) *Preemption of state laws.* Section 701.21 is promulgated pursuant to the NCUA's Board's exclusive authority as set forth in section 107(5) of the Federal Credit Union Act (12 U.S.C 1757(5)) to regulate the rates, terms of repayment and other conditions of Federal credit union loans and lines of credit (including credit cards) to members. This exercise of the Board's authority preempts any state law purporting to limit or affect:

(i)(A) Rates of interest and amounts of finance charges, including:

(*1*) The frequency or the increments by which a variable interest rate may be changed;

(*2*) The index to which a variable interest rate may be tied;

(*3*) The manner or timing of notifying the borrower of a change in interest rate;

(*4*) The authority to increase the interest rate on an existing balance;

(B) Late charges; and

(C) Closing costs, application, origination, or other fees;

(ii) Terms of repayment, including:

(A) The maturity of loans and lines of credit;

(B) The amount, uniformity, and frequency of payments, including the accrual of unpaid interest if payments are insufficient to pay all interest due;

(C) Balloon payments; and

(D) Prepayment limits;

(iii) Conditions related to:

(A) The amount of the loan or line of credit;

(B) The purpose of the loan or line of credit;

(C) The type or amount of security and the relation of the value of the security to the amount of the loan or line of credit;

(D) Eligible borrowers; and

(E) The imposition and enforcement of liens on the shares of borrowers and accommodation parties.

(2) *Matters not preempted.* Except as provided by paragraph (b)(1) of this section, it is not the Board's intent to preempt state laws that do not affect rates, terms of repayment and other conditions described above concerning loans and lines of credit, for example:

(i) Insurance laws;

(ii) Laws related to transfer of and security interests in real and personal property (see, however, paragraph (g)(6) of this section concerning the use and exercise of due-on-sale clauses);

(iii) Conditions related to:

(A) Collection costs and attorneys' fees;

(B) Requirements that consumer lending documents be in ''plain language;'' and

(C) The circumstances in which a borrower may be declared in default and may cure default.

(3) *Other Federal law.* Except as provided by paragraph (b)(1) of this section, it is not the Board's intent to preempt state laws affecting aspects of credit transactions that are primarily regulated by Federal law other than the Federal Credit Union Act, for example, state laws concering credit cost disclosure requirements, credit discrimination, credit reporting practices, unfair credit practices, and debt collection practices. Applicability of state law in these instances should be determined pursuant to the preemption standards of the relevant Federal law and regulations.

(4) *Examination and enforcement.* Except as otherwise agreed by the NCUA Board, the Board retains exclusive examination and administrative enforcement jurisdiction over Federal credit unions. Violations of Federal or applicable state laws related to the lending activities of a Federal credit union should be referred to the appropriate NCUA regional office.

(5) *Definition of State law.* For purposes of paragraph (b) of this section ''state law'' means the constitution, laws, regulations and judicial decisions of any state, the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

(c) *General rules*—(1) *Scope.* The following general rules apply to all loans to members and, where indicated, all lines of credit (including credit cards) to members, except as otherwise provided in the remaining provisions of § 701.21.

(2) *Written policies.* The board of directors of each Federal credit union shall establish written policies for loans and lines of credit consistent with the relevant provisions of the Act, NCUA's regulations, and other applicable laws and regulations.

(3) *Credit application.* Consistent with policies established by the board of directors, the credit committee or loan officer shall ensure that a credit application is kept on file for each borrower supporting the decision to make a loan or establish a line of credit.

(4) *Maturity.* The maturity of a loan to a member may not exceed 12 years. Lines of credit are not subject to a statutory or regulatory maturity limit. Amortization of line of credit balances and the type and amount of security on any line of credit shall be as determined by contract between the Federal credit union and the member/borrower.

(5) *Ten percent limit.* No loan or line of credit advance may be made to any member if such loan or advance would cause that member to be indebted to

the Federal credit union upon loans and advances made to the member in an aggregate amount exceeding 10% of the credit union's total unimpaired capital and surplus. In the case of member business loans as defined in § 701.21(h)(1)(i), additional limitations apply as set forth in § 701.21(h)(2)(ii).

(6) *Early payment.* A member may repay a loan, or outstanding balance on a line of credit, prior to maturity in whole or in part on any business day without penalty.

(7) *Loan interest rates*—(i) *General.* Except when a higher maximum rate is provided for in paragraph (c)(7)(ii) of this section, a Federal credit union may extend credit to its members at rates not to exceed 15 percent per year on the unpaid balance inclusive of all finance charges. Variable rates are permitted on the condition that the effective rate over the term of the loan (or line of credit) does not exceed the maximum permissible rate.

(ii) *Temporary rates*—(A) *21 percent maximum rate.* Effective from December 3, 1980 through May 14, 1987, a Federal credit union may extend credit to its members at rates not to exceed 21 percent per year on the unpaid balance inclusive of all finance charges. Loans and line of credit balances existing on or before May 14, 1987, may continue to bear rates of interest of up to 21 percent per year after May 14, 1987.

(B) *18 percent maximum rate.* Effective May 15, 1987, a Federal credit union may extend credit to its members at rates not to exceed 18 percent per year on the unpaid balance inclusive of all finance charges.

(C) *Expiration.* After September 8, 1997, or as otherwise ordered by the NCUA Board, the maximum rate on federal credit union extensions of credit to members shall revert to 15 percent per year. Higher rates may, however, be charged, in accordance with paragraphs (c)(7)(ii) (A) and (B) of this section, on loans and line of credit balances existing on or before September 8, 1997.

(8)(i) Except as otherwise provided herein, no official or employee of a Federal credit union, or immediate family member of an official or employee of a Federal credit union, may receive, directly or indirectly, any commission, fee, or other compensation in connection with any loan made by the credit union.

(ii) For the purposes of this section:

Compensation includes non monetary items, except those of nominal value.

Immediate family member means a spouse or other family member living in the same household.

Loan includes line of credit.

Official means any member of the board of directors or a volunteer committee.

Person means an individual or an organization.

Senior management employee means the credit union's chief executive officer (typically, this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager), and the chief financial officer (Comptroller).

Volunteer official means an official of a credit union who does not receive compensation from the credit union solely for his or her service as an official.

(iii) This section does not prohibit:

(A) Payment, by a Federal credit union, of salary to employees;

(B) Payment, by a Federal credit union, of an incentive or bonus to an employee based on the credit union's overall financial performance;

(C) Payment, by a Federal credit union, of an incentive or bonus to an employee, other than a senior management employee, in connection with a loan or loans made by the credit union, provided that the board of directors of the credit union establishes written policies and internal controls in connection with such incentive or bonus and monitors compliance with such policies and controls at least annually.

(D) Receipt of compensation from a person outside a Federal credit union by a volunteer official or non senior management employee of the credit union, or an immediate family member of a volunteer official or employee of the credit union, for a service or activity performed outside the credit union, provided that no referral has been made by the credit union or the official, employee, or family member.

(d) *Loans and lines of credit to officials*—(1) *Purpose.* Sections 107(5)(A) (iv) and (v) of the Act require the approval of the board of directors of the Federal credit union in any case where the aggregate of loans to an official and loans on which the official serves as endorser or guarantor exceeds $20,000 plus pledged shares. This paragraph implements the requirement by establishing procedures for determining whether board of directors's approval is required. The section also prohibits preferential treatment of officials.

(2) *Official.* An ''official'' is any member of the board of directors, credit committee or supervisory committee.

(3) *Initial approval.* All applications for loans or lines of credit on which an official will be either a direct obligor or an endorser, cosigner or guarantor shall be initially acted upon by either the board of directors, the credit committee or a loan officer, as specified in the Federal credit union's bylaws.

(4) *Board of Directors' review.* The board of directors shall, in any case, review and approve or deny an application on which an official is a direct obligor, or endorser, cosigner or guarantor if the following computation produces a total in excess of $20,000:

(i) Add:

(A) The amount of the current application.

(B) The outstanding balances of loans, including the used portion of an approved line of credit, extended to or endorsed, cosigned or guaranteed by the official.

(C) The total unused portion of approved lines of credit extended to or endorsed, cosigned or guaranteed by the official.

(ii) From the above total subtract:

(A) The amount of shares pledged by the official on loans or lines of credit extended to or endorsed, cosigned or guaranteed by the official.

(B) The amount of shares to be pledged by the official on the loan or line of credit applied for.

(5) *Nonpreferential treatment.* The rates, terms and conditions on any loan or line of credit either made to, or endorsed or guaranteed by—

(i) An official,

(ii) An immediate family member of an official, or

(iii) Any individual having a common ownership, investment or other pecuniary interest in a business enterprise with an official or with an immediate family member of an official,

shall not be more favorable than the rates, terms and conditions for comparable loans or lines of credit to other credit union members. ''Immediate family member'' means a spouse or other family member living in the same household.

(e) *Insured, guaranteed and advance commitment loans.* A loan secured by the insurance or guarantee of, or with an advance commitment to purchase the loan by, the Federal Government, a State government, or any agency of either, may be made for the maturity and under the terms and conditions, including rate of interest, specified in the law, regulations or program under which the insurance, guarantee or commitment is provided.

(f) *20-year loans.* Notwithstanding the general 12-year maturity limit on loans to members, a Federal credit union may make loans with maturities of up to 20 years in the case of:

(1) A loan to finance the purchase of a mobile home if the mobile home will be used as the member-borrower's residence and the loan is secured by a first lien on the mobile home,

(2) A second mortgage loan (or a nonpurchase money first mortgage loan in the case of a residence on which there is no existing first mortgage) if the loan is secured by a residential dwelling which is the residence of the member-borrower, and

(3) A loan to finance the repair, alteration, or improvement of a residential dwelling which is the residence of the member-borrower.

(g) *Long-term mortgage loans*—(1) *Authority.* A Federal credit union may make residential real estate loans to members, with maturities of up to 40 years, or such longer period as may be permitted by the NCUA Board on a case-by-case basis, subject to the conditions of this paragraph.

(2) *Statutory limits.* The loan shall be made on a one to four family dwelling that is or will be the principal residence of the member-borrower and the loan shall be secured by a perfected first lien in favor of the credit union on

such dwelling (or a perfected first security interest in the case of either a residential cooperative or a leasehold or ground rent estate).

(3) *Loan application.* The loan application shall be a completed standard Federal Housing Administration, Veterans Administration, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association or Federal Home Loan Mortgage Corporation/Federal National Mortgage Association application form. In lieu of use of a standard application the Federal credit union may have a current attorney's opinion on file stating that the forms in use meet the requirements of applicable Federal, state and local laws.

(4) *Security instrument and note.* The security instrument and note shall be executed on the most current version of the FHA, VA, FHLMC, FNMA, or FHLMC/FNMA Uniform Instruments for the jurisdiction in which the property is located. No prepayment penalty shall be allowed, although a Federal credit union may require that any partial prepayments be made on the date monthly installments are due and be in the amount of that part of one or more monthly installments that would be applicable to principal. In lieu of use of a standard security instrument and note, the Federal credit union may have a current attorney's opinion on file stating that the security instrument and note in use meet the requirements of applicable Federal, state and local laws.

(5) *First lien, territorial limits.* The loan shall be secured by a perfected first lien or first security interest in favor of the credit union supported by a properly executed and recorded security instrument. No loan shall be secured by a residence located outside the United States of America, its territories and possessions, or the Commonwealth of Puerto Rico.

(6) *Due-on-sale clauses.* (i) Except as otherwise provided herein, the exercise of a due-on-sale clause by a Federal credit union is governed exclusively by section 341 of Pub. L. 97–320 and by any regulations issued by the Federal Home Loan Bank Board implementing section 341.

(ii) In the case of a contract involving a long-term (greater than twelve years), fixed rate first mortgage loan which was made or assumed, including a transfer of the liened property subject to the loan, during the period beginning on the date a State adopted a constitutional provision or statute prohibiting the exercise of due-on-sale clauses, or the date on which the highest court of such state has rendered a decision (or if the highest court has not so decided, the date on which the next highest court has rendered a decision resulting in a final judgment if such decision applies statewide) prohibiting such exercise, and ending on October 15, 1982, a Federal credit union may exercise a due-on-sale clause in the case of a transfer which occurs on or after November 18, 1982, unless exercise of the due-on-sale clause would be based on any of the following:

(A) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(B) The creation of a purchase money security interest for household appliances;

(C) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(D) The granting of a leasehold interest of 3 years or less not containing an option to purchase;

(E) A transfer to a relative resulting from the death of a borrower;

(F) A transfer where the spouse or children of the borrower become an owner of the property;

(G) A transfer resulting from a decree of a dissolution of marriage, a legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property;

(H) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property; or

(I) Any other transfer or disposition described in regulations promulgated by the Federal Home Loan Bank Board.

(h) *Member business loans*—(1) *Definitions.* (i) *Member business loans* mean any loan, line of credit, or letter of credit, the proceeds of which will be

used for a commercial, corporate, business, investment property or venture, or agricultural purpose, except that the following shall not be considered member business loans for the purposes of this section:

(A) A loan or loans fully secured by a lien on a 1 to 4 family dwelling that is the member's primary residence.

(B) A loan that is fully secured by shares in the credit union or deposits in other financial institutions.

(C) A loan meeting the general definition of member business loans under this paragraph (h)(1)(i), and, made to a borrower or an associated member (as defined in paragraph (h)(1)(iii) of this section), which when added to other such loans to the borrower or associated member, is less than $50,000.

(D) A loan, the repayment of which is fully insured or fully guaranteed by, or where there is an advance commitment to purchase in full by, any agency of the federal government or of a state or any of its political subdivisions.

(E) A loan granted by a corporate credit union operating under the provisions of part 704 of this chapter, to another credit union.

(ii) *Reserves* mean all reserves, including the Allowance for Loan Losses and undivided earnings or surplus.

(iii) *Associated Member* means any member with a shared ownership, investment or other pecuniary interest in a business or commercial endeavor with the borrower.

(iv) *Immediate Family Member* means a spouse or other family member living in the same household.

(v) *Loan-to-value* (LTV) ratio means the quotient of the aggregate amount of all sums borrowed from all sources on an item of collateral divided by the market value of the collateral used to secure the loan.

(vi) *Construction or development loan* means a financing arrangement for the purpose of acquisition of property or rights to property including land or structures with the intent of conversion into income-producing property including residential housing for rental or sale, commercial, or industrial use, or a similar use.

(2) *Requirements.* Member business loans, as defined in § 701.21(h)(1)(i), may be made by federal credit unions only in accordance with the applicable provisions of § 701.21 (a) through (g), to the extent that they are not inconsistent with this section, and the following additional requirements:

(i) *Written loan policies.* The board of directors must adopt specific business loan policies and review them at least annually. The policies shall, at a minimum, address the following:

(A) Types of business loans that will be made;

(B) The credit union's trade area for business loans;

(C) Maximum amount of credit union assets, in relation to reserves, that will be invested in business loans;

(D) Maximum amount of credit union assets, in relation to reserves, that will be invested in a given category or type of business loan;

(E) Maximum amount of credit union assets, in relation to reserves, that will be loaned to any one member or group of associated members, subject to § 701.21(h)(2)(iii)(A);

(F) Qualifications and experience of personnel involved in making and administering business loans with a minimum of 2 years direct experience with this type of lending;

(G) Analysis of the ability of the borrower to repay the loan;

(H) Documentation supporting each request for an extension of credit or an increase in an existing loan or line of credit shall (except where the board of directors finds that such documentation requirements are not generally available for a particular type of business loan and states the reasons for those findings in the credit union's written policies) include the following: balance sheet, cash flow analysis, income statement, tax data; leveraging; comparison with industry averages; receipt and periodic updating of financial statements and other documentation; including tax returns;

(I) Collateral requirements, including loan-to-value ratios; appraisal, title search and insurance requirements; steps to be taken to secure various types of collateral; and how often the value and marketability of collateral is reevaluated;

(J) Appropriate interest rates and maturities of business loans;

(K) Loan monitoring, servicing and follow-up procedures, including collection procedures;

(L) Provision for periodic disclosure to the credit union's members of the number and aggregate dollar amount of member business loans;

(M) Identification, by position, of those senior management employees prohibited by paragraph (h)(3) of this section from receiving member business loans.

(ii) *Other policies.* The following minimum limits and policies shall also be established in writing and reviewed at least annually for loans granted under this section:

(A) Unless a credit union loan program was in existence prior to January 1, 1992, and is granted an exemption by the regional director, loans shall be granted on a fully secured basis by collateral as follows:

(*1*) Second lien for LTV ratios of up to 70 percent;

(*2*) First lien for LTV ratios of up to 80 percent;

(*3*) First lien with an LTV ratio in excess of 80 percent shall be granted only where the value in excess of 80 percent is covered through acquisition of private mortgage, or equivalent type, insurance provided by an insurer acceptable to the credit union, or insurance or guarantees by or subject to advance commitment to purchase by an agency of the federal government or of a state or any of its political subdivisions, and in no event shall the LTV ratio exceed 95 percent;

(B) Loans shall not be granted without the personal liability and guarantees of the principals (natural person members) except where the borrower is a not-for-profit organization as defined by the Internal Revenue Service Code (26 U.S.C. 501);

(C) Federally insured, state-chartered credit unions are exempt from the provisions of § 701.21(h)(2)(ii)(A) with respect to credit card line of credit programs offered to nonnatural person members which are limited to routine purposes normally made available under such programs.

(iii) *Loan limits*—(A) *Loans to one borrower.* Unless a greater amount is approved by the NCUA regional director, the aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 15% of the credit union's reserves (less the Allowance for Loan Losses account), or $75,000, whichever is higher. If any portion of a member business loan is secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the federal government or of a state or any of its political subdivisions, such portion shall not be calculated in determining the 15% limit.

(B) *Exemptions.* Credit unions seeking an exemption from the LTV ratios of § 701.21(h)(2)(ii)(A), or the limits of § 701.21(h)(2)(iii)(A) or § 701.21(h)(3) must present the regional director with, at a minimum: The higher limit sought; an explanation of the need by the members to raise the limit and ability of the credit union to manage this activity; an analysis of the credit union's prior experience making member business loans; and a copy of its business lending policy. The analysis of credit union experience in making member business loans shall document the history of loan losses, loan delinquency, volume and cyclical or seasonal patterns, diversification, concentrations of credit to one borrower or group of associated borrowers in excess of 15 percent of reserves (less the Allowance for Loan Losses account), underwriting standards and practices, types of loans grouped by purpose and collateral, and qualifications of personnel responsible for underwriting and administering member business loans. Regional directors shall consider, in addition to the information submitted by the credit union, the historical CAMEL ratings. If the credit union does not receive notification of the action taken within 30 calendar days of the date the request was received by the regional office, the credit union may assume approval of the request to exceed the limit. The regional director's decision may be appealed to the NCUA Board.

(C) *Maturity.* Member business loans shall be granted for periods consistent with the purpose, security, creditworthiness of the borrower and sound lending policies.

(D) *Monitoring requirement.* Credit unions with member business loans in excess of 100 percent of reserves (less the Allowance for Loan Losses account) shall submit the following information regarding member business loans to their respective regional director on a quarterly basis: the aggregate total of loans outstanding; the amount of loans delinquent in excess of 30 days; the balance of the allowance for member business loan losses; the aggregate total of all concentrations of credit to one borrower or group of associated borrowers in excess of 15 percent of reserves (less the Allowance for Loan Losses account); the total number and amount of all construction, development or speculative loans; and any other information pertinent to the safe and sound condition of the member business loan portfolio.

(iv) *Allowance for loan losses.* (A) The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including, but not limited to, the adequacy of analysis and documentation. The criteria for determining the classification of loans is contained in the appendix to § 701.21(h)—Classifications.

(B) Loans classified shall be reserved as follows:

(*1*) Loss loans at 100% of outstanding amount;

(*2*) Doubtful loans at 50% of outstanding amounts; and

(*3*) Substandard loans at 10% of outstanding amount unless other factors (e.g., history of such loans at the credit union) indicate a greater or lesser amount is appropriate.

(3) *Construction and development lending.* Unless an exemption is approved by the regional director, loans granted under this section to finance the construction or development of commercial or residential property shall be subject to the following additional provisions:

(i) The aggregate of all such loans, excluding any portion of a loan secured by shares in the credit union, or deposits in another financial institution, or fully or partially insured or guaranteed by, or subject to an advance commitment to purchase by, any agency of the Federal Government or of a State or any of its political subdivisions, shall not exceed 15 percent of reserves (less the Allowance for Loan Losses account);

(ii) The borrower shall have a minimum of 35 percent equity interest in the project being financed;

(iii) Funds for such projects shall be released following on-site inspections by independent, qualified personnel in accordance with a preapproved draw schedule.

(4) *Prohibitions*—(i) *Senior management employees.* A federal credit union may not make member business loans to the following:

(A) Any member of the board of directors who is compensated as such;

(B) The credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager);

(C) Any assistant chief executive officers (e.g., Assistant President, Vice President, or Assistant Treasurer/Manager);

(D) The chief financial officer (Comptroller);

(E) Any associated member or immediate family member of the senior management employees listed in paragraphs (h)(4)(i) (A) through (D) of this section.

(ii) *Equity kickers/joint ventures.* A federal credit union shall not grant a member business loan where a portion of the amount of income to be received by the credit union in conjunction with such loan is tied to the profit or sale of the business or commercial endeavor for which the loan is made.

(5) *Recordkeeping.* All loans, lines of credit, or letters of credit, that meet the definition of Section 701.21(h)(1)(i), shall be separately identified in the records of the credit union and reported as such in financial and statistical reports required by the National Credit Union Administration.

(6) *Effective date.* Section 701.21(h) is effective January 1, 1992. All member business loans granted on or after that date must be in full compliance with § 701.21(h).

(i) *Put option purchases in managing increased interest-rate risk for real estate loans produced for sale on the secondary market—*

(1) *Definitions.* For purposes of this § 701.21(i): (i) *Financial options contract* means an agreement to make or take delivery of a standardized financial instrument upon demand by the holder of the contract at any time prior to the expiration date specified in the agreement, under terms and conditions established either by:

(A) A contract market designated for trading such contracts by the Commodity Futures Trading Commission, or

(B) By a Federal credit union and a primary dealer in Government securities that are counterparties in an over-the-counter transaction.

(ii) *FHLMC security* means obligations or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454 and 1455).

(iii) *FNMA security* means an obligation, participation, or any instrument of or issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association.

(iv) *GNMA security* means an obligation, participation, or any instrument of or issued by, or fully guaranteed as to principal and interest by, the Government National Mortgage Association.

(v) *Long position* means the holding of a financial options contract with the option to make or take delivery of a financial instrument.

(vi) *Primary dealer in Government securities* means:

(A) A member of the Association of Primary Dealers in United States Government Securities; or

(B) Any parent, subsidiary, or affiliated entity of such primary dealer where the member guarantees (to the satisfaction of the FCU's board of directors) over-the-counter sales of financial options contracts by the parent, subsidiary, or affiliated entity to a Federal credit union.

(vii) *Put* means a financial options contract which entitles the holder to sell, entirely at the holder's option, a specified quantity of a security at a specified price at any time until the stated expiration date of the contract.

(2) *Permitted options transactions.* A Federal credit union may, to manage risk of loss through a decrease in value of its commitments to originate real estate loans at specified interest rates, enter into long put positions on GNMA, FNMA, and FHLMC securities:

(i) If the real estate loans are to be sold on the secondary market within ninety (90) days of closing;

(ii) If the positions are entered into:

(A) Through a contract market designated by the Commodity Futures Trading Commission for trading such contracts, or

(B) With a primary dealer in Government securities;

(iii) If the positions are entered into pursuant to written policies and procedures which are approved by the Federal credit union's board of directors, and include, at a minimum:

(A) The Federal credit union's strategy in using financial options contracts and its analysis of how the strategy will reduce sensitivity to changes in price or interest rates in its commitments to originate real estate loans at specified interest rates;

(B) A list of brokers or other intermediaries through which positions may be entered into;

(C) Quantitative limits (e.g., position and stop loss limits) on the use of financial options contracts;

(D) Identification of the persons involved in financial options contract transactions, including a description of these persons' qualifications, duties, and limits of authority, and description of the procedures for segregating these persons' duties,

(E) A requirement for written reports for review by the Federal credit union's board of directors at its monthly meetings, or by a committee appointed by the board on a monthly basis, of:

(1) The type, amount, expiration date, correlation, cost of, and current or projected income or loss from each position closed since the last board review, each position currently open and current gains or losses from such positions, and each position planned to be entered into prior to the next board review;

(2) Compliance with limits established on the policies and procedures; and

(3) The extent to which the positions described contributed to reduction of sensitivity to changes in prices or interest rates in the Federal credit union's commitments to originate real estate loans at a specified interest rate; and

(iv) If the Federal credit union has received written permission from the appropriate NCUA Regional Director to engage in financial options contracts transactions in accordance with this § 701.21(i) and its policies and procedures as written.

(3) *Recordkeeping and reporting.* (i) The reports described in § 701.21(i)(2)(iii)(E) for each month must be submitted to the appropriate NCUA Regional Office by the end of the following month. This monthly reporting requirement may be waived by the appropriate NCUA Regional Director on a case-by-case basis for those Federal credit unions with a proven record of responsible use of permitted financial options contracts.

(ii) The records described in § 701.21(i)(2)(iii)(E) must be retained for two years from the date the financial options contracts are closed.

(4) *Accounting.* A Federal credit union must account for financial options contracts transactions:

(i) In accordance with standards established by the NCUA Board in the Accounting Manual for Federal Credit Unions, available from NCUA, Administrative Office, 1776 G St. NW., Washington, DC 20456, or such other instruction as may be deemed appropriate; or

(ii) To the extent not inconsistent with NCUA Board instruction, in accordance with generally accepted accounting standards or principles.

[49 FR 30685, Aug. 1, 1984, as amended at 52 FR 12368, Apr. 16, 1987; 54 FR 18472, May 1, 1989; 54 FR 43278, Oct. 24, 1989; 55 FR 30207, July 25, 1990; 56 FR 37831, Aug. 9, 1991; 56 FR 48425, Sept. 25, 1991; 57 FR 42488, Sept. 15, 1992; 58 FR 40043, July 27, 1993; 59 FR 39425, Aug. 3, 1994; 60 FR 51889, Oct. 4, 1995; 60 FR 58504, Nov. 28, 1995; 60 FR 63613, Dec. 12, 1995; 61 FR 4215, Feb. 5, 1996; 61 FR 68128, Dec. 27, 1996]

§ 701.22 Loan participation.

(a) For purposes of this section:

(1) *Participation loan* means a loan where one or more eligible organizations participates pursuant to a written agreement with the originating lender.

(2) *Eligible organizations* means a credit union, credit union organization, or financial organization.

(3) *Credit union* means any Federal or State chartered credit union.

(4) *Credit union organization* means any organization as determined by the Board, established primarily to serve the daily operational needs of its member credit unions. The term does not include trade associations, membership organizations principally composed of credit unions, or corporations or other businesses which principally provide services to credit union members as opposed to corporations or businesses whose business relates to the daily in-house operation of credit unions.

(5) *Financial organization* means any federally chartered or federally insured financial institution.

(6) *Originating lender* means the participant with which the member contracts.

(b) Subject to the provisions of this section any Federal credit union may participate in making loans with eligible organizations within the limitations of the board of director's written participation loan policies, *Provided:*

(1) No Federal credit union shall obtain an interest in a participation loan if the sum of that interest and any (other) indebtedness owing to the Federal credit union by the borrower exceeds 10 per centum of the Federal credit union's unimpaired capital and surplus;

(2) A written master participation agreement shall be properly executed, acted upon by the Federal credit union's board of directors, or if the board has so delegated in its policy, the investment committee or senior management official(s) and retained in the Federal credit union's office. The master agreement shall include provisions for identifying, either through a document which is incorporated by reference into the master agreement or directly in the master agreement, the participation loan or loans prior to their sale; and

(3) A Federal credit union may sell to or purchase from any participant the servicing of any loan in which it owns a participation interest.

(c) An originating lender which is a Federal credit union shall:

(1) Originate loans only to its members;

(2) Retain an interest of at least 10 per centum of the face amount of each loan;

(3) Retain the original or copies of the loan documents; and

(4) Require the credit committee or loan officer to use the same underwriting standards for participation loans used for loans that are not being sold in a participation agreement unless there is a participation agreement in place prior to the disbursement of the loan. Where a participation agreement is in place prior to disbursement, either the credit union's loan policies or the participation agreement shall address any variance from non-participation loan underwriting standards.

(d) A participant Federal credit union that is not an originating lender shall:

(1) Participate only in loans it is empowered to grant, having a participation policy in place which sets forth the loan underwriting standards prior to entering into a participation agreement;

(2) Participate in participation loans only if made to its own members or members of another participating credit union;

(3) Retain the original or a copy of the written participation loan agreement and a schedule of the loans covered by the agreement; and

(4) Obtain the approval of the board of directors or investment committee of the disbursement of proceeds to the originating lender.

[43 FR 51610, Nov. 6, 1978, as amended at 46 FR 38680, July 29, 1981; 46 FR 43830, Sept. 1, 1981; 47 FR 1371, Jan. 13, 1982; 47 FR 54428, Dec. 3, 1982. Redesignated and amended at 49 FR 30688, Aug. 1, 1984; 60 FR 58204, Nov. 27, 1995]

§701.23 Purchase, sale, and pledge of eligible obligations.

(a) For purposes of this section:

(1) *Eligible obligation* means a loan or group of loans.

(2) *Student loan* means a loan granted to finance the borrower's attendance at an institution of higher education or at a vocational school, which is secured by and on which payment of the outstanding principal and interest has been deferred in accordance with the insurance or guarantee of the Federal Government, of a State government, or any agency of either.

(b) *Purchase.* (1) A Federal credit union may purchase, in whole or in part, within the limitations of the board of directors' written purchase policies:

(i) Eligible obligations of its members, from any source, if either: (A) They are loans it is empowered to grant or (B) they are refinanced with the consent of the borrowers, within 60 days after they are purchased, so that they are loans it is empowered to grant;

(ii) Eligible obligations of a liquidating credit union's individual members, from the liquidating credit union;

(iii) Student loans, from any source, if the purchaser is granting student loans on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary market; and

(iv) Real estate-secured loans, from any source, if the purchaser is granting real estate-secured loans pursuant to §701.21 on an ongoing basis and if the purchase will facilitate the purchasing credit union's packaging of a pool of such loans to be sold or pledged on the secondary mortage market.

(2) A Federal credit union may make purchases in accordance with this paragraph (b), provided:

(i) The board of directors or investment committee approves the purchase;

(ii) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the purchasers office; and

(iii) For purchases under paragraph (b)(1)(ii) of this section, any advance written approval required by §741.8 of this chapter is obtained before consummation of such purchase.

(3) The aggregate of the unpaid balance of eligible obligations purchased under paragraph (b) shall not exceed 5

percent of the unimpaired capital and surplus of the purchaser. Student loans purchased in accordance with paragraph (b)(1)(iii) of this section, real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section, and eligible obligations purchased in accordance with paragraph (b)(1)(i) of this section that are refinanced by the purchaser so that they are loans it is empowered to grant shall not be included in considering this 5 percent limitation.

(c) *Sale.* A Federal credit union may sell, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii) of this section, student loans purchased in accordance with paragraph (b)(1)(iii) of this section, and real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section, within the limitations of the board of directors' written sale policies, *Provided:*

(1) The board of directors or investment committee approves the sale; and

(2) A written agreement and a schedule of the eligible obligations covered by the agreement are retained in the seller's office.

(d) *Pledge.* (1) A Federal credit union may pledge, in whole or in part, to any source, eligible obligations of its members, eligible obligations purchased in accordance with paragraph (b)(1)(ii) of this section, student loans purchased in accordance with paragraph (b)(1)(iii) of this section, and real estate loans purchased in accordance with paragraph (b)(1)(iv) of this section, within the limitations of the board of directors' written pledge policies, *Provided:*

(i) The board of directors or investment committee approves the pledge;

(ii) Copies of the original loan documents are retained; and

(iii) A written agreement covering the pledging arrangement is retained in the office of the credit union that pledges the eligible obligations.

(2) The pledge agreement shall identify the eligible obligations covered by the agreement.

(e) *Servicing.* A Federal credit union may agree to service any eligible obligation it purchases or sells in whole or in part.

(f) *10 Percent limitation.* The total indebtedness owing to any Federal credit union by any person, inclusive of retained and reacquired interests, shall not exceed 10 percent of its unimpaired capital and surplus.

[44 FR 27071, May 9, 1979, as amended at 46 FR 38680, July 29, 1981. Redesignated at 49 FR 30688, Aug. 1, 1984, and amended at 53 FR 4844, Feb. 18, 1988; 56 FR 15036, Apr. 15, 1991; 56 FR 35811, July 29, 1991; 60 FR 58504, Nov. 28, 1995]

§ 701.24 Refund of interest.

(a) The board of directors of a Federal credit union may authorize an interest refund to members who paid interest to the credit union during any dividend period and who are members of record at the close of business on the last day of such dividend period. Interest refunds may be made for a dividend period only if dividends on share accounts have been declared and paid for that period.

(b) The amount of interest refund to each member shall be determined as a percentage of the interest paid by the member. Such percentage may vary according to the type of extension of credit and the interest rate charged.

(c) The board of directors may exclude from an interest refund:

(1) A particular type of extension of credit;

(2) Any extension of credit made at a particular interest rate; and

(3) Any extension of credit that is presently delinquent or has been delinquent within the period for which the refund is being made.

[53 FR 19747, May 31, 1988]

§ 701.25 [Reserved]

§ 701.26 Credit union service contracts.

(a) A Federal credit union may act as a representative of and enter into a contractual agreement with one or more credit unions or other organizations for the purpose of sharing, utilizing, renting, leasing, purchasing, selling, and/or joint ownership of fixed assets or engaging in activities and/or services which relate to the daily operations of credit unions. Agreements must be in writing, and shall advise all parties subject to the agreement that the goods and services provided shall

be subject to examination by the NCUA Board to the extent permitted by law.

(b) Where any agreement calls for, or requires, the payment in advance of the actual or estimated charges for more than 3 months such payment shall be deemed an investment in a credit union service organization and subject to the limitations delineated in sections 107(7)(I) and 107(5)(D) of the Federal Credit Union Act (12 U.S.C. 1757(7)(I) and 1757(5)(D)).

[47 FR 30462, July 14, 1982]

§ 701.27 Investments in and loans to credit union service organizations.

(a) *Scope.* Sections 107(7)(I) and 107(5)(D) of the Federal Credit Union Act (12 U.S.C. 1757(7)(I) and 1757(5)(D)) authorize Federal credit unions to invest in and make loans to credit union service organizations. This regulation implements those sections by addressing various issues, including monetary limits on loans and investments, the structure of credit union service organizations, their customer base, and the range of services and activities that they may provide. The regulation also establishes prudential standards for Federal credit union involvement with credit union service organizations, through provisions concerning conflicts of interest, accounting practices, and NCUA access to books and records. The regulation applies only in cases where one or more Federal credit unions have invested in or made loans to an organization pursuant to section 107(7)(I) or 107(5)(D). The regulation does not regulate credit union service organizations directly but rather establishes conditions of Federal credit union investments in and loans to such organizations.

(b) *Limits imposed by the Federal Credit Union Act.* (1) Section 107(7)(I) of the Act:

(i) Authorizes a Federal credit union to invest in shares, stock or obligations of credit union service organizations in amounts not exceeding, in the aggregate, 1% of the credit unions's paid-in and unimpaired capital and surplus;

(ii) Limits credit union service organizations to providing services associated with the routine operations of credit unions; and

(iii) Prohibits a Federal credit union from utilizing this authority to acquire control, directly or indirectly, of another financial institution, or to invest in shares, stocks or obligations of an insurance company, trade association, liquidity facility, or other similar organization.

(2) Section 107(5)(D) of the Act:

(i) Authorizes a Federal credit union to make loans to credit union service organizations in amounts not exceeding, in the aggregate, 1% of its paid-in and unimpaired capital and surplus (this is independent of the 1% investment limit pursuant to section 107(7)(I));

(ii) Requires that credit union service organizations exist primarily to meet the needs of their member credit unions; and

(iii) Limits credit union service organizations to business relating to the daily operations of the credit unions they serve.

(c) *Definitions*—(1) *Affiliated credit unions* means those credit unions that have either invested in or made loans to a credit union service organization.

(2) *Official* means any director or committee member.

(3) *Immediate family member* means a spouse or other family members living in the same household.

(4) *Paid-in and unimpaired capital and surplus* means shares and undivided earnings.

(5) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

(d) *Regulatory provisions*—(1) *Limits on funding.* A Federal credit union by itself, with other credit unions and/or with non-credit union parties, may invest in and/or loan to a credit union service organization. A Federal credit union's investments in credit union service organizations may not exceed, in the aggregate, 1% of the Federal credit union's paid-in and unimpaired capital and surplus as of its last calendar year-end financial report. A Federal credit union's loans to credit

union service organizations may not exceed, in the aggregate, 1% of the Federal credit union's paid-in and unimpaired capital and surplus as of its last calendar year-end financial report.

(2) *Structure.* A Federal credit union may invest in or loan to a credit union service organization only if the organization is structured as either a corporation or limited partnership.

(i) *Corporation.* A credit union service organization chartered as a corporation must be adequately capitalized and operated as a separate entity. A Federal credit union investing in or making loans to such a corporation must take those steps necessary to ensure that it will not be held liable for obligations of the corporation.

(ii) *Limited partnership.* A Federal credit union may participate only as a limited partner in a credit union service organization structured as a limited partnership. As a limited partner, the Federal credit union must not engage in those activities (e.g., control, management, decisionmaking), which, under state law, would cause the credit union to lose its status as limited partner, and correspondingly its limited liability, and be treated as a general partner.

(3) *Legal opinion.* A Federal credit union making an investment in or loan to a credit union service organization must obtain written legal advice as to whether the credit union service organization is established in a manner that will limit the credit union's potential exposure to no more than the loss of funds invested in or lent to the credit union service organization.

(4) *Customer base.* A Federal credit union may invest in or loan to a credit union service organization only if the organization primarily serves credit unions and/or the membership of affiliated credit unions (as defined in paragraph (c)(1) of this section).

(5) *Permissible services and activities.* A Federal credit union may invest in and/or loan to those credit union service organizations that provide only one or more of the following services and activities:

(i) *Operational services.* Credit card and debit card services; check cashing and wire transfers; internal audits for credit unions; ATM services; EFT services; accounting services; data processing; shared credit union branch (service center) operations; sale of repossessed collateral; management, development, sale or lease of fixed assets; sale, lease or servicing of computer hardware or software; management and personnel training and support; payment item processing; locator services; marketing services; research services; record retention and storage; microfilm and microfiche services; alarm-monitoring and other security services; debt collection services; credit analysis; consumer mortgage loan origination; loan processing, servicing and sales; coin and currency services; provision of forms and supplies.

(ii) *Financial services.* Financial planning and counseling; retirement counseling; investment counseling; securities brokerage services; estate planning; income tax preparation; acting as administrator for prepaid legal service plans; developing and administering IRA, Keogh, deferred compensation, and other personnel benefit plans; trust services; acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity; real estate brokerage services; travel agency services; agent for sale of insurance; personal property leasing; and provision of vehicle warranty programs.

(iii) *NCUA approval of other services.* Any service or activity which is not authorized in paragraph (d)(5)(i) or (ii) of this section must receive NCUA Board approval before a Federal credit union may invest in and/or loan to the credit union service organization that offers the service or activity. Any request for NCUA Board approval of a new service or activity should include a full explanation and complete documentation of the service or activity and how that service or activity is associated with routine credit union operations. The request should be submitted to the appropriate NCUA Regional Office. The request will be treated as a petition to amend paragraph (d)(5)(i) or (ii) of this section and NCUA will request public comment or otherwise act on the petition within 60 days after receipt.

(6)(i) *Conflict of interest.* Individuals who serve as officials of, or senior management employees of an affiliated

Federal credit union (as defined in paragraph (c)(1) of this section), and immediate family members of such individuals, may not receive any salary, commission, investment income, or other income or compensation from a credit union service organization either directly or indirectly, or from any person being served through the credit union service organization. This provision does not prohibit an official or senior management employee of Federal credit union from assisting in the operation of a credit union service organization, provided the individual is not compensated by the credit union service organization. Further, the credit union service organization may reimburse the Federal credit union for the services provided by the individual.

(ii) The prohibition contained in paragraph (d)(6)(i) of this section also applies to any employee not otherwise covered if the employee is directly involved in dealing with the credit union service organization unless the board of directors determines that the employee's position does not present a conflict of interest.

(iii) All transactions with business associates or family members not specifically prohibited by this paragraph (d)(6) must be conducted at arm's length and in the interest of the credit union.

(7) *Accounting procedures; Access to information*—(i) *Federal credit union accounting.* A Federal credit union must follow generally accepted accounting principles (GAAP) in its involvement with credit union service organizations.

(ii) *Credit union service organization Accounting; audits and financial statements; NCUA access to books and Records.* An affiliated Federal credit union must obtain written agreements from a credit union service organization, prior to investing in or lending to the organization, that the organization will:

(A) Follow GAAP,

(B) Render financial statements (balance sheet and income statement) at least quarterly and obtain a Certified Public Accountant audit annually and provide copies of such to the affiliated Federal credit union, and

(C) Provide the NCUA Board, or its representatives, with complete access to any books and records of the credit union service organization, as deemed necessary by the Board in carrying out its responsibilities under the Federal Credit Union Act.

(8) *Preexisting credit union service organizations.* (i) Any Federal credit union investments in existence prior to the effective date of this regulation, May 27, 1986, must conform with this regulation not later than May 27, 1987, unless the NCUA Board grants its prior approval to continue such investment for a stated period.

(ii) Any Federal credit union loans in existence prior to the effective date of this regulation must conform with this regulation not later than May 27, 1987, unless:

(A) The NCUA Board grants its prior approval to continue the loan for a stated period, or

(B) Under the terms of its loan agreement the Federal credit union cannot require accelerated repayment without breaching the agreement.

(e) *Other laws.* A credit union service organization must comply with applicable Federal, state and local laws.

[51 FR 10360, Mar. 26, 1986, as amended at 52 FR 43570, Nov. 13, 1987]

§§ 701.28—701.29 [Reserved]

§ 701.30 Safe deposit box service.

A Federal credit union may lease safe deposit boxes to its members.

[46 FR 7934, Jan. 26, 1981]

§ 701.31 Nondiscrimination requirements.

(a) *Definitions.* As used in this part, the term:

(1) *Application* carries the meaning of that term as defined in 12 CFR 202.2(f) (Regulation B), which is as follows:

An oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested;

(2) *Dwelling* carries the meaning of that term as defined in 42 U.S.C. 3602(b) (Fair Housing Act), which is as follows: ''Any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and

any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure, or portion thereof''; and

(3) *Real estate-related loan* means any loan for which application is made to finance or refinance the purchase, construction, improvement, repair, or maintenance of a dwelling.

(b) *Nondiscrimination in Lending.* (1) A Federal credit union may not deny a real estate-related loan, nor may it discriminate in setting or exercising its rights pursuant to the terms or conditions of such a loan, nor may it discourage an application for such a loan, on the basis of the race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18) of:

(i) Any applicant or joint applicant;

(ii) Any person associated, in connection with a real estate-related loan application, with an applicant or joint applicant;

(iii) The present or prospective owners, lessees, tenants, or occupants of the dwelling for which a real estate-related loan is requested;

(iv) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling for which a real estate-related loan is requested.

(2) With regard to a real estate-related loan, a Federal credit union may not consider a lending criterion or exercise a lending policy which has the effect of discriminating on the basis of race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18). Guidelines concerning possible exceptions to this provision appear in paragraph (e)(1) of this section.

(3) Consideration of any of the following factors in connection with a real estate-related loan is not necessary to a Federal credit union's business, generally has a discriminatory effect, and is therefore prohibited:

(i) The age or location of the dwelling;

(ii) Zip code of the applicant's current residence;

(iii) Previous home ownership;

(iv) The age or location of dwellings in the neighborhood of the dwelling;

(v) The income level of residents in the neighborhood of the dwelling.

Guidelines concerning possible exceptions to this provision appear in paragraph (e)(2) of this section.

(c) *Nondiscrimination in appraisals.* (1) A Federal credit union may not rely upon an appraisal of a dwelling if it knows or should know that the appraisal is based upon consideration of the race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18) of:

(i) Any applicant or joint applicant;

(ii) Any person associated, in connection with a real estate-related loan application, with an applicant or joint applicant;

(iii) The present or prospective owners, lessees, tenants, or occupants of the dwelling for which a real estate-related loan is requested;

(iv) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling for which a real estate-related loan is requested.

(2) With respect to a real-estate related loan, a Federal credit union may not rely upon an appraisal of a dwelling if it knows or should know that the appraisal is based upon consideration of a criterion which has the effect of discriminating on the basis of race, color, national origin, religion, sex, handicap, or familial status (having children under the age of 18). Guidelines concerning possible exceptions to this provision appear in paragraph (e)(1) of this section.

(3) A Federal credit union may not rely upon an appraisal that it knows or should know is based upon consideration of any of the following criteria, for such criteria generally have a discriminatory effect, and are not necessary to a Federal credit union's business:

(i) The age or location of the dwelling;

(ii) The age or location of dwellings in the neighborhood of the dwelling;

(iii) The income level of the residents in the neighborhood of the dwelling.

(4) Notwithstanding paragraph (c)(3) of this section, it is recognized that there may be factors concerning location of the dwelling which can be properly considered in an appraisal. If any

such factor(s) is relied upon, it must be specifically documented in the appraisal, accompanied by a brief statement demonstrating the necessity of using such factor(s). Guidelines concerning the consideration of location factors appear in paragraph (e)(3) of this section.

(5) Each Federal credit union shall make available, to any requesting member/applicant, a copy of the appraisal used in connection with that member's real estate-related loan application. The appraisal shall be available for a period of 25 months after the applicant has received notice from the Federal credit union of the action taken by the Federal credit union on the real estate-related loan application.

(d) *Nondiscrimination in advertising*—(1) *Advertising notice of nondiscrimination compliance. (i) No Federal credit union may directly or indirectly engage in any form of advertising of real estate-related loans which implies or suggests that the Federal credit union discriminates in violation of the provisions of the Fair Housing Act or of this section. Advertisements of such loans shall include a facsimile of the following:*

EQUAL HOUSING LENDER

We Do Business in Accordance With the Federal Fair Housing Law and the Equal Credit Opportunity Act

(ii) Advertisements of real estate-related loans which are broadcast on the radio shall contain the following statement:

The (insert name) Federal Credit Union is an equal housing lender.

(2) *Lobby notice of nondiscrimination compliance.* Every Federal credit union which engages in real estate-related lending shall conspicuously display in the public lobby of such credit union and in the public area of each office where such loans are made, in a manner so as to be clearly visible to the general public entering such lobby or area, a notice that incorporates a facsimile of the logotype and notice appearing in paragraph (d)(3) of this section. Posters containing this notice and logotype may be obtained from the Regional Offices of the National Credit Union Administration.

(3) *Logotype and notice of nondiscrimination compliance.* The logotype and text of the notice required in paragraph (d)(2) of this section shall be as follows:

EQUAL HOUSING
LENDER

We Do Business in Accordance With
Federal Fair Lending Laws

UNDER THE FEDERAL FAIR HOUSING ACT, IT IS ILLEGAL, ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, HANDICAP, OR FAMILIAL STATUS (HAVING CHILDREN UNDER THE AGE OF 18), TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling, or deny any loan secured by a dwelling; or
- Discriminate in fixing the amount, interest rate, duration, application procedures or other terms or conditions of such a loan, or in appraising property.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

Assistant Secretary for Fair Housing and Equal Opportunity
Department of Housing & Urban Development
Washington, D.C. 20410
For processing under the Federal Fair Housing Act
and to:
National Credit Union Administration
Office of Examination and Insurance
Washington, D.C. 20456
For processing under NCUA Regulations

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UNDER THE EQUAL CREDIT OPPORTUNITY ACT, IT IS ILLEGAL TO DISCRIMINATE IN ANY CREDIT TRANSACTION:

- On the basis of race, color, national origin, religion, sex, marital status, or age,
- Because income is from public assistance, or
- Because a right was exercised under the Consumer Credit Protection Act.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU SHOULD SEND A COMPLAINT TO:

National Credit Union Administration
Office of Examination and Insurance
Washington, D.C. 20456

NCUA 1582 (Rev. 3/96)

(e) *Guidelines.* (1) Compliance with the Fair Housing Act is achieved when each loan applicant's creditworthiness is evaluated on an individual basis, without presuming that the applicant has certain characteristics of a group. If certain lending policies or procedures do presume group characteristics, they may violate the Fair Housing Act, even though the characteristics are not based upon race, color, sex, national origin, religion, handicap, or familial status. Such a violation occurs when otherwise facially nondiscriminatory lending procedures (either general lending policies or specific criteria used in reviewing loan applications) have the effect of making real estate-related loans unavailable or less available on the basis of race, color, sex, national origin, religion, handicap, or familial status. Note, however, that a policy or criterion which has a discriminatory effect is not a violation of the Fair Housing Act if its use achieves a legitimate business necessity which cannot be achieved by using less discriminatory standards. It is also important to note that the Equal Credit Opportunity Act and Regulation B prohibit discrimination, either per se or in effect, on the basis of the applicant's age, marital status, receipt of public assistance, or the exercise of any rights under the Consumer Credit Protection Act.

(2) Paragraph (b)(3) of this section prohibits consideration of certain factors because of their likely discriminatory effect and because they are not necessary to make sound real estate-related loans. For purposes of clarification, the prohibited use of location factors in this section is intended to prevent abandonment of areas in which a Federal credit union's members live or want to live. It is not intended to require loans in those areas that are geographically remote from the FCU's main or branch offices or that contravene the parameters of a Federal credit union's charter. Further, this prohibition does not preclude requiring a borrower to obtain flood insurance protection pursuant to the National Flood Insurance Act and part 760 of NCUA's Rules and Regulations, nor does it preclude involvement with Federal or state housing insurance programs which provide for lower interest rates for the purchase of homes in certain urban or rural areas. Also, the legitimate use of location factors in an appraisal does not constitute a violation of the provision of paragraph (b)(3) of this section, which prohibits consideration of location of the dwelling. Finally, the prohibited use of prior home ownership does not preclude a Federal credit union from considering an applicant's payment history on a loan which was made to obtain a home. Such action entails consideration of the payment record on a previous loan in determining creditworthiness; it does not entail consideration of prior home ownership.

(3)(i) Paragraph (c)(3) of this section prohibits consideration of the age or location of a dwelling in a real estate-related loan appraisal. These restrictions are intended to prohibit the use of unfounded or unsubstantiated assumptions regarding the effect upon loan risk of the age of a dwelling or the physical or economic characteristics of an area. Appraisals should be based on the present market value of the property offered as security (including consideration of specific improvements to be made by the borrower) and the likelihood that the property will retain an adequate value over the term of the loan.

(ii) The term ''age of the dwelling'' does not encompass structural soundness. In addition, the age of the dwelling may be used by an appraiser as a basis for conducting further inspections of certain structural aspects of the dwelling. Paragraph (c)(3) of this section does, however, prohibit an unsubstantiated determination that a house over X years in age is not structurally sound.

(iii) With respect to location factors, paragraph (c)(4) of this section recognizes that there may be location factors which may be considered in an appraisal, and requires that the use of any such factors be specifically documented in the appraisal. These factors will most often be those location factors which may negatively affect the short range future value (up to 3–5 years) of a property. Factors which in some cases may cause the market

value of a property to decline are recent zoning changes or a significant number of abandoned homes in the immediate vicinity of the property. However, not all zoning changes will cause a decline in property values, and proximity to abandoned buildings may not affect the market value of a property because the cause of abandonment is unrelated to high risk. Proper considerations include the condition and utility of the improvement and various physical factors such as street conditions, amenities such as parks and recreation areas, availability of public utilities and municipal services, and exposure to flooding and land faults.

[54 FR 46223, Nov. 2, 1989, as amended at 59 FR 36041, July 15, 1994]

§ 701.32 Payment on shares by public units and nonmembers.

(a) *Authority.* A Federal credit union may, to the extent permitted under Section 107(6) of the Act and this section, receive payments on shares, (regular shares, share certificates, and share draft accounts) from public units and political subdivisions thereof (as those terms are defined in § 745.1) and nonmember credit unions, and to the extent permitted under the Act, this section and § 701.34, receive payments on shares (regular shares, share certificates, and share draft accounts) from other nonmembers.

(b) *Limitations.* (1) Unless a greater amount has been approved by the Regional Director, the maximum amount of all public unit and nonmember shares shall not, at any given time, exceed 20% of the total shares of the federal credit union or $1.5 million, whichever is greater.

(2) Before accepting any public unit or nonmember shares in excess of 20% of total shares, the board of directors must adopt a specific written plan concerning the intended use of these shares and forward a copy of the plan to the Regional Director. The plan must include:

(i) A statement of the credit union's needs, sources and intended uses of public unit and nonmember shares;

(ii) Provision for matching maturities of public unit and nonmember shares with corresponding assets, or justification for any mismatch; and

(iii) Provision for adequate income spread between public unit and nonmember shares and corresponding assets.

(3) A federal credit union seeking an exemption from the limits of paragraph (b)(1) of this section must submit to the Regional Director a written request including:

(i) The new maximum level of public unit and nonmember shares requested, either as a dollar amount or a percentage of total shares;

(ii) The current plan adopted by the credit union's board of directors concerning the use of new public unit and nonmember shares;

(iii) A copy of the credit union's latest financial statement; and

(iv) A copy of the credit union's loan and investment policies.

(4) Where the financial condition and management of the credit union are sound and the credit union's plan for the funds is reasonable, there will be a presumption in favor of granting the request. When granted, exemptions will normally be for a two-year period. The Regional Director will provide a written explanation for an exemption that is granted for a lesser time period.

(5) The Regional Director will provide a written determination on an exemption request within 30 calendar days after receipt of the request. The 30 day period will not begin to run until all necessary information has been submitted to the Regional Director. All denials may be appealed to the NCUA Board in a timely manner. Appeals should be submitted through the Regional Director.

(6) Upon expiration of an exemption, nonmember shares currently in the credit union in excess of the limits established pursuant to (b)(1) of this section will continue to be insured by the National Credit Union Insurance Fund within applicable limits. No new shares in excess of the limits established pursuant to (b)(1) of this section shall be accepted. Existing share certificates in excess of the limits established pursuant to (b)(1) of this section may remain in the credit union only until maturity.

(c) The limitations herein do not apply to accounts maintained in accordance with § 701.37 (Treasury Tax

and Loan Depositaries; Depositaries and Financial Agents of the Government) and matching funds required by §705.7(b) (Community Development Revolving Loan Program for Credit Unions). Once a loan granted pursuant to part 705 is repaid, nonmember share deposits accepted to meet the matching requirement are subject to this section.

[54 FR 31184, July 27, 1989, as amended at 54 FR 51384, Dec. 15, 1989; 55 FR 1794, Jan. 19, 1990; 58 FR 21645, Apr. 23, 1993; 59 FR 26102, May 19, 1994; 61 FR 3790, Feb. 2, 1996]

§701.33 Reimbursement, insurance, and indemnification of officials and employees.

(a) *Official.* An *official* is a person who is or was a member of the board of directors, credit committee or supervisory committee, or other volunteer committee established by the board of directors.

(b) *Compensation.* (1) Only one board officer, if any, may be compensated as an officer of the board. The bylaws must specify the officer to be compensated, if any, as well as the specific duties of each of the board officers. No other official may receive compensation for performing the duties or responsibilities of the board or committee position to which the person has been elected or appointed.

(2) For purposes of this section, the term *compensation* specifically excludes:

(i) Payment (by reimbursement to an official or direct credit union payment to a third party) for reasonable and proper costs incurred by an official in carrying out the responsibilities of the position to which that person has been elected or appointed, if the payment is determined by the board of directors to be necessary or appropriate in order to carry out the official business of the credit union, and is in accordance with written policies and procedures, including documentation requirements, established by the board of directors. Such payments may include the payment of travel costs for officials and one immediate family member per official;

(ii) Provision of reasonable health, accident and related types of personal insurance protection, supplied for officials at the expense of the credit union: *Provided,* that such insurance protection must exclude life insurance; must be limited to areas of risk, including accidental death and dismemberment, to which the official is exposed by reason of carrying out the duties or responsibilities of the official's credit union position; must cease immediately upon the insured person's leaving office, without providing residual benefits other than from pending claims, if any; and

(iii) Indemnification and related insurance consistent with paragraph (c) of this section.

(c) *Indemnification.* (1) A Federal credit union may indemnify its officials and current and former employees for expenses reasonably incurred in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties.

(2) Indemnification shall be consistent either with the standards applicable to credit unions generally in the state in which the principal or home office of the credit union is located, or with the relevant provisions of the Model Business Corporation Act. A Federal credit union that elects to provide indemnification shall specify whether it will follow the relevant state law or the Model Business Corporation Act. Indemnification and the method of indemnification may be provided for by charter or bylaw amendment, contract or board resolution, consistent with the procedural requirements of the applicable state law or the Model Business Corporation Act, as specified. A charter or bylaw amendment must be approved by the National Credit Union Administration.

(3) A Federal credit union may purchase and maintain insurance on behalf of its officials and employees against any liability asserted against them and expenses incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable state law or the Model Business Corporation Act.

[53 FR 29642, Aug. 8, 1988, as amended at 57 FR 54503, Nov. 19, 1992]

§ 701.34 Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.

(a) *Designation of low-income status.* (1) Section 107(6) of the Federal Credit Union Act (12 U.S.C. 1757(6)) authorizes federal credit unions serving predominantly low-income members to receive shares, share drafts and share certificates from nonmembers. In order to utilize this authority, a federal credit union must receive a low-income designation from its Regional Director. The designation may be removed by the Regional Director upon notice to the federal credit union if the definitions set forth in paragraphs (a) (2) and (3) of this section are no longer met. Removals may be appealed to the NCUA Board within 60 days. Appeals should be submitted through the Regional Director.

(2) The term *low-income members* shall mean those members who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics or those members whose annual household income falls at or below 80 percent of the median household income for the nation as established by the Census Bureau or those members otherwise defined as low-income members as determined by order of the NCUA Board.

(i) In documenting its low-income membership, a credit union that serves a geographic area where a majority of residents fall at or below the annual income standard is presumed to be serving predominantly low-income members. In applying the standards, Regional Directors shall make allowances for geographical areas with higher costs of living. The following is the exclusive list of geographic areas with the differentials to be used:

	Percent
Hawaii	40
Alaska	36
Washington, DC	19
Boston	17
San Diego	15
Los Angeles	14
New York	13
San Francisco	13
Seattle	10
Chicago	7
Philadelphia	7

(ii) The term *low-income member* also includes those members who are enrolled as full-time or part-time students in a college, university, high school, or vocational school.

(3) The term *predominantly* is defined as a simple majority.

(b) *Receipt of secondary capital accounts by low-income designated credit unions.* A Federal credit union having a designation of low income status pursuant to paragraph (a) of this section may offer secondary capital accounts to nonnatural person members and nonnatural person nonmembers on the following conditions:

(1) Prior to offering secondary capital accounts, the credit union shall adopt, and forward to the appropriate NCUA Regional Director, a written plan for use of the funds in the secondary capital accounts and subsequent liquidity needs to meet repayment requirements upon maturity of the accounts.

(2) The secondary capital account must be established as a uninsured secondary capital account or other form of non-share account.

(3) The maturity of the secondary capital account must be for a minimum of five years.

(4) The secondary capital account must not be redeemable prior to maturity.

(5) The secondary capital account shall not be insured by the National Credit Union Share Insurance Fund or any governmental or private entity.

(6) The secondary capital account holder's claim against the credit union must be subordinate to all other claims including those of shareholders, creditors and the National Credit Union Share Insurance Fund.

(7) Funds in the secondary capital account (including both principal and interest) must be available to cover operating losses realized by the credit union that exceed its net available reserves and undivided earnings (i.e., reserves and undivided earnings exclusive of allowance accounts for loan and investment losses), and to the extent funds are so used, the credit union shall under no circumstances restore or

replenish the account. Losses shall be distributed pro-rata among all secondary capital accounts held by the credit union at the time the losses are realized.

(8) The secondary capital account may not be pledged or provided by the account-holder as security on a loan or other obligation with the credit union or any other party.

(9) In the event of merger or other voluntary dissolution of the credit union, other than merger into another low-income designated credit union, the secondary capital accounts will, to the extent they are not needed to cover losses at the time of merger or dissolution, be closed and paid out to the account-holder.

(10) A secondary capital account contract agreement must be executed between an authorized representative of the account holder and the credit union accurately establishing the terms and conditions of this section and containing no provisions inconsistent therewith.

(11) A disclosure and acknowledgment as set forth in the Appendix to this section must be provided to and executed by an authorized representative of the secondary capital account holder at the time of entering into the account agreement, and original copies of the account agreement and the disclosure and acknowledgment must be retained by the credit union for the term of the agreement.

(c) *Accounting treatment; weighted value for purposes of recognizing capital value of secondary capital accounts.* (1) A low-income designated credit union that issues secondary capital accounts pursuant to paragraph (b) of this section shall record the funds on its balance sheet in an equity account entitled ''uninsured secondary capital account.'' For such accounts with remaining maturities of less than five years, the credit union shall reflect the capital value of the accounts in its financial statement in accordance with the following scale:

(i) Four to less than five years remaining maturity—80 percent.

(ii) Three to less than four years remaining maturity—60 percent.

(iii) Two to less than three years remaining maturity—40 percent.

(iv) One to less than two years remaining maturity—20 percent.

(v) Less than one year remaining maturity—0 percent.

(2) The credit union will reflect the full amount of the secondary capital on deposit in a footnote to its financial statement.

APPENDIX TO § 701.34

Disclosures and acknowledgment in the following form must be provided to any investor in secondary capital accounts in a low-income designated credit union.

An original, signed copy must be retained by the credit union.

Disclosure and Acknowledgment

I, _____ (name of signatory), hereby acknowledge and agree to the following in my capacity as _____ (official position or title) of _____ (name of institutional investor):

• _____ (name of institutional investor) has committed _____ (amount of funds) to a secondary capital account with _____ (name of credit union).

• The funds committed to the secondary capital account are committed for a period of ___ years and are not redeemable prior to _____.

• The secondary capital account is not a share account and the funds committed to the secondary capital account are not insured by the National Credit Union Share Insurance Fund or any other governmental or private entity.

The funds committed to the secondary capital account and any interest paid to the account may be used by _____ (name of credit union) to cover any and all operating losses that exceed the credit union's net available reserves and undivided earnings (i.e., reserves and undivided earnings exclusive of allowance accounts for loan and investment losses), and in the event the funds are so used _____ (name of credit union) will under no circumstances restore or replenish those funds to _____ (organization).

• In the event of liquidation of _____ (name of credit union), the funds committed to the secondary capital account shall be *subordinate to all other claims* on the assets of the credit union, including claims of member shareholders, creditors and the National Credit Union Share Insurance Fund.

_____

(signature)

_____

(official title)

[61 FR 3790, Feb. 2, 1996, as amended at 61 FR 50695, 50697, Sept. 27, 1996]

§ 701.35 Share, share draft, and share certificate accounts.

(a) Federal credit unions may offer share, share draft, and share certificate accounts in accordance with section 107(6) of the Act (12 U.S.C. 1757(6)) and the board of directors may declare dividends on such accounts as provided in section 117 of the Act (12 U.S.C. 1763).

(b) A Federal credit union shall accurately represent the terms and conditions of its share, share draft, and share certificate accounts in all advertising, disclosures, or agreements, whether written or oral

(c) A Federal credit union may, consistent with this section, parts 707 and 740 of this subchapter, other federal law, and its contractual obligations, determine the types of fees or charges and other matters affecting the opening, maintaining and closing of a share, share draft or share certificate account. State laws regulating such activities are not applicable to federal credit unions.

(d) For purposes of this section, ''state law'' means the constitution, statutes, regulations, and judicial decisions of any state, the District of Columbia, the several territories and possessions of the United States, and the Commonwealth of Puerto Rico.

[47 FR 17979, Apr. 27, 1982, as amended at 50 FR 4637, Feb. 1, 1985; 59 FR 50445, Sept. 27, 1993]

§ 701.36 FCU ownership of fixed assets.

(a) A Federal credit union's ownership in fixed assets shall be limited as described in this chapter.

(b) *Definitions*—As used in this section:

(1) Premises includes any office, branch office, suboffice, service center, parking lot, other facility, or real estate where the credit union transacts or will transact business.

(2) Furniture, Fixtures, and Equipment includes all office furnishings, office machines, computer hardware and software, automated terminals, heating and cooling equipment.

(3) Fixed Assets means premises and furniture, fixtures and equipment as these terms are defined above.

(4) Investments in fixed assets means:

(i) Any investment in real property (improved or unimproved) which is being used or is intended to be used as premises;

(ii) Any leasehold improvement on premises;

(iii) The aggregate of all capital and operating lease payments pursuant to lease agreements for fixed assets;

(iv) Any investment in the bonds, stock, debentures, or other obligations of a partnership or corporation, including any entity described in § 701.27, holding any fixed assets used by the Federal credit union and any loans to such partnership or corporation; or

(v) Any investment in furniture, fixtures and equipment.

(5) Abandoned premises means former Federal credit union premises from the date of relocation to new quarters, and property originally acquired for future expansion for which such use is no longer contemplated.

(6) Immediate family member means a spouse or other family members living in the same household.

(7) Shares mean all savings (regular shares, share drafts, share certificates, other savings) and retained earnings means regular reserve, reserve for contingencies, supplemental reserves, reserve for losses and undivided earnings.

(8) Senior management employee means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

(c) *Investment in fixed assets.* (1) No Federal credit union with $1,000,000 or more in assets, without the prior approval of the Administration, shall invest in fixed assets if the aggregate of all such investments exceeds 5 percent of shares and retained earnings.

(2) A Federal credit union shall submit such statement and reports as the NCUA regional director may require in support of any investment in fixed assets in excess of the limit specified above.

(3) If the Administration determines that the proposal will not adversely affect the credit union, an aggregate dollar amount or percentage of assets will

be approved for investment in fixed assets. Once such a limit has been approved, and unless otherwise specified by the regional director, a Federal credit union may make future acquisitions of fixed assets, provided the aggregate of all such future investments in fixed assets does not exceed an additional 1 percent of the shares and retained earnings of the credit union over the amount approved.

(4) Federal credit unions shall submit their requests to the NCUA regional office having jurisdiction over the geographical area in which the credit union's main office is located. The regional office shall inform the requesting credit union, in writing, of the date the request was received. If the credit union does not receive notification of the action taken on its request within 45 calendar days of the request was received by the regional office, the credit union may proceed with its proposed investment in fixed assets.

(d) *Premises.* (1) When real property is acquired for future expansion, at least partial utilization should be accomplished within a reasonable period, which shall not exceed 3 years unless otherwise approved in writing by the Administration. After real property acquired for future expansion has been held for 1 year, a board resolution with definitive plans for utilization must be available for inspection by an NCUA examiner.

(2) A Federal credit union shall endeavor to dispose of ''abandoned premises'' at a price sufficient to reimburse the Federal credit union for its investment and costs of acquisition. Current documents must be maintained reflecting the Federal credit union's continuing and diligent efforts to dispose of ''abandoned premises.'' After ''abandoned premises'' have been on the Federal credit union's books for 4 years, the property must be publicly advertised for sale. Disposition must occur through public or private sale within 5 years of abandonment, unless otherwise approved in writing by the Administration.

(e) *Prohibited transactions.* (1) With the exception of a short term informal lease agreement (maturity less than 1 year) no Federal credit union may acquire or lease premises without the prior written approval of the Administration from any of the following:

(i) A director, member of the credit committee or supervisory committee, or senior management employee of the Federal credit union, or immediate family member of any such individual.

(ii) A corporation in which any director, member of the credit committee or supervisory committee, official, or senior management employee, or immediate family members of any such individual, is an officer or director, or has a stock interest of 10 percent or more.

(iii) A partnership in which any director, member of the credit committee or supervisory committee, or senior management employee, or immediate family members of any such individual, is a general partner, or a limited partner with an interest of 10 percent or more.

(2) The prohibition contained in paragraph (e)(1) of this section, also applies to any employee not otherwise covered if the employee is directly involved in investments in fixed assets unless the board of directors determines that the employee's involvement does not present a conflict of interest.

(3) All transactions with business associates or family members not specifically prohibited by this paragraph (e) must be conducted at arm's length and in the interest of the credit union.

[54 FR 18467, May 1, 1989]

§ 701.37 Treasury tax and loan depositaries; depositaries and financial agents of the Government.

(a) *Definitions.* (1) *Treasury Tax and Loan (TT&L)* Remittance Account means a nondividend-paying account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of Federal taxes and certain United States obligations under United States Treasury Department regulations.

(2) *TT&L Note Account* means an account subject to the right of immediate call, evidencing funds held by depositaries electing the note option under United States Treasury Department regulations.

(3) *Treasury General Account* means an account, established under United States Treasury Department regulations, in which a zero balance may be

maintained and from which the entire balance may be withdrawn by the depositor immediately under all circumstances except closure of the credit union.

(4) *U.S. Treasury Time Deposit—Open Account* means a nondividend-bearing account, established under United States Treasury Department regulations, which generally may not be withdrawn until the expiration of 14 days after the date of the United States Treasury Department's written notice of intent to withdraw.

(b) Subject to regulation of the United States Treasury Department, a Federal credit union may serve as a Treasury tax and loan depositary, a depositary of Federal taxes, a depositary of public money, and a financial agent of the United States Government. In serving in these capacities, a Federal credit union may maintain the accounts defined in subsection (a), pledge collateral, and perform the services described under United States Treasury Department regulations for institutions acting in these capacities.

(c) Funds held in a TT&L Remittance Account, a TT&L Note Account, a Treasury General Account, and a U.S. Treasury Time Deposit—Open Account shall be considered deposits of public funds. Funds held in a TT&L Remittance Account and a TT&L Note Account shall be added together and insured up to a maximum of $100,000 in the aggregate. Funds held in a Treasury General Account and a U.S. Treasury Time Deposit—Open Account shall be added together and insured up to a maximum of $100,000 in the aggregate.

(d) Funds held in a TT&L Remittance Account, a TT&L Note Account, a Treasury General Account, and U.S. Treasury Time Deposit—Open Account are not subject to the 60-day notice requirement of Article III, section 5(a) of the Federal Credit Union Bylaws.

[54 FR 18471, May 1, 1989]

§ 701.38 Borrowed funds from natural persons.

(a) Federal credit unions may borrow from a natural person, provided:

(1) The borrowing is evidenced by a signed promissory note which sets forth the terms and conditions regarding maturity, prepayment, interest rate, method of computation, and method of payment;

(2) The promissory note and any advertisement for such funds contains conspicuous langauge indicating that:

(i) The note represents money borrowed by the credit union;

(ii) The note does not represent shares and, therefore, is *not* insured by the National Credit Union Share Insurance Fund.

[45 FR 29271, May 2, 1980, as amended at 47 FR 17979, Apr. 27, 1982]

PART 702—RESERVES

Sec.
702.1 Reserves.
702.2 Regular reserve.
702.3 Full and fair disclosure required.

AUTHORITY: 12 U.S.C. 1762 and 1766.

§ 702.1 Reserves.

Federal credit unions shall establish and maintain such reserves as may be required by the Act, or by regulation, or in special cases by the Board. A Federal credit union which has a Regular Reserve in excess of the greater applicable percent established by section 116 of the Federal Credit Union Act may transfer the excess to a supplemental reserve or to the Undivided Earnings Account: *Provided, however,* That such transfer is appropriately approved by the board of directors after careful consideration of the financial condition of the credit union, of present and anticipated future reserve needs, and of full and fair disclosure as set forth in § 702.3.

(Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and sec. 209, 84 Stat. 1014 (12 U.S.C. 1789))

[42 FR 24252, May 13, 1977]

§ 702.2 Regular reserve.

(a) Each Federal credit union shall establish and maintain a Regular Reserve, as provided by section 116 of the Federal Credit Union Act. The totals of the Regular Reserve, the Allowance for Loan Losses Account, and the Allowance for Investment Losses shall be combined for determining the applicable percentage of gross income to be transferred to the Regular Reserve.

(b) Charges to the Regular Reserve for loan losses shall be made in accordance with full and fair disclosure and as set forth in the Accounting Manual for Federal Credit Unions.

(c) Charges to the Regular Reserve for losses other than loan losses shall also be subject to the following conditions:

(1) Charges for losses other than loan losses may be made pursuant to authorization of the board of directors if the credit union's ratio of capital to assets is greater than 6 percent and the charge reduces the ratio by no more than ½ percent. The board of directors' authorization shall state the amount of and an explanation of the need for the charge. For the purposes of this section, capital is defined as the total of the Regular Reserve, the Allowance for Loan Losses, the Allowance for Investment Losses, Undivided Earnings, and other reserves.

(2) Charges for losses other than loan losses that do not meet the conditions of paragraph (c)(1) of this section must receive the written approval of the regional director for Federal credit unions.

(d) The Board may decrease the reserve requirements as set forth in section 116 of the Act when, in its opinion, such decrease is necessary or desirable.

[54 FR 48235, Nov. 22, 1989]

§702.3 Full and fair disclosure required.

(a) ''Full and fair disclosure'' is the level of disclosure which a prudent person would provide to a member of a Federal credit union, the National Credit Union Administration, or, at the discretion of the board of directors, a creditor in order to fairly inform any or all of them of the financial condition and the results of operations of the credit union.

(b)(1) Federal credit union financial statements shall provide for full and fair disclosure of all assets, liabilities, and members' equity, including such valuation allowance accounts as may be necessary to present fairly the financial position; and all income and expenses necessary to present fairly the results of operations for the period concerned.

(2) Full and fair disclosure will further be accomplished by: (i) Selecting one of the accounting bases provided for in the Accounting Manual for Federal Credit Unions which shall be either the modified cash basis or the accrual basis of accounting, and by (ii) use of appropriate financial statements described in the Accounting Manual for Federal Credit Unions, or financial statements of equivalent format.

(c)(1) The maintenance of a valuation allowance for loan losses shall not eliminate the requirement for transferring a percentage of gross income before the payment of each dividend to the regular reserve as required by section 116 of the Federal Credit Union Act.

(2) As a minimum, adjustments to the valuation allowance for loan losses shall be made prior to the distribution or posting of any dividend to the accounts of members so that the valuation allowance established fairly presents the value of loans and probable losses for all categories of loans. The valuation allowance must encompass:

(i) Specifically identified doubtful or troubled loans;

(ii) Pools of classified loans;

(iii) Pools of loans (e.g., consumer, credit card, etc.); and

(iv) A general portion for all other loans.

(3) (i) Adjustments to the valuation allowance for loan losses will be recorded in the expense account ''Provision for Loan Losses.''

(ii) Whenever additions to the valuation allowance for loan losses cause a deficit in the regular reserve account, such deficits shall be transferred first to undivided earnings and, if this shall cause a deficit in undivided earnings, then to other segregations of undivided earnings that may exist, exclusive of the Special Reserve for Losses, should such be required by the Board in accordance with §702.1 of this part. These amounts are eligible for return to undivided earnings as provided for in the Accounting Manual for Federal Credit Unions.

(iii) Dividends shall not exceed the amount available for that purpose after provisions have been made for the statutory transfer to the regular reserve

account and the removal of any deficit in the regular reserve account.

(d) The Statement of Financial Condition, when presented to members, creditors, or to the National Credit Union Administration, shall contain a dual declaration by the treasurer and by the president, or in the absence of the president, by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report and related financial statements are true and correct to the best of their knowledge and belief and present fairly the financial position and the results of operations for the period covered.

(e) Upon written application by the board of directors of a Federal credit union, the Board may waive, in whole or in part, the requirement for the maintenance of the valuation allowance for loan losses in amounts which are in excess of the statutory requirements of section 116 of the Federal Credit Union Act but are required under paragraph (c)(3)(ii) of this section. Such application shall set forth the justification for the requested waiver and shall be addressed to the appropriate Regional Director.

[40 FR 8069, Feb. 25, 1975, as amended at 47 FR 1371, Jan. 13, 1982; 54 FR 48235, Nov. 22, 1989; 57 FR 60722, Dec. 22, 1992]

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

Sec.
703.1 Scope.
703.2 Definitions.
703.3 Investment policies.
703.4 Authorized activities.
703.5 Prohibited activities.

AUTHORITY: 12 U.S.C. 1757(7), 1757(8), 1757(15), 1766(a), 1789(11).

SOURCE: 56 FR 56003, Oct. 31, 1991, unless otherwise noted.

§ 703.1 Scope.

Sections 107(7), 107(8), and 107(15) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8), 1757(15), set forth those securities, deposits, and other obligations in which federal credit unions may invest. Included are securities issued or fully guaranteed by the United States Government or any of its agencies, shares of central credit unions and any federally insured credit union, accounts in other federally insured financial institutions, certain mortgages and mortgage-related securities, and other specified investments. This part interprets several of the provisions of sections 107(7), 107(8) and 107(15)(B). It also places limits on the types of transactions that federal credit unions may enter into in connection with the purchase and sale of authorized securities, deposits, and obligations under sections 107(7), 107(8) and 107(15)(B) This part does not apply to: Investments in loans to members and related activities, which are governed by §§ 701.21, 701.22 and 701.23 (12 CFR 701.21, 701.22 and 701.23); to the purchase of real estate-secured loans pursuant to section 107(15)(A), which is governed by § 701.23; to investment in credit union service organizations, which is governed by § 701.27 (12 CFR 701.27); or to investment in fixed assets, which is governed by § 701.36 (12 CFR 701.36).

§ 703.2 Definitions.

Adjusted trading means any method or transaction used to defer a loss whereby a federal credit union sells a security to a vendor at a price above its current market price and simultaneously purchases or commits to purchase from the vendor another security at a price above its current market price.

Average life means the weighted average time to principal repayment with the amount of the principal paydowns (both scheduled and unscheduled) as the weights.

Bailment for hire contract means a contract whereby a third party, bank or other financial institution, for a fee, agrees to exercise ordinary care in protecting the securities held in safekeeping for its customers.

Bankers' Acceptance means a time draft that is drawn on and accepted by a bank, and that represents an irrevocable obligation of the bank.

Cash forward agreement means an agreement to purchase or sell a security with delivery and acceptance being mandatory and at a future date in excess of thirty (30) days from the trade date.

Collateralized Mortgage Obligation (CMO) means a multi-class bond issue

collateralized by whole loan mortgages or mortgage-backed securities (MBS). CMOs usually consist of four or more classes of bonds which are commonly referred to as ''tranches''.

Corporate credit union means a credit union that conforms to the definition of *corporate credit union* as contained in part 704 of this chapter.

Eurodollar deposit means a deposit in a foreign branch of a United States depository institution.

Facility means the home office of a federal credit union or any suboffice thereof including, but not necessarily limited to, a wire service, telephonic station, or mechanical teller station.

Federal funds transaction means a short-term or open-ended transfer of funds to a section 107(8) institution.

Futures contract means a contract for the future delivery of commodities, including certain government securities, sold on commodities exchanges.

Immediate family member means a spouse or other family members living in the same household.

Market price means the last established price at which a security is sold.

Maturity date means the date on which a security matures, and shall not mean the call date or the average life of the security.

Real Estate Mortgage Investment Conduit (REMIC) means a nontaxable entity formed for the sole purpose of holding a fixed pool of mortgages secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

Repurchase transaction means a transaction in which a federal credit union agrees to purchase a security from a vendor and to resell the same or any identical security to that vendor at a later date. A repurchase transaction may be of three types:

(1) *Investment-type repurchase transaction* means a repurchase transaction where the federal credit union purchasing the security takes physical possession of the security, or receives written confirmation of the purchase and a custodial or safekeeping receipt from a third party under a written bailment for hire contract, or is recorded as the owner of the security through the Federal Reserve Book-Entry System;

(2) *Financial institution-type repurchase transaction* means a repurchase transaction with a section 107(8) institution; and

(3) *Loan-type repurchase transaction* means any repurchase transaction that does not qualify as an investment-type or financial institution-type repurchase transaction.

Residual interest means the remainder cash flows from a CMO or REMIC transaction after payments due bondholders and trust administrative expenses have been satisfied.

Reverse repurchase transaction means a transaction whereby a federal credit union agrees to sell a security to a purchaser and to repurchase the same or any identical security from that purchaser at a future date and at a specified price.

Section 107(8) institution means an institution in which a federal credit union is authorized to make deposits pursuant to section 107(8) of the Federal Credit Union Act (12 U.S.C. 1757(8)), i.e., an institution that is insured by the Federal Deposit Insurance Corporation or is a state bank, trust company or mutual savings bank operating in accordance with the laws of a state in which the federal credit union maintains a facility.

Security means any security, obligation, account, deposit, or other item authorized for investment by a federal credit union pursuant to section 107(7), 107(8), or 107(15)(B) of the Federal Credit Union Act (12 U.S.C. 1757(7), 1757(8), 1757(15)(B)), other than loans to members.

Senior management employee means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

Settlement date means the date originally agreed to by a federal credit union and a vendor for settlement of the purchase or sale of a security.

Short sale means the sale of a security not owned by the seller.

Standby commitment means a commitment to either buy or sell a security,

on or before a future date, at a predetermined price. The seller of the commitment is the party receiving payment for assuming the risk associated with committing either to purchase a security in the future at a predetermined price, or to sell a security in the future at a predetermined price. The seller of the commitment is required to either accept delivery of a security (in the case of a commitment to buy) or make delivery of a security (in the case of a commitment to sell), in either case at the option of the buyer of the commitment.

Stripped Mortgage-Backed Securities (SMBS) means securities that represent unequal proportions of the cash flows of an underlying pool of mortgages. In their purest form, SMBS represent mortgage-backed securities (MBS) that have been converted into interest only (IO) securities, where holders receive 100 percent of the interest cash flows, and principal only (PO) securities, where holders receive 100 percent of the principal cash flows.

Trade date means the date a federal credit union originally agrees, whether orally or in writing, to enter into the purchase or sale of a security.

Yankee Dollar deposit means a deposit in a United States branch of foreign bank licensed to do business in the state in which it is located, or a deposit in a state-chartered, foreign controlled bank.

Zero coupon bond means a debt obligation that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon bond realizes the rate of return through the gradual appreciation of the security, which is redeemed at face value on a specified maturity date.

§ 703.3 Investment policies.

The board of directors of each federal credit union shall establish written investment policies consistent with the applicable provisions of the Act, NCUA's regulations, and other applicable laws and regulations, and review them at least annually. At a minimum, the written policies shall address the following:

(a) Purposes and objectives of the credit union's investment activities, including a statement whether securities purchased are held for sale, investment, or trading purposes;

(b) Persons or committees to whom investment authority has been delegated and the extent of their authority;

(c) Limits on the amount of funds that may be committed to any particular investment or securities transaction;

(d) Maturity limits;

(e) Interest rate risk (as applicable);

(f) Credit risk (as applicable);

(g) Securities dealers/brokerage firms approved for use by the board of directors together with any limitations that the board has established with respect to the amount of funds that may be placed or invested with any of the approved broker/dealers (as applicable); and

(h) Safekeeping of securities, including a list of safekeeping facilities approved by the credit union's board of directors.

§ 703.4 Authorized activities.

(a) *General authority.* A federal credit union may contract for the purchase or sale of a security provided that:

(1) The delivery of the security is to be made within thirty (30) days from the trade date; and

(2) The price of the security at the time of purchase is the market price.

(b) *Cash forward agreements.* A federal credit union may enter into a cash forward agreement to purchase or sell a security, provided that:

(1) The period from the trade date to the settlement date does not exceed one hundred and twenty (120) days;

(2) If the credit union is the purchaser, it has written cash flow projections evidencing its ability to purchase the security;

(3) If the credit union is the seller, it owns the security on the trade date; and

(4) The cash forward agreement is settled on a cash basis at the settlement date.

(c) *Loans, shares and deposits—other financial institutions.* A federal credit union may invest in the following accounts of other financial institutions as specified in sections 107(7) and 107(8) of the Federal Credit Union Act (12

U.S.C. 1757(7), 1757(8)): Loans to nonmember credit unions in an aggregate amount not exceeding 25 percent of the lending credit union's unimpaired capital and surplus; shares, share certificates or share deposits of federally insured credit unions; shares or deposits of any central credit union specifically authorized by the board of directors; and deposits of any section 107(8) institution, provided that where any such deposit, or any portion of it, is not federally insured, a credit union shall analyze the credit quality of the issuing institution prior to making the deposit. Where the deposit, or any portion of it is not federally insured, a federal credit union shall also record its credit decision respecting the investment in the records of the credit union.

(d) *Repurchase transactions.* A federal credit union may enter into an investment-type repurchase transaction or a financial institution-type repurchase transaction provided the purchase price of the security obtained in the transaction is at or below the market price. A repurchase transaction not qualifying as either an investment-type or financial institution-type repurchase transaction will be considered a loan-type repurchase transaction subject to section 107 of the Federal Credit Union Act (12 U.S.C. 1757), which generally limits federal credit unions to making loans only to members.

(e) *Reverse repurchase transactions.* A federal credit union may enter into a reverse repurchase transaction, provided that either any securities purchased with the funds obtained from the transaction or the securities collateralizing the transaction have a maturity date not later than the settlement date for the reverse repurchase transaction. A reverse repurchase transaction is a borrowing transaction subject to section 107(9) of the Federal Credit Union Act (12 U.S.C. 1757(9)), which limits a federal credit union's aggregate borrowing to 50 percent of its unimpaired capital and surplus.

(f) *Federal funds.* A federal credit union may sell Federal funds to a section 107(8) institution, provided that the interest or other consideration received from the financial institution is at the market rate for Federal funds transaction and that the transaction has a maturity of 1 or more business days or the credit union is able to require repayment at any time.

(g) *Yankee Dollars.* A federal credit union may invest in Yankee Dollar deposits in a section 107(8) institution.

(h) *Eurodollars.* A federal credit union may invest in Eurodollar deposits in a branch of a section 107(8) institution.

(i) *Banker's acceptances.* A federal credit union may invest in banker's acceptances issued by a section 107(8) institution.

(j) *Mutual funds.* A federal credit union may invest in a mutual fund if the investments and investment transactions of the fund are legally permissible for federal credit unions under the Federal Credit Union Act and NCUA Rules and Regulations.

§703.5 Prohibited activities.

The prohibitions contained in paragraphs (f), (h) and (k) of this section shall not apply to securities purchased prior to December 2, 1991. The prohibition contained in paragraph (g) of this section shall not apply to securities purchased prior to July 30, 1993.

(a) Except as provided in §701.21(i), a federal credit union may not purchase or sell a standby commitment.

(b) A federal credit union may not buy or sell a futures contract.

(c) A federal credit union may not engage in adjusted trading.

(d) A federal credit union may not engage in a short sale.

(e) A federal credit union may not purchase shares or deposits in, or otherwise transact business with a corporate credit union that does not operate in compliance with part 704 of this chapter in significant respects, or is not examined by NCUA.

(f) Except as provided in paragraph (i) of this section, a federal credit union may not purchase a Stripped Mortgage-Backed Security (SMBS).

(g)(1) Except as provided in paragraph (i) of this section, a federal credit union may not purchase a CMO or REMIC which meets any of the following three tests:

(i) *Average Life Test.* The CMO or REMIC has an expected average life greater than 10 years

(ii) *Average Life Sensitivity Test.* The average life of the CMO or REMIC: (A)

Extends by more then 4 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or

(B) Shortens by more than 6 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points.

(iii) *Price Sensitivity Test.* The estimated change in the price of the CMO or REMIC is more than 17 percent, due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(2) The three tests contained in this paragraph (g) shall apply at the time of purchase and on any subsequent retesting date, assuming market interest rates and prepayment speeds at the time that the tests are applied.

(h) Except as provided in paragraph (i) of this section, a federal credit union may not purchase a residual interest in a CMO or REMIC transaction.

(i) The prohibitions contained in paragraphs (f), (g) and (h) of this section shall not apply where an investment is made solely to reduce interest rate risk and where:

(1) A monitoring and reporting system is in place that provides the documentation necessary to evaluate the expected and actual performance of the investment under different interest rate scenarios;

(2) The monitoring and reporting system is used to conduct and document an analysis that shows, prior to purchase, that the proposed investment will reduce the credit union's interest rate risk;

(3) The investment, subsequent to purchase, is evaluated at least quarterly, to determine whether or not the investment has actually reduced the credit union's interest rate risk;

(4) The investment is reported as a trading asset at market value or as a held-for-sale asset at the lower of cost or market value until its disposition.

(j) The average life and average life sensitivity tests contained in paragraph (g) of this section shall not apply to a floating or adjustable rate CMO/REMIC that has all of the following characteristics at the time of purchase or on a subsequent testing date, irrespective of whether or not it has been purchased to reduce interest-rate risk:

(1) The interest rate of the instrument is reset at least annually.

(2) The interest rate of the instrument, at the time of purchase or at a subsequent testing date, is below the contractual cap of the instrument.

(3) The index upon which the interest rate is based is a conventional widely-used market interest rate such as the London Interbank Offered Rate (LIBOR).

(4) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a multiple of the change in the related index.

(k) A federal credit union may not purchase a zero coupon security with a maturity date that is more than 10 years from the settlement date for purchase of the security.

(l) A federal credit union's directors, officials, committee members and senior management employees, and immediate family members of such individuals, may not receive pecuniary consideration in connection with the making of an investment or deposit by the federal credit union. The prohibition contained in this subsection also applies to any employee not otherwise covered if the employee is directly involved in investments or deposits unless the board of directors determines that the employee's involvement does not present a conflict of interest.

(m) All transactions with business associates or family members not specifically prohibited by paragraph (l) of this section must be conducted at arm's length and in the interest of the credit union.

[56 FR 56003, Oct. 31, 1991, as amended at 58 FR 34870, June 30, 1993; 58 FR 41419, Aug. 4, 1993]

PART 704—CORPORATE CREDIT UNIONS

Sec.

704.1 Scope.
704.2 Definitions.
704.3 Planning: Strategic and Business Plans.
704.4 Asset/Liability Management.
704.5 Capital Goals, Objectives and Strategies.
704.6 Investment.
704.7 Lending.
704.8 Borrowing.

704.9 Services.
704.10 Fixed Assets.
704.11 Corporate Reserves.
704.12 Representation.
704.13 Annual Audit.
704.14 Contracts/Written Agreements.
704.15 State-Chartered Corporate Credit Unions.
704.16 Effective Date.
704.17 Fidelity bond coverage.

APPENDIX A TO PART 704—SUMMARY OF RISK WEIGHTS AND RISK CATEGORIES FOR CORPORATE CREDIT UNIONS

APPENDIX B TO PART 704—OFF-BALANCE SHEET CREDIT CONVERSION FACTORS

APPENDIX C TO PART 704—U.S. GOVERNMENT OBLIGATIONS, AGENCIES, AND GOVERNMENT-SPONSORED CORPORATIONS AND ENTERPRISES

AUTHORITY: 12 U.S.C. 1762, 1766(a), 1781 and 1789.

SOURCE: 57 FR 22630, May 28, 1992, unless otherwise noted.

§704.1 Scope.

(a) This part establishes special rules for all federally insured corporate credit unions and grants certain additional authorities to federal corporate credit unions. Except to the extent that they are inconsistent with this part, other provisions of NCUA's Rules and Regulations (12 CFR part 700 *et seq.*) and the Federal Credit Union Act apply to federally chartered corporate credit unions and federally insured state-chartered corporate credit unions to the same extent that they apply to other federally chartered and federally insured state-chartered credit unions, respectively.

(b) The NCUAB has the authority to issue orders which vary from this part. This authority is provided under section 120(a) of the Federal Credit Union Act, 12 U.S.C. 1766(a).

[57 FR 22630, May 28, 1992, as amended at 57 FR 28085, June 24, 1992]

§704.2 Definitions.

Affiliated organization means:

(1) An organization with which the corporate credit union shares facilities, personnel, equipment, or services; or

(2) An organization which is at least 20 percent owned or controlled by an organization with which the corporate credit union shares services, facilities, personnel, or equipment.

Asset-backed securities (ABS) means all securities supported by installment loans or leases or by revolving lines of credit. This definition excludes those securities referred to in the financial markets as mortgage-backed securities (MBS) which includes collateralized mortgage obligations (CMOs) and real estate mortgage investment conduits (REMICs).

Average daily assets means the daily average of net assets calculated on the basis of assets at the close of each day in the period.

Average life means the weighted average time to principal repayment with the amount of the principal paydowns (both scheduled and unscheduled) as the weights.

Capital means the total of all corporate reserves (regular or statutory reserves, as applicable), all undivided earnings, net income, and membership capital share deposit (or equivalent) accounts.

Capital of a broker/dealer means the sum of stockholder equity plus subordinated debt which qualifies as capital for regulatory purposes.

Claims means loans or other debt obligations.

Commitments means any unconditional arrangement that obligates a corporate credit union to extend credit in the form of loans or lease financing receivables; to purchase loans, securities or other assets; or to participate in loans and leases. Commitments also include overdraft facilities, revolving credit, home equity, and mortgage lines of credit, and similar transactions. An obligation is conditional if the corporate credit union is not automatically obligated to extend funds.

Corporate credit union means an organization that:

(1) Is chartered under Federal or state law as a credit union;

(2) Receives shares from and provides loan services to other credit unions;

(3) Is operated primarily for the purpose of serving other credit unions;

(4) Is designated by the National Credit Union Administration as a corporate credit union;

(5) Limits natural person members to the minimum required by state or federal law to charter and operate the credit union; and

(6) Does not condition the eligibility of any credit union to become a member on that credit union's membership in any other organization.

Corporate reserves means regular or statutory reserves, as applicable, excluding all valuation allowances established to meet the full and fair disclosure requirements of § 702.3 of this chapter.

Credit equivalent amounts means the face amount of each off-balance sheet item multiplied by a credit conversion factor outlined in Appendix B.

Credit union service organization (CUSO) means an organization that:

(1) Exists primarily to meet the needs of credit unions; and

(2) Engages only in business activities relating to the daily operations of the credit unions it serves or provides services associated with the routine operations of credit unions.

Expected maturity means the date on which all remaining principal amounts of an instrument or bond are anticipated to be paid off on the basis of projected payment assumptions.

Federally issued CMO/REMIC means a CMO or REMIC which is issued by a U.S. Government agency or a U.S. Government-sponsored corporation or enterprise.

Foreign bank means an institution which is organized under the laws of a country other than the United States, which is engaged in the business of banking, and which is recognized as a bank by the banking supervisory authority of the country in which it is organized.

Material means an amount that exceeds 5 percent of the corporate credit union's capital.

Membership capital share deposit (MCSD) account means a share, or deposit, or other account that:

(1) Is established, at a minimum, as a 12-month notice account;

(2) Is limited to members;

(3) Is not subject to share insurance coverage by the National Credit Union Share Insurance Fund (NCUSIF) or other deposit insurers; and

(4) In the event of liquidation of the corporate credit union, is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured obligations to shareholders and the NCUSIF.

In any event, an MCSD account shall not be repayable until notice that the account holder credit union intends to withdraw MCSD account funds from the corporate credit union, except in the case of a credit union that is placed into liquidation, is purchased and assumed, or is merged. MCSD accounts cannot be used to pledge borrowings. Corporate credit unions that issue MCSD accounts shall disclose, at least annually to their members, the terms and conditions under which such accounts are issued.

Member reverse repurchase transaction means an integrated transaction in which a corporate credit union purchases a security from one of its member credit unions under agreement by that member credit union to repurchase the same security at a specified time in the future. The corporate credit union then sells that same security, on the same day, to a third party, under agreement to repurchase it on the same date on which the corporate credit union is obligated to return the security to its member credit union.

Net assets means total assets less Central Liquidity Facility (CLF) stock subscriptions, CLF loans guaranteed by the NCUSIF, U.S. Central CLF certificates, and member reverse repurchase transactions.

Non credit union member means any member of a corporate credit union that is not chartered or licensed as a credit union.

Original maturity means the length of time between the date when a commitment is issued and the earliest date on which the corporate credit union can unconditionally cancel the commitment.

Other reserves means reserves other than corporate reserves.

Primary capital means all corporate reserves and undivided earnings.

Privately issued CMO/REMIC means a CMO or REMIC that qualifies as a permissible investment for a federal credit union pursuant to the provisions of section 107(15)(B) of the Federal Credit Union Act.

Risk-based capital means the total of primary capital and secondary capital (up to 100 percent of primary capital).

Risk-weighted assets means the sum of total balance sheet assets and off-balance sheet credit equivalent amounts multiplied by their appropriate risk-weights.

SEC-recognized rating agency means any firm recognized by the Securities and Exchange Commission (SEC) as qualified to assign risk ratings to various instruments required to be registered with the SEC.

Secondary capital means MCSD or equivalent accounts (except for MCSD accounts owned by other corporates unless the MCSD account is held by a corporate whose members are primarily other corporates and organizations recognized under section 501(c)(6) of the Internal Revenue Code), allowance for loan and lease losses up to a maximum of 1.25 percent of risk-weighted assets, and term subordinated debt weighted by remaining maturity as indicated:

(1) 5 years or more until maturity—100 percent;

(2) 4 to less than 5 years until maturity—80 percent;

(3) 3 to less than 4 years until maturity—60 percent;

(4) 2 to less than 3 years until maturity—40 percent;

(5) 1 to less than 2 years until maturity—20 percent; and

(6) Less than 1 year remaining maturity—0 percent.

MCSD Accounts upon which the account holder has given the corporate credit union notice of intent to withdraw may no longer be considered secondary capital.

Speculative activities means the use of forwards, options, futures, or similar activities other than when used to reduce interest rate risk.

Term subordinated debt means debt of a corporate credit union that:

(1) Is unsecured;

(2) Is not a deposit;

(3) Is not insured by the National Credit Union Administration;

(4) Is subordinated to general creditors and claims of depositors;

(5) Has an original maturity of at least 7 years;

(6) Is not redeemable prior to maturity except with the approval of NCUA;

(7) Is ineligible as collateral for a loan; and

(8) Is represented by a debt instrument which clearly states that it will absorb losses.

Trade association means an association of organizations or persons formed to promote their common interests. The term includes entities owned or controlled directly or indirectly by such an association but does not include credit unions.

Undivided earnings means all forms of retained earnings, except:

(1) Corporate reserves (regular or statutory reserves, as applicable); and

(2) Valuation allowances established to meet the full and fair disclosure requirements of section 702.3 of this chapter.

United States depository institutions means offices or branches (foreign and domestic) of federally insured banks and depository institutions chartered and headquartered in the United States, Puerto Rico, and U.S. territories and possessions. This includes banks, mutual or stock savings banks, savings or building and loan associations, cooperative banks, credit unions, international banking facilities of domestic depository institutions, and U.S. chartered depository institutions owned by entities outside of the United States.

United States Government or its agencies means the United States Government or instrumentalities of the United States whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States Government (see appendix C to this part).

United States Government-sponsored corporations and enterprises means agencies originally established or chartered to serve public purposes specified by Congress, but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government (see appendix C to this part).

[57 FR 22630, May 28, 1992, as amended at 57 FR 28085, June 24, 1992; 59 FR 59360, Nov. 17, 1994]

§ 704.3 Planning: Strategic and Business Plans.

(a) The board of directors of a corporate credit union shall adopt a strategic plan with appropriate objectives and goals. This plan will be reviewed periodically during the year to determine that the goals are being accomplished. At least annually, the strategic plan will be reviewed and updated.

(b) A business plan will be prepared for any material expenditure in fixed assets, new products and services, or investments in a CUSO.

§ 704.4 Asset/Liability Management.

(a) *General.* Corporate credit unions shall develop and implement comprehensive written funds management policies.

(b) *Monitoring.* Corporate credit unions shall prepare monthly reports showing the degree of mismatch between the sources and uses of funds for the various timeframes.

§ 704.5 Capital Goals, Objectives and Strategies.

(a) *General.* Corporate credit unions shall adopt formal, written goals (both long-term and short-term), objectives and strategies, including a budgetary process, for the building of capital.

(b) *Impact study.* Where a proposed new service or program, purchase or lease of a fixed asset, or investment in or loan to a CUSO has a material effect on a corporate credit union, the corporate credit union shall perform a cost/benefit analysis of the activity and a study of its impact on the capital position of the corporate credit union.

(c) *Monitoring.* Management will establish monitoring standards and procedures to periodically review and reassess the capital position of the corporate credit union and will document the review.

§ 704.6 Investment.

(a) *Policies.* A corporate credit union shall develop written investment policies which address, at a minimum:

(1) Risk diversification;

(2) Funds management strategies;

(3) Approved investment issuers, instruments, credit limits, credit ratings, and list of permissible institutions;

(4) Approved list of broker/dealers;

(5) Authorization of and limitations on persons/committees making investments; and

(6) Procedures to periodically evaluate the quality of the investment portfolio.

(b) *Limitations.*

(1) Credit Union Service Organizations (CUSOs). The aggregate of all investments in CUSOs shall not exceed 15 percent of a corporate credit union's capital unless permission is obtained from the National Credit Union Administration Board (NCUAB). A corporate credit union is prohibited from utilizing CUSO authority to acquire control, directly or indirectly, of another financial institution, or to invest in shares, stocks or obligations of another financial institution, insurance company, trade association, liquidity facility, or similar organization. Except to the extent that they are inconsistent with this paragraph, a corporate credit union investing in a CUSO shall adhere to the applicable provisions of paragraphs (c) through (e) of § 701.27 of this chapter.

(2) Other Investments. Corporate credit unions shall be limited to the following additional investments:

(i) Investments authorized by sections 107(7), 107(8), and 107(15) of the Federal Credit Union Act and part 703 of this chapter, except where those authorities are inconsistent with other limitations of this section;

(ii) Deposits in state banks, trust companies, and mutual savings banks not domiciled in the state in which the corporate credit union does business;

(iii) Deposits in, the sale of Federal Funds to, and debt obligations of foreign banks subject to the following requirements:

(A) The bank must have assets of at least US$ 20 billion, and the investment must be rated not lower than A–1 (or equivalent) for short-term (initial maturity of 1 year or less) investments by an SEC-recognized rating agency, and not lower than AA– (or equivalent) for long-term (initial maturity over 1 year) investments. Short-term investments downgraded below A–2 (or equivalent) and long-term investments downgraded below A– (or equivalent) by the same rating agency used when

the investment was purchased, if material in amount, shall be divested;

(B) The investment shall be denominated in United States dollars;

(C) The country in which the issuing bank is organized shall be rated AAA (or equivalent) for political and economic stability by an SEC recognized rating agency; and

(D) Aggregate investments in any single foreign bank are limited to not more than 5 percent of the corporate credit union's net assets;

(iv) Debt obligations of U.S. bank holding companies and other U.S. chartered corporations rated not lower than A–1 (or equivalent) for short-term investments (initial maturity of 1 year or less) by an SEC-recognized rating agency and not lower than AA– (or equivalent) for long-term investments (initial maturity over 1 year). Short-term investments downgraded below A–2 (or equivalent) and long-term investments downgraded below A– (or equivalent) by the same rating agency used when the investment was purchased, if material in amount, shall be divested. The total investment in the obligations of any single issuer shall not exceed 5 percent of the corporate credit union's net assets. This authority does not apply to debt obligations that are convertible into the stock of the corporation or holding company;

(v) Asset-backed securities subject to the following requirements:

(A) Rated not lower than AAA (or equivalent) by an SEC-recognized rating agency;

(B) Limited to a maximum of 5 percent of the corporate credit union's net assets for any single security or trust; and

(C) Having an average life at the time of purchase not to exceed 5 years.

Asset-backed securities downgraded below AA– (or equivalent) by the same rating agency used when the investment was purchased, if material in amount, shall be divested;

(vi) Federally issued CMOs/REMICs and privately issued CMOs/REMICs as defined in Section 3(a)(41) of the Securities Exchange Act of 1934. CMOs and REMICs are limited further as follows:

(A) *Fixed-rate.* An investment in a fixed-rate CMO/REMIC must have an expected average life not to exceed 5 years given an immediate and sustained increase of 300 basis points in mortgage loan commitment rates. This average life standard shall apply at the time of purchase and on any subsequent review date assuming market interest rates and prepayment speeds at the time that the test is applied. A corporate credit union shall use the average of the prepayment estimates of several major securities dealers as the prepayment assumption for the underlying mortgages. In computing the expected average life of a CMO/REMIC investment, it must be assumed that the anticipated rate of prepayment remains constant over the remaining life of the mortgage collateral. This limitation does not apply if principal payments of the investment are specifically matched to principal payments of the corresponding liability.

(B) *Variable-rate.* If the CMO/REMIC has a variable interest rate with a cap, then the lesser of the highest interest rate cap or the final interest rate cap during the average life at the time of purchase must be at least 200 basis points above the rate of the corresponding liability that it is matched against. This limitation does not apply if principal payments of the investment are specifically matched to principal payments of the corresponding liability.

(C) *Divestiture.* Any CMO/REMIC security downgraded below AA– (or equivalent) by the same SEC-recognized rating agency used when the investment was purchased, if material in amount, shall be divested.

(D) *Issuer limitation.* Privately-issued CMO/REMIC securities shall not exceed 5 percent of the corporate credit union's net assets for any single issuer.

(vii) Additional investments provided the corporate credit union has obtained permission from the NCUAB.

(c) *Exclusion.* The requirements of this section to divest investments downgraded below the minimum acceptable ratings do not apply if the expected maturity for the downgraded investment is 3 months or less.

(d) *Divestiture time frame.* The corporate credit union has 10 business days to divest itself of any investment

that does not comply with the requirements of this section or to request permission from the NCUAB to hold the investment. Any investment acquired before the effective date of this regulation is not subject to this divestiture requirement.

[57 FR 22630, May 28, 1992, as amended at 57 FR 28085, June 24, 1992]

§ 704.7 Lending.

(a) *Policies.* A corporate credit union shall develop written loan policies which address, at a minimum:

(1) Loan types and limits;

(2) Documentation for each loan and line of credit;

(3) Security;

(4) Analysis of financial and operational data;

(5) Monitoring standards; and

(6) Review and reassessment of the credit quality of the borrower.

(b) *General.* Each individual loan or line of credit limit will be determined after analyzing the financial and operational soundness of the applicant and the ability of the applicant to repay the loan. Loans are limited as follows:

(1) *Loans to member credit unions.* The maximum aggregate amount in loans and approved lines of credit to any one member that is a credit union, excluding pass-through and guaranteed loans from the CLF and the NCUSIF and member reverse repurchase transactions, shall not exceed the corporate credit union's capital or 10 percent of the corporate credit union's shares and capital, whichever is greater;

(2) *Loans to members that are not credit unions.* The aggregate amount of loans and lines of credit to credit union service organizations (CUSOs) and to members other than credit unions shall not exceed 15 percent of the corporate credit union's capital unless permission is obtained from the NCUAB.

(3) *Loans to credit unions that are not members of the corporate credit union.* The aggregate amount of loans to other credit unions that are not members of the corporate credit union shall not exceed 25 percent of the corporate credit union's shares and capital. The maximum aggregate amount in loans and approved lines of credit to any one borrower, excluding pass-through and guaranteed loans from the CLF and the NCUSIF and member reverse repurchase transactions, shall not exceed the corporate credit union's capital or 10 percent of the corporate credit union's shares and capital, whichever is greater. Loans resulting from a loan participation purchased from another corporate credit union are excluded from this 25 percent limitation.

(c) *Participation Loans with other corporate credit unions.* A corporate credit union is permitted to participate in a loan with another corporate credit union and must retain an interest of at least 5 percent of the face amount of the loan. The participation agreement may be executed at any time prior to, during, or after disbursement.

(d) *Prepayment penalties.* If provided for in the loan contract, a corporate credit union is authorized to assess prepayment penalties on loans made at fixed and variable rates to member credit unions or other organizations.

[57 FR 22630, May 28, 1992, as amended at 57 FR 28085, June 24, 1992]

§ 704.8 Borrowing.

A corporate credit union may borrow up to 10 times capital or 50 percent of shares (excluding shares created by the use of member reverse repurchase agreements) and capital, whichever is greater. CLF borrowings and borrowed funds created by the use of member reverse repurchase agreements are excluded from this limit. Additional borrowing authority can be obtained from the NCUAB.

§ 704.9 Services.

A corporate credit union may provide services to its members involving investments, liquidity management, payment systems, and correspondent services, unless otherwise prohibited by the NCUAB, or, in the case of a state-chartered corporate credit union, prohibited by state law. The corporate credit union will maintain written agreements with vendors and other providers of services.

§ 704.10 Fixed assets.

(a) *General.* A corporate credit union's ownership in fixed assets shall be limited as described in Section 701.36 of this chapter, except that in lieu of paragraphs (c)(1) through (4) of

§701.36, paragraph (b) of this section applies.

(b) *Investment in fixed assets.* (1) No corporate credit union, without the prior written approval of the NCUAB, shall invest in fixed assets where the aggregate of all such investments exceeds 15 percent of capital.

(2) A corporate credit union shall submit requests to exceed the limitation of paragraph (b)(1) of this section to the Director, Office of Corporate Credit Unions. Requests shall be supplemented by such statements and reports as the Director, Office of Corporate Credit Unions may require. If the corporate credit union does not receive notification of the action taken on its request within 45 calendar days of the date the request was received by the Director, Office of Corporate Credit Unions, the corporate credit union may proceed with its proposed investment in fixed assets. If the NCUAB determines that the proposal will not adversely affect the corporate credit union, it will respond in writing and an aggregate dollar amount or percentage of total capital will be approved for investment in fixed assets.

[57 FR 22630, May 28, 1992, as amended at 57 FR 28086, June 24, 1992; 59 FR 47072, Sept. 14, 1994]

§704.11 Corporate reserves.

(a) *Minimum capital ratio.* Each corporate credit union shall maintain a minimum ratio of risk-based capital to risk-weighted assets as follows:

(1) Within 90 days of the effective date of this regulation, primary capital shall be at least 4 percent of risk-weighted assets, or the corporate credit union will develop and implement a plan acceptable to NCUA for achieving an adequate level of primary capital consistent with the provisions of this regulation. This plan shall be submitted to the Director, Office of Corporate Credit Unions.

(2) By January 1, 1994, total capital shall equal at least 8 percent of risk-weighted assets, or the corporate credit union will develop and implement a plan acceptable to NCUA for achieving an adequate level of capital consistent with the provisions of this regulation. This plan shall be submitted to the Director, Office of Corporate Credit Unions.

(b) *Exceptions.* The NCUAB may modify a corporate credit union's reserve requirements under special circumstances.

(c) *Components of risk-based capital.* A corporate credit union's qualifying capital base consists of primary and secondary capital of which at least 50 percent shall be composed of primary capital.

(d) *Limitations.* For purposes of calculating the amount of secondary capital, term subordinated debt shall not exceed 50 percent of secondary capital.

(e) *Procedures.* Balance sheet assets and credit equivalent amounts for off-balance sheet items are assigned to a risk-weight category. The total dollar amount in each category shall be multiplied by the risk-weight assigned to that category. The sum of the categories comprises risk-weighted assets.

(f) *Frequency.* Each corporate credit union shall calculate the ratio of capital to risk-weighted assets each month. A record of such calculation shall be maintained.

(g) *Risk-weights for balance sheet assets.* Each balance sheet asset shall be assigned a risk-weight of 0 percent, 20 percent, 50 percent, and 100 percent as indicated in appendix A to this part.

(h) Other considerations. (1) An investment in the shares of a mutual fund is assigned to the risk category appropriate to the highest risk-weighted asset that the fund is permitted to hold. In addition, if the fund engages in speculative activities as defined in §704.2, then investments in the fund will be assigned to the 100 percent risk category.

(2) Accruals will be assigned the risk-weighting of the underlying asset that they represent.

(i) *Credit conversion factors for off-balance sheet items.* Off-balance sheet items will be risk-weighted each month using credit conversion factors as indicated in appendix B to this part.

(j) *Risk-based capital ratios.* (1) The primary capital ratio is computed by dividing primary capital by total risk-weighted assets.

(2) The total capital ratio is computed by dividing risk-based capital by total risk-weighted assets.

(3) Month-end amounts will be used to calculate corporate credit union capital ratios.

(k) *Required reserve transfers.* The amount that a corporate credit union is required to transfer or set aside in corporate reserves is based on both the corporate credit union's primary and total capital ratios. Ranges of capital ratios have been established. These capital ratio ranges are then associated with 1 of 6 corresponding categories in determining the required reserve transfer. To qualify for a lower reserve transfer category, the capital ratios must fall in both the primary and total capital ratio ranges of the applicable category. The corporate credit union shall set aside an amount equal to the appropriate required reserve transfer percentage times the corporate credit union's average daily assets for the transfer period times the number of days in the transfer period divided by 365. Until January 1, 1994, transfers shall be based on the level of primary capital only.

(1) Category 1 requires a corporate reserve transfer percentage of at least 25 basis points of average daily assets when either the primary capital ratio is less than 4.0 percent or the total capital ratio is less than 8.0 percent. A corporate reserve transfer percentage greater than 25 basis points of average daily assets is required if needed to bring either or both of the capital ratios up to the minimum acceptable level, or the corporate credit union would have to obtain approval from the NCUAB to operate below the minimum capital levels.

(2) Category 2 requires a corporate reserve transfer percentage of 20 basis points of average daily assets when the primary capital ratio is greater than 4.0 percent and less than 6.0 percent or the total capital ratio is greater than 8.0 percent and less than 9.0 percent.

(3) Category 3 requires a corporate reserve transfer percentage of 15 basis points of average daily assets when either the primary capital ratio is greater than 6.0 percent and less than 8.0 percent or the total capital ratio is greater than 9.0 percent and less than 12.0 percent.

(4) Category 4 requires a corporate reserve transfer percentage of 10 basis points of average daily assets when either the primary capital ratio is greater than 8.0 percent and less than 10.0 percent or the total capital ratio is greater than 12.0 percent and less than 15.0 percent.

(5) Category 5 requires a corporate reserve transfer percentage of 5 basis points of average daily assets when either the primary capital ratio is greater than 10.0 percent and less than 12.0 percent or the total capital ratio percentage is greater than 15.0 percent and less than 18.0 percent.

(6) Category 6 requires a corporate reserve transfer percentage of 0 basis points when the primary capital ratio is greater than 12.0 percent and the total capital ratio percentage is greater than 18.0 percent.

(l) Corporate credit unions must provide reserves necessary for full and fair disclosure as specified in § 702.3 of the NCUA Rules and Regulations.

[57 FR 22630, May 28, 1992, as amended at 57 FR 28086, June 24, 1992; 59 FR 47072, Sept. 14, 1994]

§ 704.12 Representation.

(a) *Board representation.* The board shall be determined as stipulated in the standard corporate federal credit union bylaws governing election procedures, provided that:

(1) At least a majority of directors, including the chair of the board, must serve on the board as representatives of member credit unions;

(2) The chair of the board may not serve simultaneously as an officer, director, or employee of a credit union trade association;

(3) A majority of directors may not serve simultaneously as officers, directors, or employees of the same credit union trade association or its affiliates (not including chapters or other subunits of a state trade association);

(4) For purposes of meeting the requirements of paragraphs (a)(2) and (a)(3) of this section, an individual may not serve as a director or chair of the board if that individual holds a subordinate employment relationship to another employee who serves as an officer, director, or employee of a credit union trade association;

(5) In the case of a corporate credit union whose membership is composed

of more than 25% non credit unions, the majority of directors serving as representatives of member credit unions, including the chair, must be elected only by member credit unions.

(b) *Representatives of organizational members.* (1) An organizational member of a corporate credit union is a member that is not a natural person. An organizational member may appoint one of its members or officials as a representative to the corporate credit union. The representative shall be empowered to attend membership meetings, to vote, and to stand for election on behalf of the member. No individual may serve as the representative of more than one organizational member in the same corporate credit union.

(2) Any vacancy on the board of a corporate credit union caused by a representative being unable to complete his or her term shall be filled by the board of the corporate credit union according to its bylaws governing the filling of board vacancies.

(c) *Recusal provision.* (1) No director, committee member, officer, or employee of a corporate credit union shall in any manner, directly or indirectly, participate in the deliberation upon or the determination of any question affecting his or her pecuniary interest or the pecuniary interest of any entity (other than the corporate credit union) in which he or she is interested, except if the matter involves general policy applicable to all members, such as setting dividend or loan rates or fees for services.

(2) An individual is ''interested'' in an entity if he or she:

(i) Serves as a director, officer, or employee of the entity;

(ii) Has a business, ownership, or deposit relationship with the entity; or

(iii) Has a business, financial, or familial relationship with an individual whom he or she knows has a pecuniary interest in the entity.

(3) In the event of the disqualification of any directors, by operation of paragraph (c)(1) of this section, the remaining qualified directors present at the meeting, if constituting a quorum with the disqualified directors, may exercise, by majority vote, all the powers of the board with respect to the matter under consideration. Where all of the directors are disqualified, the matter must be decided by the members of the corporate credit union.

(4) In the event of the disqualification of any committee member by operation of paragraph (c)(1) of this section, the remaining qualified committee members, if constituting a quorum with the disqualified committee members, may exercise, by majority vote, all the powers of the committee with respect to the matter under consideration. Where all of the committee members are disqualified, the matter shall be decided by the board of directors.

(d) *Administration.* A corporate credit union shall be under the direction and control of its board of directors. While the board may delegate the performance of administrative duties, the board is not relieved of its responsibility for their performance. The board may employ a chief executive officer who shall have such authority and such powers as delegated by the board to conduct business from day to day. Such chief executive officer must answer solely to the board of the corporate credit union, and may not be an employee of a credit union trade association.

[59 FR 59360, Nov. 17, 1994]

§704.13 Annual audit.

(a) The supervisory committee of a corporate credit union shall cause an annual opinion audit to be made by an independent, duly licensed certified public accountant (CPA) and shall submit the audit report to the board of directors. A summary of the audit report shall be submitted to the membership at the next annual meeting;

(b) The CPA's audit workpapers shall be made available for review by the examiner during the examination; and

(c) A copy of the audit report and reportable conditions letter (i.e., management letter) shall be submitted to the Director, Office of Corporate Credit Unions, within 30 days after receipt by the board of directors.

[57 FR 22630, May 28, 1992, as amended at 59 FR 47072, Sept. 14, 1994]

§ 704.14 Contracts/written agreements.

Services, facilities, personnel or equipment shared with any party shall be supported by a written contract, with the duties and responsibilities of each party specified and the allocation of service fee/expenses fully supported and documented.

§ 704.15 State-chartered corporate credit unions.

This part does not expand the powers and authorities of any state-chartered corporate credit union, beyond those powers and authorities provided under the laws of the state in which it was chartered.

§ 704.16 Effective date.

This regulation is effective beginning December 1, 1992, or June 29, 1992 if the corporate credit union plans to use the expanded authorities of paragraphs 6, 7, and 8 and has substantially complied with the other provisions of this part.

[57 FR 22630, May 28, 1992, as amended at 59 FR 47072, Sept. 14, 1994]

§ 704.17 Fidelity bond coverage.

(a) *Scope.* This section provides the fidelity bond requirements for employees and officials in corporate credit unions.

(b) *Review of coverage.* The board of directors of each corporate credit union shall, at least annually, carefully review the bond coverage in force to determine its adequacy in relation to risk exposure and to the minimum requirements in this section.

(c) *Minimum coverage.* Approved Forms. Every corporate credit union will maintain bond coverage with a company holding a certificate of authority from the Secretary of the Treasury. All bond forms, and any riders and endorsements which limit the coverage provided by approved bond forms, must receive the prior written approval of the NCUA Board. The Corporate Credit Union Discovery Bond (NCUA 100) and Standard Form 24 with Credit Union Bond Conversion Endorsement are approved for use by corporate credit unions. Credit Union Blanket Bond Form 581 and Form 23—Extended Form, may also be utilized by corporate credit unions. Fidelity bonds must provide coverage for the fraud and dishonesty of all employees, directors, officers, and supervisory and credit committee members. Notwithstanding the foregoing, all bonds must include a provision, in a form approved by the NCUA Board, requiring written notification by surety to the Board: (1) When the bond of a credit union is terminated in its entirety; or (2) when bond coverage is terminated, by issuance of a written notice, on an employee, director, officer, supervisory, or credit committee member. Said notification shall be sent to the Secretary of the NCUA Board or designee and shall include a brief statement of cause for termination.

(d) *Minimum coverage amounts.* The minimum amount of bond coverage will be computed based on the corporate credit union's net assets. The following table lists the minimum requirements.

Net assets	Minimum bond (million)
Less than $50 million	$1.0
$50–$99 million	2.0
$100–$499 million	4.0
$500–$999 million	6.0
$1.0–$1.999 billion	8.0
$2.0–$4.999 billion	10.0
$5.0–$9.999 billion	15.0
$10.0–$24.999 billion	20.0
$25.0 billion plus	25.0

It is the duty of the board of directors of each corporate credit union to provide adequate protection to meet its unique circumstances by obtaining, when necessary, bond coverage in excess of the above minimums.

(e) *Reduced coverage:* NCUA Approval. Any proposal for reduced coverage must be approved in writing by the NCUA Board at least 20 days in advance of the proposed effective date of the reduction.

(f) *Deductibles.* (1) The maximum amount of deductibles allowed are based on the corporate credit union's primary capital to risk asset ratio as defined in § 704.11(j)(1). The following table sets out the maximum deductibles.

Primary capital to risk assets ratio	Maximum deductible
Less than 4.0 percent	7.5 percent of primary capital.

Primary capital to risk assets ratio	Maximum deductible
4.0–7.99 percent	10.0 percent of primary capital.
8.0–11.99 percent	12.0 percent of primary capital.
Greater than 12.0 percent	15.0 percent of primary capital.

(2) A deductible may be applied separately to one or more insuring clauses in a blanket bond. Deductibles in excess of those showing in this section must have the written approval of the NCUA Board at least 20 days prior to the effective date of the deductibles.

(g) *Additional coverage.* The NCUA Board may require additional coverage for any corporate credit union when, in the opinion of the Board, current coverage is insufficient. The board of directors of the corporate credit union must obtain additional coverage within 30 days after the date of written notice from the NCUA Board.

[58 FR 57541, Oct. 26, 1993]

APPENDIX A TO PART 704—SUMMARY OF RISK WEIGHTS AND RISK CATEGORIES FOR CORPORATE CREDIT UNIONS

Category 1: Zero Percent Risk Weight

a. Coin and currency on hand or physically in transit.

b. Balances due from and claims on Federal Reserve Banks.

c. Claims on and portions of claims that are unconditionally guaranteed by the U.S. Government or its agencies.

d. Claims collateralized by cash or eligible deposits.

e. CLF subscriptions, including U.S. Central CLF Participation Certificates, and CLF Pass Through Loans from the CLF through U.S. Central to the corporate credit unions.

f. Asset Accounts related to Member Reverse Repurchase Agreements without indemnity obligation.

g. Claims on or unconditionally guaranteed by sovereign central governments of ''AAA'' rated countries.

h. Accrued interest receivable on the above.

Category 2: 20 Percent Risk Weight

a. Items, other than Coin and Currency, in process of collection.

b. Claims on or Portions of Claims guaranteed by U.S. Government-Sponsored Corporations and Enterprises.

c. Claims conditionally guaranteed by the U.S. Government or its Agencies or U.S. Government-Sponsored Corporations and Enterprises.

d. Claims or Portions of Claims (including Repurchase Agreements) collateralized by securities issued by the U.S. Government or its agencies or U.S. Government-Sponsored Corporations and Enterprises.

e. General obligation claims on state and local governments located in the United States.

f. Claims on U.S. Depository Institutions (including Federal Funds sold) subject to the ratings requirements shown below.

g. Claims on Depository Institutions (including Federal Funds sold) chartered in countries rated AAA other than the United States subject to the ratings requirements shown below.

h. Claims on a corporate credit union.

i. Asset accounts related to Member Reverse Repurchase Agreements with indemnity obligations.

j. Delivery Versus Payment (DVP) Repurchase Transactions in which the corporate receives the securities collateralizing the transactions, and the corporate is authorized to invest in these securities.

k. Tri-party Repurchase transactions with broker/dealers having at least $100 million in capital which are collateralized by securities that the corporate credit union is authorized to invest in.

l. Asset-backed securities rated no lower than AAA with remaining weighted average lives of 3 years or less.

m. All CMOs/REMICs (excluding CMOs/REMICs collateralized by whole loan mortgages) that comply with section 6(b)(2)(vi).

n. Secured loans to credit unions.

o. Accrued Interest Receivable on above.

In order to have a 20 percent risk-weighting, U.S. Depository Institutions and Foreign Banks must meet one of the following conditions:

(a) The institution has a short-term debt rating not lower than A–2 (or

equivalent) by a SEC-recognized rating agency; or

(b) The institution has a long-term debt rating not lower than A- (or equivalent) by a SEC-recognized rating agency; or

(c) The institution has an issuer rating not lower than B/C (or equivalent) by a SEC-recognized rating agency.

Category 3: 50 Percent Risk Weight

a. Asset-backed securities rated no lower than AAA with remaining weighted average lives greater than 3 years.

b. All CMOs/REMICs collateralized by whole-loan mortgages that qualify under section 6(b)(2)(vi).

c. Accrued Interest Receivable on the above.

Category 4: 100 Percent Risk Weight for All Other Assets Including, but not limited to

a. Loans to and Investments in CUSOs.

b. Unsecured loans to credit unions.

c. All fixed assets, including land, buildings, furniture, fixtures, equipment, automobiles, and leasehold improvements.

d. All Hold-in-Custody Repurchase Agreements.

e. Member Capital Share Deposits (MCSD) in a corporate credit union.

f. Stripped Mortgage-Backed Securities.

g. Residual Interests of CMOs/REMICs.

h. Zero Coupon Securities with a maturity date more than 5 years from the purchase settlement date of the security.

i. Claims on U.S. Chartered Corporations and Bank Holding Companies, including Commercial Paper and Corporate Bonds.

j. Mutual Funds that do not qualify for a lower risk-weighting.

k. Prepaid Assets.

l. Accounts Receivable and other receivables.

m. NCUSIF Deposit.

n. Mortgage Servicing Rights.

o. Intangible Assets.

p. Accrued Interest Receivable on the above.

[57 FR 22630, May 28, 1992, as amended at 57 FR 28086, June 24, 1992]

APPENDIX B TO PART 704—OFF-BALANCE SHEET CREDIT CONVERSION FACTORS

Zero Percent Credit Conversion Factor

Unused portions of credit lines with original maturities of 6 months or less, or which are unconditionally cancellable.

50 Percent Credit Conversion Factor

a. Unused portions of credit lines with original maturities exceeding 6 months.

b. Commitments to participate in a loan or loan package.

100 Percent Credit Conversion Factor

a. Irrevocable standby letters of credit guaranteeing financial performance (including VISA letters of credit issued by corporate credit unions on behalf of their members, or standby letters of credit backing Industrial Revenue Bonds)

b. Forward Commitments to purchase an asset or perform under a lease contract.

c. Securities held in safekeeping loaned with indemnification. Other off-balance sheet items will be addressed on a case-by-case basis by the Director, Office of Corporate Credit Unions.

[57 FR 22630, May 28, 1992, as amended at 59 FR 47072, Sept. 14, 1994]

APPENDIX C TO PART 704—U.S. GOVERNMENT OBLIGATIONS, AGENCIES, AND GOVERNMENT-SPONSORED CORPORATIONS AND ENTERPRISES

U.S. Government Obligations and U.S. Government Agencies

a. U.S. Treasury Bills.

b. U.S. Treasury Notes.

c. U.S. Treasury Bonds.

d. Commodity Credit Corporation.

e. Export-Import Bank (Exim Bank).

f. Farm Credit System Financial Assistance Corporation (FCSFAC).

g. Farmers Home Administration (FmHA).

h. Federal Housing Administration (FHA).

i. General Services Administration (GSA).
j. Government National Mortgage Association (GNMA).
k. Maritime Administration (MA).
l. Overseas Private Investment Corporation (OPIC).
m. Small Business Administration (SBA).
n. Veterans Administration (VA).
o. Washington Metropolitan Area Transit Authority (WMATA).

U.S. Government-Sponsored Corporations and Enterprises

a. Federal Home Loan Bank (FHLB).
b. Federal Home Loan Mortgage Corporation (FHLMC).
c. Federal National Mortgage Association (FNMA).
d. Resolution Trust Corporation (RTC).
e. Student Loan Marketing Association (SLMA).

PART 705—COMMUNITY DEVELOPMENT REVOLVING LOAN PROGRAM FOR CREDIT UNIONS

Sec.
705.0 Applicability.
705.1 Scope.
705.2 Purpose of the program.
705.3 Definitions.
705.4 Program activities.
705.5 Application for participation.
705.6 Community needs plan.
705.7 Loans to participating credit unions.
705.8 State-chartered credit unions.
705.9 Application period.
705.10 Technical assistance.

AUTHORITY: 12 U.S.C. 1772c–1; 42 U.S.C. 9822 and 9822 note.

SOURCE: 58 FR 21646, Apr. 23, 1993, unless otherwise noted.

§705.0 Applicability.

Monies from the Community Development Revolving Loan Fund for Credit Unions are governed by this part.

§705.1 Scope.

(a) This part implements the Community Developments Revolving Loan Program for Credit Unions (Program) under the sole administration of the National Credit Union Administration.

(b) This part establishes the following:

(1) Definitions;

(2) The application process and requirements for qualifying for a loan under the program;

(3) How loan funds are to be made available and their repayment; and

(4) Technical assistance to be provided to participating credit unions.

§705.2 Purpose of the program.

(a) The Community Development Revolving Loan Program for Credit Unions is intended to support the efforts of participating credit unions through loans and technical assistance to those credit unions in:

(1) Providing basic financial and related services to residents in their communities; and

(2) Stimulating economic activities in the communities they service which will result in increased income, ownership and employment opportunities for low-income residents, and other community growth efforts.

(b) The policy of NCUA is to revolve loan funds to qualifying credit unions as often as practical in order to gain maximum economic impact on as many participating credit unions as possible.

§705.3 Definitions.

(a)(1) The term ''low-income members'' shall mean those members who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics or those members whose annual household income falls at or below 80% of the median household income for the nation as established by the Census Bureau or those members otherwise defined as low-income members as determined by order of the NCUA Board.

(2) In documenting its low-income membership, a credit union that serves a geographic area where a majority of residents fall at or below the annual income standard is presumed to be serving predominantly low-income members. In applying the standards, Regional Directors shall make allowances for geographical areas with higher costs of living. The following is the exclusive list of geographic areas and the differentials to be used:

	Percent
Hawaii	40
Alaska	36
Washington, DC	19
Boston	17
San Diego	15
Los Angeles	14
New York	13
San Francisco	13
Seattle	10
Chicago	7
Philadelphia	7

(b) For purposes of this part, a *participating credit union* means a state- or federally-chartered credit union (excluding student credit unions) that is specifically involved in the stimulation of economic development activities and community revitalization efforts aimed at benefiting the community it serves; whose membership consists of predominantly low-income members as defined in paragraph (a) of this section or applicable state standards as reflected by a current low-income designation pursuant to § 701.34(a)(1) or § 741.204 of this chapter or, in the case of a state-chartered nonfederally insured credit union, under applicable state standards; and has submitted an application for a loan and/or technical assistance and has been selected for participation in the Program in accordance with this part.

[58 FR 21646, Apr. 23, 1993, as amended at 60 FR 58504, Nov. 28, 1995; 61 FR 50695, Sept. 27, 1996]

§ 705.4 Program activities.

In order to meet the objectives of the Program, a credit union applicant should provide a variety of financial and related services designed to meet the particular needs of the low-income community served. These activities shall include basic member share account and member loan services.

§ 705.5 Application for participation.

(a) Applications to participate and qualify for a loan or technical assistance under the Program may be obtained from the National Credit Union Administration, Community Development Revolving Loan Program For Credit Unions.

(b) The application for a loan shall contain the following information:

(1) Information demonstrating a sound financial position and the credit union's ability to manage its day-to-day business affairs, including the credit union's latest financial statement. Nonfederally insured credit unions must include the following:

(i) A copy of its most recent outside audit report;

(ii) Proof of deposit and surety bond insurance which states the maximum insurance levels permitted by the policies;

(iii) A balance sheet, an income and expense statement, and a schedule of delinquent loans, for the most recent month-end and each of the twelve months preceding that month-end.

(2) Evidence that the credit union has a need for increased funds in order to improve financial services to its members.

(3) The following information concerning a state-chartered credit union's field of membership:

(i) Current field of membership as set forth in the credit union's charter;

(ii) Changes, if any, to be made to the field of membership for participation in the Program, including;

(A) Evidence of approval of change by credit union board of directors;

(B) Evidence of submission and approval of change by the state supervisor;

(iii) Current designation as a low-income credit union if the credit union is not federally insured.

(4) Along with a community needs plan, specifics of how the credit union proposes to serve the needs of its members and the community with Program funds. The applicant credit union will also construct and submit a plan for its growth and development. The plan will set forth objectives for financial growth, credit union development and capitalization, and the means for achieving these objectives.

(5) Indication of any other involvement in existing community development programs of state and federal agencies.

(c) NCUA will notify applicant credit unions as to whether or not they have qualified for a loan or technical assistance under this part. Reasons for nonqualification will be stated. Any applicant whose qualification is denied may

appeal that decision to the NCUA Board.

[58 FR 21646, Apr. 23, 1993, as amended at 61 FR 50695, Sept. 27, 1996]

§705.6 Community needs plan.

(a) The credit union's board of directors will prepare a Community Needs Plan and submit it with its loan application. The Plan will contain a list of needed community services that the credit union will provide.

(b) The credit union's board of directors will report on the progress of providing needed community services to the credit union members once a year, either at the annual meeting or in a written report sent to all members. The credit union will also submit the written report or a summary of the report given at the annual meeting to NCUA.

§705.7 Loans to participating credit unions.

(a) *Amount and recording of loans.* A participating credit union will be eligible to receive up to $300,000 in the aggregate, as determined by the NCUA Board, in the form of a loan from the Community Development Revolving Loan Fund for Credit Unions. The amount of the loan will be based on funds availability, the creditworthiness of the participating credit union, financial need, and a demonstrated capability of a participating credit union to provide financial and related services to its members. At the discretion of NCUA, a loan will be recorded by a participating credit union as either a note payable or a nonmember deposit.

(b) *Matching requirements.* Participating credit unions will be encouraged to develop, as rapidly as possible, a permanent source of member shares.

(1) Generally loan monies made available must be matched by the participating credit union by increasing its share deposits in an amount equal to the loan amount. However, any loan monies matched by member share deposits will be credited as a two-for-one match. Nonmember share deposits accepted to meet the matching requirement are not subject to the 20% limitation on nonmember deposits under §701.32. Participating credit unions must meet this matching requirement within one year of the approval of the loan application and must maintain the increase in the total amount of share deposits for the duration of the loan. Once the loan is repaid, nonmember share deposits accepted to meet the matching requirement are subject to §701.32.

(2) Upon approval of its loan application, and before it meets its matching requirement, a participating credit union may receive the entire loan commitment in a single payment. If any funds are withheld, the remainder of the funds committed will be available to the participating credit union only after it has documented that it has met the match requirement for the total amount of the loan committed.

(3) Failure of a participating credit union to generate the required match within one year of the approval of the loan will result in the reduction of the loan proportionate to the amount of match actually generated. Payment of any additional funds initially approved will be limited as appropriate to reflect the revised amount of the loan approved. Any funds already advanced to the participating credit union in excess of the revised amount of loan approval must be repaid immediately to NCUA. Failure to repay such funds to NCUA upon demand shall result in the default of the entire loan.

(c) *Terms and repayment.* (1) Assistance made available through Program loans, whether recorded by the credit union as a note payable or nonmember deposit at NCUA's direction, is in the form of a loan and must be repaid to NCUA. All loans will be scheduled for repayment within the shortest time compatible with sound business practices and with objectives of the Program, but in no case will the term exceed five years.

(2) Semiannual interest payments (beginning six months after the initial distribution of a loan) and semiannual principal payments (beginning one year after the initial distribution of a loan) will be required.

(d) *Interest rates.* Loans made under this part shall bear interest at a fixed annual percentage rate of not more than 3 percent and not less than 1 percent as determined by the NCUA Board.

(e) *Default, collections and adjustments.* The terms of each loan agreement shall provide for the immediate acceleration of the unpaid balance for breach or default in the performance by the participating credit union of the terms or conditions of the loan. This will include misrepresentation, default in making interest/principal payments, failure to report, insolvency, failure to maintain adequate match for the duration of the loan period, etc. The unpaid balance will also be accelerated and immediately due if any part of the loan funds are improperly used, or if uninvested loan proceeds remain unused for an unreasonable or unjustified period of time.

[58 FR 21646, Apr. 23, 1993, as amended at 61 FR 50696, Sept. 27, 1996]

§ 705.8 State-chartered credit unions.

State-chartered credit union loan applicants approved for participation by NCUA must obtain written concurrence from their respective state regulatory authority. Such applicants shall make copies of their state examination reports available to NCUA and shall agree to examination by NCUA for the limited purpose of compliance with this part.

§ 705.9 Application period.

NCUA will announce annually and publish in the FEDERAL REGISTER when applications for participation in the program may be submitted. Such notice will be dependent upon the availability of funds.

§ 705.10 Technical assistance.

Based on available earnings, NCUA may contract with outside providers to render technical assistance to participating credit unions. Participating credit unions can be provided with technical assistance without obtaining a Program loan. NCUA technical assistance will aid participating credit unions in providing services to their members and in the efficient operation of such credit unions.

[61 FR 50696, Sept. 27, 1996]

PART 706—CREDIT PRACTICES

Sec.

706.1 Definitions.
706.2 Unfair credit practices.
706.3 Unfair or deceptive cosigner practices.
706.4 Late charges.
706.5 State exemptions.

AUTHORITY: 15 U.S.C. 57a(f).

SOURCE: 52 FR 46586, Dec. 9, 1987, unless otherwise noted.

§ 706.1 Definitions.

(a) *Person.* An individual, corporation, or other business organization.

(b) *Consumer.* A natural person member who seeks or acquires goods, services, or money for personal, family, or household use.

(c) *Obligation.* An agreement between a consumer and a Federal credit union.

(d) *Debt.* Money that is due or alleged to be due from one to another.

(e) *Earnings.* Compensation paid or payable to an individual or for his or her account for personal services rendered or to be rendered by him or her, whether denominated as wages, salary, commission, bonus, or otherwise, including periodic payments pursuant to a pension, retirement, or disability program.

(f) *Household goods.* Clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents, provided that the following are not included within the scope of the term ''household goods'':

(1) Works of art;

(2) Electronic entertainment equipment (except one television and one radio);

(3) Items acquired as antiques; and

(4) Jewelry (except wedding rings).

(g) *Antique.* Any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character.

(h) *Cosigner.* A natural person who renders himself or herself liable for the obligation of another person without receiving goods, services, or money in return for the credit obligation, or, in the case of an open-end credit obligation, without receiving the contractual right to obtain extensions of credit under the obligation. The term includes any person whose signature is

requested as a condition to granting credit to a consumer, or as a condition for forbearance on collection of a consumer's obligation that is in default. The term does not include a spouse whose signature is required on a credit obligation to perfect a security interest pursuant to state law. A person is a cosigner within the meaning of this definition whether or not he or she is designated as such on a credit obligation.

§706.2 Unfair credit practices.

(a) In connection with the extension of credit to consumers, it is an unfair act or practice for a Federal credit union, directly or indirectly, to take or receive from a consumer an obligation that:

(1) Constitutes or contains a cognovit or confession of judgment (for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

(2) Constitutes or contains an executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation.

(3) Constitutes or contains an assignment of wages or other earnings unless:

(i) The assignment by its terms is revocable at the will of the debtor, or

(ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or

(iii) The assignment applies only to wages or other earnings already earned at the time of the assignment.

(4) Constitutes or contains a nonpossessory security interest in household goods other than a purchase money security interest.

§706.3 Unfair or deceptive cosigner practices.

(a) *Prohibited practices.* In connection with the extension of credit to consumers, it is:

(1) A deceptive act or practice for a Federal credit union, directly or indirectly, to mispresent the nature or extent of cosigner liability to any person.

(2) An unfair act or practice for a Federal credit union, directly or indirectly, to obligate a cosigner unless the cosigner is informed prior to becoming obligated, which in the case of open-end credit means prior to the time that the agreement creating the cosigner's liability for future charges is executed, of the nature of his or her liability as cosigner.

(b) *Disclosure requirement.* (1) To comply with the cosigner information requirement of paragraph (a)(2) of this section, a clear and conspicuous disclosure statement shall be given in writing to the cosigner prior to becoming obligated. The disclosure statement will contain only the following statement, or one which is substantially equivalent, and shall either be a separate document or included in the documents evidencing the consumer credit obligation.

NOTICE TO COSIGNER

You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay if you have to, and that you want to accept this responsibility.

You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount.

The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record.

This notice is not the contract that makes you liable for the debt.

(2) If the notice to cosigner is a separate document, nothing other than the following items may appear with the notice. Items (i) through (v) may not be part of the narrative portion of the notice to cosigner.

(i) The name and address of the Federal credit union;

(ii) An identification of the debt to be consigned (e.g., a loan identification number);

(iii) The amount of the loan;

(iv) The date of the loan;

(v) A signature line for a cosigner to acknowledge receipt of the notice; and

(vi) To the extent permitted by state law, a cosigner notice required by state law may be included in the paragraph (b)(1) notice.

(3) To the extent the notice to cosigner specified in paragraph (b)(1) of this section refers to an action against a cosigner that is not permitted by state law, the notice to cosigner may be modified.

§ 706.4 Late charges.

(a) In connection with collecting a debt arising out of an extension of credit to a consumer, it is an unfair act or practice for a Federal credit union, directly or indirectly, to levy or collect any delinquency charge on a payment, which payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, when the only delinquency is attributable to late fee(s) or delinquency charge(s) assessed on earlier installment(s).

(b) For purposes of this section, ''collecting a debt'' means any activity other than the use of judicial process that is intended to bring about or does bring about repayment of all or part of a consumer debt.

§ 706.5 State exemptions.

(a) If, upon application to the NCUA by an appropriate state agency, the NCUA determines that:

(1) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and

(2) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule; then that provision of this rule will not be in effect in the state to the extent specified by the NCUA in its determination, for as long as the state administers and enforces the state requirement or prohibition effectively.

(b) States that received an exemption from the Federal Trade Commission's Credit Practices Rule prior to September 17, 1987, are not required to reapply to NCUA for an exemption under paragraph (a) of this section provided that the state forwards a copy of its exemption determination to the appropriate Regional Office. NCUA will honor the exemption for as long as the state administers and enforces the state requirement or prohibition effectively. Any state seeking a greater exemption than that granted to it by the Federal Trade Commission must apply to NCUA for the exemption.

PART 707—TRUTH IN SAVINGS

Sec.

707.1 Authority, purpose, coverage and effect on state laws.
707.2 Definitions.
707.3 General disclosure requirements.
707.4 Account disclosures.
707.5 Subsequent disclosures.
707.6 Statement disclosures.
707.7 Payment of dividends.
707.8 Advertising.
707.9 Enforcement and record retention.

APPENDIX A TO PART 707—ANNUAL PERCENTAGE YIELD CALCULATION
APPENDIX B TO PART 707—MODEL CLAUSES AND SAMPLE FORMS
APPENDIX C TO PART 707—OFFICIAL STAFF INTERPRETATION

AUTHORITY: 12 U.S.C. 4311.

SOURCE: 58 FR 50445, Sept. 27, 1993, unless otherwise noted.

§ 707.1 Authority, purpose, coverage and effect on state laws.

(a) *Authority.* This part is issued by the National Credit Union Administration Board to implement the Truth in Savings Act of 1991 (TISA), contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4301 *et seq.*, Public Law No. 102–242, 105 Stat. 2236).

(b) *Purpose.* The purpose of this part is to enable credit union members and potential members to make informed decisions about accounts at credit unions. This part requires credit unions to provide disclosures so that members and potential members can make meaningful comparisons among credit unions and depository institutions.

(c) *Coverage.* This part applies to all credit unions whose accounts are either insured by, or eligible to be insured by, the National Credit Union Share Insurance Fund, except for any

credit union that has been designated as a corporate credit union by the National Credit Union Administration and any credit union that has $2 million or less in assets, after subtracting any nonmember deposits, and is determined to be nonautomated by the National Credit Union Administration. In addition, the advertising rules in §707.8 apply to any person who advertises an account offered by a credit union, including any person who solicits any amount from any other person for placement in a credit union.

(d) *Effect on state laws.* State law requirements that are inconsistent with the requirements of the TISA and this part are preempted to the extent of the inconsistency.

[58 FR 50445, Sept. 27, 1993, as amended at 61 FR 68129, Dec. 27, 1996]

§707.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Account* means a share or deposit account at a credit union held by or offered to a member or potential member. It includes, but is not limited to, accounts such as share, share draft, checking and term share accounts. For purposes of the advertising regulations in §707.8, the term also includes an account at a credit union that is held by or offered by a share or deposit broker.

(b) *Advertisement* means a commercial message, appearing in any medium, that promotes directly or indirectly the availability of, or a deposit in, an account.

(c) *Annual percentage yield* means a percentage rate reflecting the total amount of dividends paid on an account, based on the dividend rate and the frequency of compounding for a 365-day period and calculated according to the rules in appendix A of this part.

(d) *Average daily balance method* means the application of a periodic rate to the average daily balance in the account for the period. The average daily balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

(e) *Board* means the National Credit Union Administration Board.

(f) *Bonus* means a premium, gift, award, or other consideration worth more than $10 (whether in the form of cash, credit, merchandise, or any equivalent) given or offered to a member during a year in exchange for opening, maintaining, or renewing an account, or increasing an account balance. The term does not include dividends, other consideration worth $10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits, or extraordinary dividends.

(g) *Credit union* means a federal or state-chartered credit union that is either insured by, or is eligible to apply for insurance from, the National Credit Union Share Insurance Fund.

(h) *Daily balance method* means the application of a daily periodic rate to the full amount of principal in the account each day.

(i) *Dividend* and *dividends* mean any declared or prospective earnings on a member's shares in a credit union to be paid to a member or to the member's account. For purposes of this part, the term does not include the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits, or extraordinary dividends.

(j) *Dividend declaration date* means the date that the board of directors of a credit union declares a dividend for the preceding dividend period.

(k) *Dividend period* means the span of time established by the board of directors of a credit union by the end of which shares in a member account earn dividend credit. The dividend period may be different for each type of account.

(l) *Dividend rate* means the declared or prospective annual dividend rate paid on an account, which does not reflect compounding. For purposes of the account disclosures in §707.4(b)(1)(i), the rate may, but need not, be referred to as the ''annual percentage rate'' in addition to being referred to as the ''dividend rate.''

(m) *Extraordinary dividends* means a nonrepetitive dividend paid at an irregular time from funds legally available for such distribution.

(n) *Fixed-rate account* means an account that is not a variable rate account as defined in paragraph (z) of this section.

(o) *Grace period* means a period following the maturity of an automatically renewing term share account during which the member may withdraw funds without being assessed a penalty.

(p) *Interest* means any payment to a member or to a member's account for the use of funds in a nondividend-bearing account at a state-chartered credit union offered pursuant to state law, calculated by application of a periodic rate to the balance. For purposes of this regulation, the term does not include the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits, or extraordinary dividends. Except as is specifically otherwise provided in this part, in the case of an interest-bearing account held in or offered by a state-chartered credit union pursuant to state law, the word ''interest'' shall be substituted for all references to ''dividend'' or ''dividends'' in this part.

(q) *Member* means:

(1) A natural person member of the credit union who holds an account primarily for personal, family, or household purposes;

(2) A natural person nonmember who holds an account primarily for personal, family, or household purposes, either jointly with a natural person member or in a credit union designated as a low-income credit union, or to whom such an account is offered; and

(3) A natural person nonmember who holds a deposit account in a state-chartered credit union pursuant to state law, or to whom such deposit account is offered.

The term does not include a natural person who holds an account for another in a professional capacity or an unincorporated nonbusiness association of natural person members.

(r) *Non-dividend membership benefits* means any property or service provided by a credit union to its members, the nature of which makes its valuation unreasonable and administratively impracticable.

(s) *Passbook account* means an account in which the member retains a book or other document in which the credit union records transactions on the account.

(t) *Periodic statement* means a statement setting forth information about an account (other than a term share account or passbook account) that is provided to a member on a regular basis four or more times a year.

(u) *Potential member* means a natural person within the credit union's field of membership (or an unincorporated nonbusiness association of such persons) or otherwise eligible to become a member as defined in paragraph (q) of this section.

(v) *State* means a state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(w) *Stepped-rate account* means an account that has two or more dividend rates that take effect in succeeding periods and are known when the account is opened.

(x) *Term share account* means any share certificate, interest-bearing certificate of deposit account, or other account with a maturity of at least seven days in which the member generally does not have a right to make withdrawals for six days after the account is opened, unless the account is subject to an early withdrawal penalty of at least seven days' dividends on amounts withdrawn, offered by a credit union to a member or potential member.

(y) *Tiered-rate account* means an account that has two or more dividend rates that are applicable to specified balance levels.

(z) *Variable-rate account* means a share, share draft, checking, or term share account in which the simple dividend rate may change after the account is opened, unless the credit union contracts to give at least thirty days advance written notice of rate decreases.

[58 FR 50445, Sept. 27, 1993, as amended at 59 FR 13436, Mar. 22, 1994; 59 FR 59899, Nov. 21, 1994]

§ 707.3 General disclosure requirements.

(a) *Form.* Credit unions shall make the disclosures required by §§ 707.4

through 707.6, as applicable, clearly and conspicuously in writing and in a form that the member or potential member may keep. Disclosures for each account offered by a credit union may be presented separately or they may be combined with disclosures for the credit union's other accounts, as long as it is clear which disclosures are applicable to the member's account.

(b) *General.* The disclosures shall reflect the terms of the legal obligation between the member and the credit union. Disclosures may be made in languages other than English, provided the disclosures are available in English upon request.

(c) *Relation to Regulation E (12 CFR part 205).* Disclosures required by and provided in accordance with the Electronic Fund Transfer Act (15 U.S.C. 1601) and its implementing Regulation E (12 CFR part 205) that are also required by this part may be substituted for the disclosures required by this part.

(d) *Multiple members.* If an account is held by more than one member, disclosures may be made to any one of the members.

(e) *Oral responses to inquiries.* In an oral response to a member or potential member's inquiry about dividend rates payable on its accounts, the credit union shall state the annual percentage yield. The dividend rate may be stated in addition to the annual percentage yield. No other rate may be stated. In stating a dividend rate and annual percentage yield, a credit union shall:

(1) For dividend-bearing accounts other than term share accounts, specify a dividend rate and annual percentage yield as of the last dividend declaration date. In the event that disclosures of a dividend rate and annual percentage yield as of the last dividend declaration date might be inaccurate because of known or contemplated dividend rate changes, the credit union may disclose the prospective dividend rate and prospective annual percentage yield. Such prospective dividend rate and prospective annual percentage yield may be disclosed either in lieu of, or in addition to, the dividend rate and annual percentage yield as of the last dividend declaration date.

(2) For interest-bearing accounts and for dividend-bearing term share accounts, specify an interest (dividend) rate and annual percentage yield that were offered within the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and provide a telephone number members may call to obtain current rate information.

(f) *Rounding and accuracy rules for rates and yields*—(1) *Rounding.* The annual percentage yield, the annual percentage yield earned, and the dividend rate shall be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places. For account disclosures, the dividend rate may be expressed to more than two decimal places.

(2) *Accuracy.* The annual percentage yield (and the annual percentage yield earned) will be considered accurate if not more than one-twentieth of one percentage point (.05%) above or below the annual percentage yield (and the annual percentage yield earned) determined in accordance with the rules in appendix A of this part.

(Approved by the Office of Management and Budget under control number 3133–0134)

[58 FR 50445, Sept. 27, 1993, as amended at 61 FR 114, Jan. 3, 1996]

§707.4 Account disclosures.

(a) *Delivery of account disclosures*—(1) *Account opening.* The credit union shall provide the account disclosures to the member or potential member before an account is opened or a service is provided, whichever is earlier. A credit union is deemed to have provided a service when a fee required to be disclosed is assessed. If the member is not present at the credit union when the account is opened or a service is provided and has not already received the disclosures, the credit union shall mail or deliver the disclosures no later than twenty calendar days after the account is opened or the service is provided, whichever is earlier.

(2) *Requests.* (i) A credit union shall provide the account disclosures to any member or potential member upon request. A credit union may provide the account disclosures to nonmembers in its sole discretion. If the member is not present at the credit union when the

request is made, the credit union shall mail or deliver the disclosures within a reasonable time after it receives the request.

(ii) In providing disclosures upon request, the credit union may:

(A) Specify rates as follows:

(*1*) For dividend-bearing accounts other than term share accounts, specify a dividend rate and annual percentage yield as of the last dividend declaration date. In the event that disclosures of a dividend rate and annual percentage yield as of the last dividend declaration date might be inaccurate because of known or contemplated dividend rate changes, the credit union may disclose the prospective dividend rate and prospective annual percentage yield. Such prospective dividend rate and prospective annual percentage yield may be disclosed either in lieu of, or in addition to, the dividend rate and annual percentage yield as of the last dividend declaration date.

(*2*) For interest bearing accounts and for dividend-bearing term share accounts, specify an interest rate and annual percentage yield that were offered within the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and provide a telephone number members may call to obtain current rate information; and

(B) State the maturity of a term share account as either a term or a date.

(b) *Content of account disclosures.* Account disclosures shall include the following, as applicable:

(1) *Rate information*—(i) *Annual percentage yield and dividend rate.* (A) For interest-bearing accounts and for dividend-bearing term share accounts, the ''annual percentage yield'' and the ''interest rate'' (''dividend rate''), using those terms, and for fixed-rate accounts the period of time the interest (dividend) rate will be in effect.

(B) For dividend-bearing accounts other than term share accounts, a credit union shall specify a dividend rate and annual percentage yield (using those terms) as of the last dividend declaration date. In the event that disclosures of a dividend rate and annual percentage yield as of the last dividend declaration date might be inaccurate because of known or contemplated dividend rate changes, the credit union may disclose the prospective dividend rate and prospective annual percentage yield. Such prospective dividend rate and prospective annual percentage yield may be disclosed either in lieu of, or in addition to, the dividend rate and annual percentage yield as of the last dividend declaration date.

(ii) *Variable rates.* For variable-rate accounts:

(A) The fact that the dividend rate and annual percentage yield may change;

(B) How the dividend rate is determined;

(C) The frequency with which the dividend rate may change; and

(D) Any limitation on the amount the dividend rate may change.

(2) *Compounding and crediting*—(i) *Frequency.* The frequency with which dividends are compounded and credited, and the dividend period for dividend-bearing accounts.

(ii) *Effect of closing an account.* If members will forfeit dividends if they close an account before accrued dividends are credited, a statement that the dividends will not be paid in such cases.

(3) *Balance information*—(i) *Minimum balance requirements.* Any minimum balance required to:

(A) Open the account;

(B) Avoid the imposition of a fee; or

(C) Obtain the annual percentage yield disclosed.

Except for the balance to open the account, the disclosure shall state how the balance is determined for these purposes.

(ii) *Balance computation method.* An explanation of the balance computation method specified in § 707.7, used to calculate dividends on the account.

(iii) *When dividends begin to accrue.* A statement of when dividends begin to accrue on noncash deposits.

(4) *Fees.* The amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed.

(5) *Transaction limitations.* Any limitations on the number or dollar amount of withdrawals or deposits.

(6) *Features of term share accounts.* For term share accounts:

(i) *Time requirements.* The maturity date.

(ii) *Early withdrawal penalties.* A statement that a penalty will be imposed for early withdrawal, how it is calculated, and the conditions for its assessment.

(iii) *Withdrawal of dividends prior to maturity.* If compounding occurs and dividends may be withdrawn prior to maturity, a statement that the annual percentage yield assumes dividends remain in the account until maturity and that a withdrawal will reduce earnings.

(iv) *Renewal policies.* A statement of whether or not the account will renew automatically at maturity. If it will, a statement of whether or not a grace period will be provided and, if so, the length of that period must be stated. If the account will not renew automatically, a statement of whether dividends will be paid after maturity if the member does not renew the account must be stated.

(7) *Bonuses.* The amount or type of any bonus, when the bonus will be provided, and any minimum balance and time requirements to obtain the bonus.

(8) *Nature of dividends.* For accounts earning dividends, other than term share accounts, a statement that dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

(c) *Notice to existing account holders*—(1) *Notice of availability of disclosures.* Credit unions shall provide a notice to members who receive periodic statements and who hold existing accounts of the type offered by the credit union on January 1, 1995. The notice shall be included on or with the first periodic statement sent after January 1, 1995 (or on or with the first periodic statement for a statement cycle beginning on or after that date). The notice shall state that the members may request account disclosures containing terms, fees, and rate information for the account. In responding to such a request, credit unions shall provide disclosures in accordance with paragraph (a)(2) of this section.

(2) *Alternative to notice.* As an alternative to the notice described in paragraph (c)(1) of this section, credit unions may provide account disclosures to members. The disclosures may be provided either with a periodic statement or separately, but must be sent no later than when the periodic statement described in paragraph (c)(1) of this section is sent.

(Approved by the Office of Management and Budget under control number 3133–0134)

[58 FR 50445, Sept. 27, 1993, as amended at 61 FR 114, Jan. 3, 1996]

§707.5 Subsequent disclosures.

(a) *Change in terms*—(1) *Advance notice required.* A credit union shall give advance notice to affected members of any change in a term required to be disclosed under §707.4(b), if the change may reduce the annual percentage yield or adversely affect the member. The notice shall include the effective date of the change. The notice shall be mailed or delivered at least 30 calendar days before the effective date of the change.

(2) *No notice required.* No notice under this section is required for:

(i) *Variable-rate changes.* Changes in the dividend rate and corresponding changes in the annual percentage yield in variable-rate accounts.

(ii) *Share draft and check printing fees.* Changes in fees for check printing.

(iii) *Short-term term share accounts.* Changes in any term for term share accounts with maturities of one month or less.

(b) *Notice before maturity for term share accounts longer than one month that renew automatically.* For term share accounts with a maturity longer than one month that renew automatically at maturity, credit unions shall provide the disclosures described below before maturity. The disclosures shall be mailed or delivered at least 30 calendar days before maturity of the existing account. Alternatively, the disclosures may be mailed or delivered at least 20 calendar days before the end of the grace period on the existing account, provided a grace period of at least five calendar days is allowed.

(1) *Maturities of longer than one year.* If the maturity is longer than one year, the credit union shall provide account

disclosures set forth in § 707.4(b) for the new account, along with the date the existing account matures. If the dividend rate and annual percentage yield that will be paid for the new account are unknown when disclosures are provided, the credit union shall state that those rates have not yet been determined, the date when they will be determined, and a telephone number members may call to obtain the dividend rate and the annual percentage yield that will be paid for the new account.

(2) *Maturities of one year or less but longer than one month.* If the maturity is one year or less but longer than one month, the credit union shall either:

(i) Provide disclosures as set forth in paragraph (b)(1) of this section; or

(ii) Disclose to the member:

(A) The date the existing account matures and the new maturity date if the account is renewed;

(B) The dividend rate and the annual percentage yield for the new account if they are known (or that those rates have not yet been determined, the date when they will be determined, and a telephone number the member may call to obtain the dividend rate and the annual percentage yield that will be paid for the new account); and

(C) Any difference in the terms of the new account as compared to the terms required to be disclosed under § 707.4(b) for the existing account.

(c) *Notice for term share accounts one month or less that renew automatically.* For term share accounts with a maturity one month or less that renew automatically at maturity, credit unions shall disclose any difference in the terms of the new account as compared to the terms required to be disclosed under § 707.4(b) for the existing account, other than a change in the dividend rate and corresponding change in the annual percentage yield. The notice shall be mailed or delivered within a reasonable time after the renewal.

(d) *Notice before maturity for term share accounts longer than one year that do not renew automatically.* For term share accounts with a maturity longer than one year that do not renew automatically at maturity, credit unions shall disclose to members the maturity date and whether dividends will be paid after maturity. The disclosures shall be mailed or delivered at least 10 calendar days before maturity of the existing account.

(Approved by the Office of Management and Budget under control number 3133–0134)

[58 FR 50445, Sept. 27, 1993, as amended at 61 FR 114, Jan. 3, 1996]

§ 707.6 Statement disclosures.

(a) *Rule when statement and crediting periods vary.* In making the disclosures described in paragraph (b) of this section, credit unions that calculate and credit dividends for a period other than the statement period, such as the dividend period, may calculate and disclose the annual percentage yield earned and amount of dividends earned based on that period rather than the statement period. The information in paragraph (b)(4) shall be stated for that period as well as for the statement period.

(b) *Statement disclosures.* If a credit union mails or delivers a periodic statement, the statement shall include the following disclosures:

(1) *Annual percentage yield earned.* The ''annual percentage yield earned,'' using that term as calculated according to the rules in appendix A of this part.

(2) *Amount of dividends.* The dollar amount of dividends earned (accrued or paid and credited) on the account. The dollar amount of any extraordinary dividends earned during the statement period shall be shown as a separate figure.

(3) Fees imposed. Fees required to be disclosed under § 707.4(b)(4) of this part and imposed on the account during the statement period. The fees shall be itemized by type and dollar amounts.

(4) *Length of period.* The total number of days in the statement period, or the beginning and ending dates of the period.

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[58 FR 50445, Sept. 27, 1993, as amended at 59 FR 59899, Nov. 21, 1994; 61 FR 114, Jan. 3, 1996]

§ 707.7 Payment of dividends.

(a) *Permissible methods*—(1) *Balance on which dividends are calculated.* Credit unions shall calculate dividends on the full amount of principal in an account

for each day by use of either the daily balance method or the average daily balance method. Credit unions shall calculate dividends by use of a daily rate of at least 1/365 of the dividend rate. In a leap year a daily rate of 1/366 of the dividend rate may be used.

(2) *Determination of minimum balance to earn dividends.* A credit union shall use the same method to determine any minimum balance required to earn dividends as it uses to determine the balance on which dividends are calculated. A credit union may use an additional method that is unequivocally beneficial to the member.

(b) *Compounding and crediting policies.* This section does not require credit unions to compound or credit dividends at any particular frequency.

(c) *Date dividends begin to accrue.* Dividends shall begin to accrue not later than the day specified in section 606 of the Expedited Funds Availability Act (12 U.S.C. 4005) and implementing Regulation CC (12 CFR part 229). Dividends shall accrue on funds until the day funds are withdrawn.

(Approved by the Office of Management and Budget under control number 3133–0134)

[58 FR 50445, Sept. 27, 1993, as amended at 61 FR 114, Jan. 3, 1996]

§707.8 Advertising.

(a) *Misleading or inaccurate advertisements.* An advertisement shall not be misleading or inaccurate and shall not misrepresent a credit union's account contract. An advertisement shall not refer to or describe an account as ''free'' or ''no cost'' (or contain a similar term) if any maintenance or activity fee may be imposed on the account. The word ''profit'' shall not be used in referring to interest paid on an account.

(b) *Permissible rates.* If an advertisement states a rate of return, it shall state the rate as an ''annual percentage yield,'' using that term. (The abbreviation ''APY'' may be used provided the term ''annual percentage yield'' is stated at least once in the advertisement.) The advertisement shall not state any other rate, except that the ''dividend rate,'' using that term, may be stated in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates.

(c) *When additional disclosures are required.* Except as provided in paragraph (e) of this section, if the annual percentage yield is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) *Variable rates.* For variable-rate accounts, a statement that the rate may change after the account is opened.

(2) *Time annual percentage yield is offered.* For interest-bearing accounts and dividend-bearing term share accounts, the period of time the annual percentage yield will be offered, or a statement that the annual percentage yield is accurate as of a specified date. For dividend-bearing accounts other than term share accounts, a statement that the annual percentage yield is accurate as of the last dividend declaration date. In the event that disclosure of an annual percentage yield as of the last dividend declaration date might be inaccurate because of known or contemplated dividend rate changes, the credit union may disclose the prospective annual percentage yield. Such prospective annual percentage yield may be disclosed either in lieu of, or in addition to, the dividend rate and annual percentage yield as of the last dividend declaration date.

(3) *Minimum balance.* The minimum balance required to earn the advertised annual percentage yield. For tiered-rate accounts, the minimum balance required for each tier shall be stated in close proximity and with equal prominence to the applicable annual percentage yield.

(4) *Minimum opening deposit.* The minimum deposit required to open the account, if it is greater than the minimum balance necessary to earn the advertised annual percentage yield.

(5) A statement that fees could reduce the earnings on the account.

(6) *Features of term share accounts.* For term share accounts:

(i) *Time requirements.* The term of the account.

(ii) *Early withdrawal penalties.* A statement that a penalty will or may be imposed for early withdrawal.

(d) *Bonuses.* Except as provided in paragraph (e) of this section, if a bonus is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) The ''annual percentage yield,'' using that term;

(2) The time requirements to obtain the bonus;

(3) The minimum balance required to obtain the bonus;

(4) The minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus; and

(5) When the bonus will be provided.

(e) *Exemption for certain advertisements*—(1) *Certain media.* If an advertisement is made through one of the following media, it need not contain the information in paragraphs (c)(1), (c)(2), (c)(4), (c)(5), (c)(6)(ii), (d)(4) and (d)(5) of this section:

(i) Broadcast or electronic media, such as television or radio;

(ii) Outdoor media, such as billboards; or

(iii) Telephone response machines.

(2) *Indoor signs.* (i) Signs inside the premises of a credit union (or the premises of a share or deposit broker) are not subject to paragraphs (b), (c), (d) or (e)(1) of this section unless they face outside the premises and can reasonably be viewed by a member only from outside the premises.

(ii) If a sign exempted by paragraph (e)(2) of this section states a rate of return, it shall:

(A) State the rate as an ''annual percentage yield,'' using that term or the term ''APY.'' The sign shall not state any other rate, except that the dividend rate may be stated in conjunction with the annual percentage yield to which it relates.

(B) Contain a statement advising members to contact an employee for further information about applicable fees and terms.

(3) *Newsletters.* (i) Newsletters sent by a credit union to existing members only are not subject to paragraphs (b), (c), (d) or (e)(1) of this section.

(ii) If a newsletter exempted by paragraph (e)(3) of this section states a rate of return, it shall:

(A) State the rate as an ''annual percentage yield,'' using that term or the term ''APY.'' The newsletter shall not state any other rate, except that the dividend rate may be stated in conjunction with the annual percentage yield to which it relates.

(B) Contain a statement advising members to contact an employee for further information about applicable fees and terms.

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[58 FR 50445, Sept. 27, 1993, as amended at 59 FR 13436, Mar. 22, 1994; 61 FR 114, Jan. 3, 1996]

§ 707.9 Enforcement and record retention.

(a) *Administrative enforcement.* Section 270 of TISA (12 U.S.C. 4309) contains the provisions relating to administrative sanctions for failure to comply with the requirements of TISA and this part.

(b) Section 271 of TISA (12 U.S.C. 4310) contains the provisions relating to civil liability for failure to comply with the requirements of TISA and this regulation.

(c) *Record retention.* A credit union shall retain evidence of compliance with this regulation for a minimum of two years after the date disclosures are required to be made or action is required to be taken.

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[58 FR 50445, Sept. 27, 1993, as amended at 59 FR 13436, Mar. 22, 1994; 61 FR 114, Jan. 3, 1996]

APPENDIX A TO PART 707—ANNUAL PERCENTAGE YIELD CALCULATION

The annual percentage yield (APY) measures the total amount of dividends a credit union pays on an account based on the dividend rate and the frequency of compounding. The annual percentage yield is expressed as an annualized rate, based on a 365-day year. (Credit unions may calculate the annual percentage yield based on a 365-day or a 366-day year in a leap year.) Part I of this appendix discusses the annual percentage yield calculations for account disclosures and advertisements, while Part II discusses annual percentage yield earned calculations for statements. The annual percentage yield reflects only dividends and does not include the value of any bonus, as that term is defined in part 707, that may be provided to the member to open, maintain, increase or renew

an account. Dividends, interest or other earnings are not to be included in the annual percentage yield if such amounts are determined by circumstances that may or may not occur in the future. These formulas apply to both dividend-bearing and interest-bearing accounts held by credit unions.

PART I. ANNUAL PERCENTAGE YIELD FOR ACCOUNT DISCLOSURES AND ADVERTISING PURPOSES

In general, the annual percentage yield for account disclosures under §§707.4 and 707.5 and for advertising under §707.8 is an annualized rate that reflects the relationship between the amount of dividends that would be earned by the member for the term of the account and the amount of principal used to calculate those dividends. The amount of dividends that would be earned may be projected based on the most recent past declared rate or an anticipated future rate, whichever the credit union judges to most reasonably approximate the dividends to be earned. Special rules apply to accounts with tiered and stepped dividend rates.

A. General Rules

The annual percentage yield shall be calculated for all accounts by the formula shown below. Credit unions may calculate the annual percentage yield using projected dividends based on either the rate at the last dividend declaration date or the rate anticipated at a future date. The credit union must disclose whichever option it uses to members. Credit unions shall calculate the annual percentage yield based on the actual number of days for the term of the account. For accounts without a stated maturity date (such as a typical share or share draft account), the calculation shall be based on an assumed term of 365 days. In determining the total dividends figure to be used in the formula, credit unions shall assume that all principal and dividends remain on deposit for the entire term, and that no other transactions (deposits or withdrawals) occur during the term. (This assumption shall not be used if a credit union requires, as a condition of the account, that members withdraw dividends during the term. In such a case, the dividends (and annual percentage yield calculation) shall reflect that requirement.) For term share accounts that are offered in multiples of months, credit unions may base the number of days on either the actual number of days during the applicable period, or the number of days that would occur for any actual sequence of that many calendar months. If credit unions choose to use this permissive rule, they must use the same number of days to calculate the dollar amount of dividends that will be earned on the account in the annual percentage yield formula (where ''Dividends'' are divided by ''Principal''.)

The annual percentage yield is to be calculated by use of the following general formula ((''APY'') is used for convenience in the formulas):

$$APY=100\ [(1 + Dividends/Principal)^{(365/Days\ in\ term)} - 1].$$

''Principal'' is the amount of funds assumed to have been deposited at the beginning of the account.

''Dividends'' is the total dollar amount of dividends earned on the Principal for the term of the account.

''Days in term'' is the actual number of days in the term of the account.

When the ''days in term'' is 365 (that is, where the stated maturity is 365 days or where the account does not have a stated maturity), the APY can be calculated by use of the following simple formula:

$$APY=100\ (Dividends/Principal).$$

Examples:

(1) If a credit union would pay $61.68 in dividends for a 365-day year on $1,000 deposited into a share draft account, the APY is 6.17%:

$$APY=100\ [(1 + 61.68/1{,}000)^{(365/365)} - 1]$$
$$APY=6.17\%.$$

Or, using the simple formula above (since the term is deemed to be 365 days):

$$APY=100\ (61.68/1{,}000)$$
$$APY=6.17\%.$$

(2) If a credit union pays $30.37 in dividends on a $1,000 six-month term share certificate account (where the six-month period used by the credit union contains 182 days), using the general formula above, the APY is 6.18%:

$$APY=100\ [(1+30.37/1{,}000)^{(365/182)} - 1]$$
$$APY=6.18\%.$$

The APY is affected by the frequency of compounding, i.e., the amount of dividends will be greater the more frequently dividends are compounded for a given nominal rate. When two credit unions are offering the same dividend rate on, for example, a share account, the APY disclosed may be different if the credit unions use a different frequency of compounding.

Examples:

(1) If a credit union pays $1,268.25 in dividends for a 365-day year on $10,000 deposited into a regular share account earning 12%, and the dividends are compounded monthly, the APY will be 12.68%.

$$APY=100\ ($1{,}268.25/10{,}000)$$
$$APY=12.68\%$$

(2) However, if a credit union is compounding dividends on a quarterly basis on an account which otherwise has the same terms, the dividends will be $1,255.09 and the APY will be 12.55%.

$$APY=100\ ($1{,}255.09/10{,}000)$$
$$APY=12.55\%$$

B. Stepped-Rate Accounts (Different Rates Apply in Succeeding Periods)

For accounts with two or more dividend rates applied in succeeding periods (where the rates are known at the time the account is opened), a credit union shall assume each dividend rate is in effect for the length of time provided for in any share agreement.

Examples:

(1) If a credit union offers a $1,000 6-month term share (certificate) account on which it pays a 5% dividend rate, compounded daily, for the first three months (which contain 91 days), and a 5.5% dividend rate, compounded daily, for the next three months (which contain 92 days), the total dividends for six months is $26.68, and, using the general formula above, the APY is 5.39%:

$$APY=100\ [(1+26.68/1{,}000)^{(365/183)}-1]$$
$$APY=5.39\%.$$

(2) If a credit union offers a $1,000 2-year share certificate on which it pays a 6% dividend rate, compounded daily, for the first year, and a 6.5% dividend rate, compounded daily, for the next year, the total dividends for two years is $133.13, and, using the general formula above, the APY is 6.45%:

$$APY=100\ [(1+133.13/1{,}000)^{(365/730)}-1]$$
$$APY=6.45\%.$$

C. Variable-Rate Accounts

For variable-rate accounts without an introductory premium or discounted rate, a credit union must base the calculation only on the initial dividend rate in effect when the account is opened (or advertised), and assume that this rate will not change during the year.

Variable-rate accounts with an introductory premium or discount rate must be treated like stepped-rate accounts. Thus, a credit union shall assume that: (1) The introductory simple dividend rate is in effect for the length of time provided for in the account contract; and (2) the variable dividend rate that would have been in effect when the account is opened or advertised (but for the introductory rate) is in effect for the remainder of the year. If the variable rate is tied to an index, the index-based rate in effect at the time of disclosure must be used for the remainder of the year. If the rate is not tied to an index, the rate in effect for existing members holding the same account (who are not receiving the introductory dividend rate) must be used for the remainder of the year.

For example, if a credit union offers an account on which it pays a 7% dividend rate, compounded daily, for the first three months (which, for example, contains 91 days), while the variable dividend rate that would have been in effect when the account was opened was 5%, the total dividends for a 365-day year for a $1,000 account balance is $56.52, (based on 91 days at 7% followed by 274 days at 5%). Using the simple formula, the APY is 5.65%:

$$APY=100\ (56.52/1{,}000)$$
$$APY=5.65\%.$$

D. Accounts with Tiered Rates (Different Rates Apply To Specified Balance Level)

For accounts in which two or more dividend rates paid on the account are applicable to specified balance levels, the credit union must calculate the annual percentage yield in accordance with the method described below that it uses to calculate dividends. In all cases, an annual percentage yield (or a range of annual percentage yields, if appropriate) must be disclosed for each balance tier.

For purposes of the examples discussed below, assume the following:

Simple dividend rate (Percent)	Share balance required to earn rate
5.25	Up to but not exceeding $2,500.
5.50	Above $2,500, but not exceeding $15,000.
5.75	Above $15,000.

Tiering Method A

Under this method, a credit union pays on the full balance in the account the stated dividend rate that corresponds to the applicable share balance tier. For example, if a member deposits $8,000, the credit union pays the 5.50% dividend rate on the entire $8,000. This is also known as a ''hybrid'' or ''plateau'' tiered rate account.

When this method is used to determine dividends, only one annual percentage yield will apply to each tier. Within each tier, the annual percentage yield will not vary with the amount of principal assumed to have been deposited.

For the dividend rates and account balances assumed above, the credit union will state three annual percentage yields—one corresponding to each balance tier. Calculation of each annual percentage yield is similar for this type of account as for accounts with a single fixed dividend rate. Thus, the calculation is based on the total amount of dividends that would be received by the member for each tier of the account for a year and the principal assumed to have been deposited to earn that amount of dividends.

First tier. Assuming daily compounding, the credit union will pay $53.90 in dividends on a $1,000 account balance. Using the general formula for the first tier, the APY is 5.39%:

$$APY=100\ [(1+53.90/1{,}000)^{(365/365)}-1]$$
$$APY=5.39\%.$$

Using the simple formula:

$$APY=100\ (53.90/1{,}000)$$
$$APY=5.39\%.$$

Second tier. The credit union will pay $452.29 in dividends on an $8,000 deposit.

Thus, using the simple formula, the annual percentage yield for the second tier is 5.65%:

APY=100 (452.29/8,000)
APY=5.65%.

Third tier. The credit union will pay $1,183.61 in dividends on a $20,000 account balance. Thus, using the simple formula, the annual percentage yield for the third tier is 5.92%:

APY=100 (1,183.61/20,000)
APY=5.92%.

Tiering Method B

Under this method, a credit union pays the stated dividend rate only on that portion of the balance within the specified tier. For example, if a member deposits $8,000, the credit union pays 5.25% on only $2,500 and 5.50% on $5,500 (the difference between $8,000 and the first tier cutoff of $2,500). This is also known as a ''pure'' tiered rate account.

The credit union that computes dividends in this manner must provide a range that shows the lowest and the highest annual percentage yields for each tier (other than for the first tier, which, like the tiers in Method A, has the same annual percentage yield throughout). The low figure for an annual percentage yield is calculated based on the total amount of dividends earned for a year assuming the *minimum* principal required to earn the dividend rate for that tier. The high figure for an annual percentage yield is based on the amount of dividends the credit union would pay on the *highest* principal that could be deposited to earn that same dividend rate. If the account does not have a limit on the amount that can be deposited, the credit union may assume any amount.

For the tiering structure assumed above, the credit union would state a total of five annual percentage yields—one figure for the first tier and two figures stated as a range for the other two tiers.

First tier. Assuming daily compounding, the credit union could pay $53.90 in dividends on a $1,000 account balance. For this first tier, using the simple formula, the annual percentage yield is 5.39%:

APY=100 (53.90/1,000)
APY=5.39%.

Second tier. For the second tier the credit union would pay between $134.75 and $841.45 in dividends, based on assumed balances of $2,500.01 and $15,000, respectively. For $2,500.01, dividends would be figured on $2,500 at 5.25% dividend rate plus dividends on $.01 at 5.50%. For the low end of the second tier, therefore, the annual percentage yield is 5.39%. Using the simple formula:

APY=100 (134.75/2,500)
APY=5.39%.

For $15,000, dividends are figured on $2,500 at 5.25% dividend rate plus dividends on $12,500 at 5.50% dividend rate. For the high end of the second tier, the annual percentage yield, using the simple formula, is 5.61%:

APY=100 (841.45/15,000)
APY=5.61%.

Thus, the annual percentage yield range that would be stated for the second tier is 5.39% to 5.61%.

Third tier. For the third tier, the credit union would pay $841.45 and $5,871.78 in dividends on the low end of the third tier (a balance of $15,000.01). For $15,000.01, dividends would be figured on $2,500 at 5.25% dividend rate, plus dividends on $12,500 at 5.50% dividend rate, plus dividends on $.01 at 5.75% dividend rate. For the low end of the third tier, therefore, the annual percentage yield, using the simple formula, is 5.61%:

APY=100 (841.45/15,000)
APY=5.61%.

Assuming the credit union does not limit the account balance, it may assume any maximum amount for the purposes of computing the annual percentage yield for the high end of the third tier. For an assumed maximum balance amount of $100,000, dividends would be figured on $2,500 at 5.25% dividend rate, plus dividends on $12,500 at 5.50% dividend rate, plus dividends on $85,000 at 5.75% dividend rate. For the high end of the third tier, therefore, the annual percentage yield, using the simple formula, is 5.87%:

APY=100 (5,871.78/100,000)
APY=5.87%.

Thus, the annual percentage yield that would be stated for the third tier is 5.61% to 5.87%. If the assumed maximum balance amount is $1,000,000, credit unions would use $985,000 rather than $85,000 in the last calculation. In that case for the high end of the third tier, the annual percentage yield, using the simple formula, is 5.91%:

APY=100 (59,134.22/1,000,000)
APY=5.91%

Thus, the annual percentage yield range that would be stated for the third tier is 5.61% to 5.91%.

PART II. ANNUAL PERCENTAGE YIELD EARNED FOR STATEMENTS

The annual percentage yield earned for statements under §707.6 is an annualized rate that reflects the relationship between the amount of dividends actually earned (accrued or paid and credited) to the member's account during the period and the average daily balance in the account for the period over which the dividends were earned.

Pursuant to §707.6(a), when dividends are paid less frequently than statements are sent, the APY Earned may reflect the number of days over which dividends were earned rather than the number of days in the statement period, e.g., if a credit union uses the average daily balance method and calculates

dividends for a period other than the statement period, the annual percentage yield earned shall reflect the relationship between the amount of dividends earned and the average daily balance in the account for the other period, such as a crediting or dividend period.

The annual percentage yield shall be calculated by using the following formulas (''APY Earned'' is used for convenience in the formulas):

A. General Formula

APY Earned=100 $[(1+\text{Dividends earned/Balance})^{(365/\text{Days in period})}-1]$.

''Balance'' is the average daily balance in the account for the period.

''Dividends earned'' is the actual amount of dividends accrued or paid and credited to the account for the period.

''Days in period'' is the actual number of days over which the dividends disclosed on the statement were earned.

Examples:

(1) If a credit union calculates dividends for the statement period (and uses either the daily balance or the average daily balance method), and the account had a balance of $1,500 for 15 days and a balance of $500 for the remaining 15 days of a 30-day statement period, the average daily balance for the period is $1,000. Assume that $5.25 in dividends was earned during the period. The annual percentage yield earned (using the formula above) is 6.58%:

APY Earned=100 $[(1+5.25/1,000)^{(365/30)}-1]$
APY Earned=6.58%.

(2) Assume a credit union calculates dividends on the average daily balance for the calendar month and provides periodic statements that cover the period from the 16th of one month to the 15th of the next month. The account has a balance of $2,000 September 1 through September 15 and a balance of $1,000 for the remaining 15 days of September. The average daily balance for the month of September is $1,500, which results in $6.50 in dividends earned for the month. The annual percentage yield earned for the month of September would be shown on the periodic statement covering September 16 through October 15. The annual percentage yield earned (using the formula above) is 5.40%:

APY Earned=100 $[(1+6.50/1,500)^{(365/30)}-1]$
APY Earned = 5.40%.

(3) Assume a credit union calculates dividends on the average daily balance for a quarter (for example, the calendar months of September through November), and provides monthly periodic statements covering calendar months. The account has a balance of $1,000 throughout the 30 days of September, a balance of $2,000 throughout the 31 days of October, and a balance of $3,000 throughout the 30 days of November. The average daily balance for the quarter is $2,000, which results in $21 in dividends earned for the quarter. The annual percentage yield earned would be shown on the periodic statement for November. The annual percentage yield earned (using the formula above) is 4.28%:

APY Earned=100 $[(1+21/2,000)^{(365/91)}-1]$
APY Earned=4.28%.

B. SPECIAL FORMULA FOR USE WHERE PERIODIC STATEMENT IS SENT MORE OFTEN THAN THE PERIOD FOR WHICH DIVIDENDS ARE COMPOUNDED.

Credit unions that use the daily balance method to accrue dividends and that issue periodic statements more often than the period for which dividends are compounded shall use the following special formula:

$$\text{APY Earned} = 100\left[\left\{1+\frac{(\text{Dividends earned/Balance})}{\text{Days in period (Compounding)}}\right\}^{(365/\text{Compounding})}-1\right]$$

The following definition applies for use in this formula (all other terms are defined under Part II):

''Compounding'' is the number of days in each compounding period.

Assume a credit union calculates dividends for the statement period using the daily balance method, pays a 5.00% dividend rate, compounded annually, and provides periodic statements for each monthly cycle. The account has a daily balance of $1000.00 for a 30-day statement period. The dividend earned of $4.11 for the period, and the annual percentage yield earned (using the special formula above) is 5.00%:

$$\text{APY Earned} = 100\left[\left\{1 + \frac{(\$4.11/1{,}000)}{30}(365)\right\}^{(365/365)} - 1\right]$$

APY Earned = 5.00%.

APPENDIX B TO PART 707—MODEL CLAUSES AND SAMPLE FORMS

Table of Contents

B–1—Model Clauses for Account Disclosures (§ 707.4(b))
B–2—Model Clauses for Changes in Terms (§ 707.5(a))
B–3—Model Clauses for Pre-Maturity Notices for Term Share Accounts (§ 707.5(b-d))
B–4—Sample Form (Signature Card/ Application for Membership)
B–5—Sample Form (Term Share (Certificate) Account)
B–6—Sample Form (Regular Share Account Disclosures)
B–7—Sample Form (Share Draft Account Disclosures)
B–8—Sample Form (Money Market Share Account Disclosures)
B–9—Sample Form (Term Share (Certificate) Account Disclosures)
B–10—Sample Form (Periodic Statement)
B–11—Sample Form (Rate and Fee Schedule)

GENERAL NOTE: Appendix B contains model clauses and sample forms intended for optional use by credit unions to aid in compliance with the disclosure requirements of §§ 707.4 (account disclosures), 707.5 (subsequent disclosures), 707.6 (statement disclosures), and 707.8 (advertisements). Section 269(b) of TISA provides that credit unions that use these clauses and forms will be in compliance with TISA's disclosure provisions.

As discussed in the supplementary information to § 707.3(a), this final rule provides for flexibility in designing the format of the disclosures. Credit unions can choose to prepare a single document or brochure that incorporates disclosures for all accounts offered, or to prepare different documents for each type of account. Credit unions may also use inserts to a document, or fill in blanks to show current rates, fees and other terms.

In the model clauses, words in parentheses indicate the type of disclosure a credit union should insert in the space provided (for example, a credit union might insert ''July 23, 1995'' in the blank for a ''(date)'' disclosure). Brackets and ''/'' indicate that a credit union must choose the alternative that best describes its practice (for example, ''[daily balance/ average daily balance]''). It should be noted that only in sections B–6 through B–10 of this appendix have specific examples of disclosures been given, with dates and figures. Sections B–1 through B–5, and section B–11 provide only unspecific model clauses or blank forms. The Board felt, as did the FRB in the Appendix A to Regulation DD, that a mix of blank clauses and forms and application of the model clauses to real specific situations would benefit those who must comply with TISA.

Any references to NCUA Rules and Regulations, the *NCUA Standard FCU Bylaws*, or the *NCUA Accounting Manual for FCUs*, are provided for guidance and as a point of reference for credit unions. Citations to these sources does not indicate that their application is required for those credit unions who need not follow them.

B–1 MODEL CLAUSES FOR ACCOUNT DISCLOSURES (§ 707.4(b))

(a) *Rate Information (Sec. 707.4(b)(1))*

(i) *Fixed-Rate Accounts (§ 707.4(b)(1)(i)(A–B))*

1. Interest-bearing Accounts

The interest rate on your deposit account is _____% with an annual percentage yield (APY) of _____%. [For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.] You will be paid this rate [for (time period)/until (date)/ for at least 30 calendar days].

NOTE: This provision reflects an accurate statement for an interest-bearing account authorized by state law for state-chartered credit unions. While the definition of the term ''interest'' permits its substitution for the term ''dividends,'' separate disclosures should be made for interest-bearing accounts. Since account opening disclosures may be provided to potential members requesting account information before opening an account, and members opening new accounts, information is provided indicating that the rate may not be current, but that the potential member or member may call the credit union to obtain up-to-date information. When opening a new account, of course, a credit union could provide the contractual rate alone, and delete the sentences in brackets. Given the definition of fixed-

rate account in §707.2(n), credit unions offering fixed-rate accounts must contract to hold rates steady for at least a 30-day period. Thus, if the 30-day option of the last sentence is not chosen, the period chosen must be longer than 30 days.

2. Dividend-bearing Term Share Accounts

The dividend rate on your term share account is _____% with an annual percentage yield (APY) of _____%. [For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.] You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days].

NOTE: This provision reflects an accurate statement for a fixed-rate, dividend-bearing term share account. Interest-bearing term share accounts would use the disclosure in §1, above. Since account opening disclosures may be provided to potential members requesting account information before opening an account, and members opening new accounts, information is provided indicating that the rate may not be current, but that the potential member or member may call the credit union to obtain up-to-date information. When opening a new account, of course, a credit union could provide the contractual rate alone, and delete the sentences in brackets. Given the definition of fixed-rate account in §707.2(n), credit unions offering fixed-rate accounts must contract to hold rates steady for at least a 30-day period. Thus, if the 30-day option of the last sentence is not chosen, the period chosen must be longer than 30 days.

3. Other Dividend-bearing Accounts

[As of [the last dividend declaration date/(date)], the dividend rate was _____% with an annual percentage yield (APY) of _____% on your account. /or The prospective dividend rate on your account is _____% with a prospective APY of _____% for the current dividend period.] You will be paid this rate for [(time period)/at least 30 calendar days].

or

[As of [the last dividend declaration date/(date)], the dividend rate was _____% with an annual percentage yield (APY) of _____% on your account. /or The prospective dividend rate on your account is _____% with an annual percentage yield (APY) of _____% for this dividend period.] This rate will not change unless the credit union notifies you at least 30 calendar days prior to any change.

NOTE: Credit unions may disclose the dividend rate and annual percentage yield on accounts as of the last dividend declaration date. This necessitates inclusion of a disclosure of the actual calendar date of the last dividend declaration date. Additionally or alternatively (if the last dividend rate could be inaccurate), credit unions may disclose a prospective dividend rate and a prospective annual percentage yield. Such prospective rates and yields must be estimated in good faith, and must be declared at the proper time if it is at all possible to do so. As for the last sentence in these disclosures, this provision reflects a credit union policy to set prospective dividend rates for the next month (or at least 30 days), quarter or other period. Many credit unions, at their mid-monthly board meeting, set prospective dividend rates for the next month beginning on the 1st day of the month and continuing to the last day of the month. These rates must be formalized or ratified at the end of a dividend period. Given the timing of the board meetings, the time to prepare and mail notices and the 30 day period, it will often take credit unions 45 to 60 days to effectively change rates. For these reasons, the Board strongly suggests that credit unions do not offer fixed-rate, dividend-bearing accounts.

(ii) *Variable-Rate Accounts (§707.4(b)(1)(ii))*

1. Interest-bearing Accounts

The interest rate on your deposit account is _____%, with an annual percentage yield (APY) of _____%. [For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.] The interest rate and annual percentage yield may change every (time period) based on [(name of index)/the determination of the credit union board of directors]. The interest rate for your account will [never change by more than _____% each (time period)/never be less/more than _____%/never exceed _____% above or fall more than _____% below the initial interest rate].

NOTE: This disclosure combines the requirements of §707.4(b)(1)(i) with §707.4(b)(1)(ii) for interest-bearing accounts. The variable nature of a deposit account usually is based on an external index or is set at the discretion of the board. If another means of rate setting is used, that, instead of the proposed language, must be disclosed. Since account opening disclosures may be provided to potential members requesting account information before opening an account, and members opening new accounts, information is provided indicating that the rate may not be current, but that the potential member or member may call the credit union to obtain up-to-date information. When opening a new account, of course, a credit union could provide the contractual rate alone, and delete the sentences in brackets. Rarely would there be limitations on rate changes, but

language is provided for this situation in the last sentence. Of course, it is only to be used if it applies to an account.

2. Dividend-bearing Term Share Accounts

The dividend rate on your term share account is _____%, with an annual percentage yield (APY) of _____%. [For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.] The dividend rate and annual percentage yield may change every (time period) based on [(name of index)/the determination of the credit union board of directors]. The dividend rate for your account will [never change by more than _____% each (time period)/never be less/more than _____% /never exceed _____% above or fall more than _____% below the initial dividend rate].

NOTE: This disclosure combines the requirements of §707.4(b)(1)(i) with §707.4(b)(1)(ii) for dividend-bearing, variable-rate term share accounts. The variable nature of a deposit account usually is based on an external index or is set at the discretion of the board. If another means of rate setting is used, that, instead of the model language, must be disclosed. Since account opening disclosures may be provided to potential members requesting account information before opening an account, and members opening new accounts, information is provided indicating that the rate may not be current, but that the potential member or member may call the credit union to obtain up-to-date information. When opening a new account, of course, a credit union could provide the contractual rate alone, and delete the sentences in brackets. Rarely would there be limitations on rate changes, but language is provided for this situation in the last sentence. Of course, it is only to be used if it applies to an account.

3. Other Dividend-bearing Accounts

[As of [the last dividend declaration date/(date)], the dividend rate was _____% with an annual percentage yield (APY) of _____% on your account. /or The prospective dividend rate on your account is _____% with an anticipated annual percentage yield (APY) of _____% for the current dividend period.] The dividend rate and annual percentage yield may change every (dividend period) as determined by the credit union board of directors.

NOTE: This language combines the requirements of §707.4(b)(1)(i) with §707.4(b)(1)(ii). Credit unions may disclose the dividend rate and annual percentage yield on accounts as of the last dividend declaration date. This necessitates inclusion of a disclosure of the actual calendar date of the last dividend declaration date or use of the phrase ''last dividend declaration date''. Additionally or alternatively, credit unions may disclose a prospective dividend rate and a prospective annual percentage yield. Such prospective rates and yields must be estimated in good faith, and must be declared at the proper time if it is at all possible to do so. As for the last sentence in these disclosures, this provision reflects the variable nature of the account. Generally, there is only one variable-rate feature for share accounts: the frequency of dividend period rate changes (e.g., daily, weekly, monthly, quarterly, semi-annually, annually). Normally, there are no contractual limitations on share account earnings (unless imposed by a regulator), nor are earnings based on any internal or external index. If contractual limitations or an index are involved, however, those factors would need to be disclosed (unless a regulator orders otherwise).

(iii) *Stepped-Rate Accounts (§707.4(b)(1)(i))*

1. Interest-bearing Accounts

The initial interest rate on your deposit account is _____%. You will be paid that rate [for (time period)/ until (date)]. After that time, the interest rate for your deposit account will be _____% and you will be paid that rate [for (time period)/ until (date)]. The annual percentage yield (APY) for your account is _____%. [For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.] You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days].

2. Dividend-bearing Term Share Accounts

The initial dividend rate on your term share account is _____%. You will be paid that rate [for (time period)/ until (date)]. After that time, the dividend rate for your term share account will be _____% and you will be paid that rate [for (time period)/ until (date)]. The annual percentage yield (APY) for your account is _____%. [For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.] You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days].

3. Other Dividend-bearing Accounts

[As of [the last dividend declaration date/ (date)], the initial dividend rate on your account was _____%. /or The prospective dividend rate on your account is _____%.] You will be paid that rate [for (time period)/ until (date)]. After that time, the prospective dividend rate for your share account will be _____% and you will be paid such rate [for (time period)/ until (date)]. The annual percentage yield (APY) for your account is _____%. You will be paid this rate for [(time period)/at least 30 calendar days].

NOTE: Stepped-rate accounts are accounts with two or more rates that take effect in succeeding periods. The applicable rates and time periods *are known* when the account is opened. By nature these are fixed-rate accounts and are usually associated with term share (certificate) accounts. Accordingly, a contract provision (for share accounts) to change rates should be included.

(iv) *Tiered-Rate Accounts (§ 707.4(b)(1)(i))*

1. Interest-bearing Accounts

Tiering Method A

1* If your [daily balance/average daily balance] is $_____ or more, the interest rate paid on the entire balance in your account will be _____%, with an annual percentage yield (APY) of _____%.

2* If your [daily balance/average daily balance] is more than $_____, but less than $_____, the interest rate paid on the entire balance in your account will be _____%, with an APY of _____%.

3* If your [daily balance/average daily balance] is $_____ or less, the interest rate paid on the entire balance will be _____% with an APY of _____%.

[For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.]

[*Fixed-rate*—You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days]./ *Variable-rate*—The interest rate and APY may change every (time period) based on [(name of index)/ the determination of the credit union board of directors.]

NOTE: Tiering Method A pays the stated interest rate that corresponds to the applicable deposit tier on the full balance in the account. This example contemplates a two-tier system. The option (1, 2 or 3) most closely matching the terms of the account should be chosen as the appropriate disclosure. For tiered-rate accounts, a disclosure may be added about the currency of the rate, as is provided in the first set of brackets. A disclosure regarding the fixed-rate or variable-rate nature of the account must be added, as is provided in the last set of brackets.

Tiering Method B

1* An interest rate of _____% will be paid only on the portion of your [daily balance/ average daily balance] that is greater than $_____. The annual percentage yield (APY) for this tier will range from _____% to _____%, depending on the balance in the account.

2* An interest rate of _____% will be paid only on the portion of your [daily balance/ average daily balance] that is greater than $_____, but less than $_____. The annual percentage yield (APY) for this tier will range from _____% to _____%, depending on the balance in the account.

3* If your [daily balance/average daily balance] is $_____ or less, the interest rate paid on the entire balance will be _____%, with an annual percentage yield (APY) of _____%.

[For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.]

[*Fixed-rate*—You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days]./ *Variable-rate*—The interest rate and APY may change every (time period) based on [(name of index)/ the determination of the credit union board of directors.]

NOTE: Tiering Method B pays different stated interest rates corresponding to applicable deposit tiers, on the applicable balance in each tier of the account. For example, a credit union might pay 3% interest on account funds of $500 or below, and pay 4% interest on the portion of the same account that exceeds $500. The example contemplates an account with two tiers, but additional tiers are possible. The option (1, 2 or 3) most closely matching the terms of the account should be chosen as the appropriate disclosure. For tiered-rate accounts, a disclosure may be added about the currency of the rate, as is provided in the first set of brackets.

Tiered-rate accounts can be either fixed-rate or variable-rate accounts. The last sentence offers an option of either fixed-rate or variable-rate disclosure. Thus, the disclosures outlined above will be made in addition to either: (i) Disclosure of the period the fixed-rates are in effect or (ii) the variable-rate disclosures. Tiered-rate accounts are also subject to the requirement for disclosure of the balance computation method, *see* paragraph (e) to this appendix.

2. Dividend-bearing Term Share Accounts

Tiering Method A

1* If your [daily balance/average daily balance] is $_____ or more, the dividend rate paid on the entire balance in your account will be _____%, with an annual percentage yield (APY) of _____%.

2* If your [daily balance/average daily balance] is more than $_____, but less than $_____, the dividend rate paid on the entire balance in your account will be _____%, with an APY of _____%.

3* If your [daily balance/average daily balance] is $_____ or less, the dividend rate paid on the entire balance will be _____% with an APY of _____%.

[For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.]

[*Fixed-rate*—You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days]./ *Variable-rate*—The interest rate and APY may change every (time period) based on [(name of index)/ the determination of the credit union board of directors.]

NOTE: Tiering Method A pays the stated dividend rate that corresponds to the applicable account balance tier on the full balance in the account. This example contemplates a two-tier system. The option (1, 2 or 3) most closely matching the terms of the account should be chosen as the appropriate disclosure. For tiered-rate accounts, a disclosure may be added about the currency of the rate, as is provided in the first set of brackets. A disclosure regarding the fixed-rate or variable-rate nature of the account must be added, as is provided in the last set of brackets.

Tiering Method B

1* A dividend rate of _____% will be paid only on the portion of your [daily balance/average daily balance] that is greater than $_____. The annual percentage yield (APY) for this tier will range from _____% to _____%, depending on the balance in the account.

2* A dividend rate of _____% will be paid only on the portion of your [daily balance/average daily balance] that is greater than $_____, but less than $_____. The annual percentage yield (APY) for this tier will range from _____% to _____%, depending on the balance in the account.

3* If your [daily balance/average daily balance] is $_____ or less, the dividend rate paid on the entire balance will be _____%, with an annual percentage yield (APY) of _____%.

[For purposes of this disclosure, this is a rate and APY that were offered within the most recent seven calendar days and were accurate as of (date). Please call (credit union telephone number) to obtain current rate information.]

[*Fixed-rate*—You will be paid this rate [for (time period)/until (date)/for at least 30 calendar days]./ *Variable-rate*—The interest rate and APY may change every (time period) based on [(name of index)/ the determination of the credit union board of directors.]

NOTE: Tiering Method B pays different stated dividend rates corresponding to applicable account balance tiers, on the applicable balance in each tier of the account. For example, a credit union might pay 3% dividend on account funds of $500 or below, and pay 4% dividend on the portion of the same account that exceeds $500. The example contemplates an account with two tiers, but additional tiers are possible. The option (1, 2 or 3) most closely matching the terms of the account should be chosen as the appropriate disclosure. For tiered-rate accounts, a disclosure may be added about the currentness of the rate, as is provided in the first set of brackets.

Tiered-rate accounts can be either fixed-rate or variable-rate accounts. The last sentence offers an option of either fixed-rate or variable-rate disclosure. Thus, the disclosures outlined above will be made in addition to either: (i) Disclosure of the period the fixed-rates are in effect or (ii) the variable-rate disclosures. Tiered-rate accounts are also subject to the requirement for disclosure of the balance computation method, *see* paragraph (e) to this appendix.

3. Other Dividend-bearing Accounts

Tiering Method A

1* [As of [the last dividend declaration date/ (date)], if your [daily balance/average daily balance] was $_____ or more, the dividend rate paid on the entire balance in your account was _____%, with an annual percentage yield (APY) of _____%. /or If your [daily balance/average daily balance] is $_____ or more, a prospective dividend rate of _____% will be paid on the entire balance in your account with a prospective annual percentage yield (APY) of _____% for this dividend period.]

2* [As of [the last dividend declaration date/ (date)], if your [daily balance/average daily balance] was more than $_____, but was less than $_____, the dividend rate paid on the entire balance in your account was _____%, with an annual percentage yield (APY) of _____%. /or If your [daily balance/average daily balance] is more than $_____, but is less than $_____, a prospective dividend rate of _____% will be paid on the entire balance in your account with a prospective annual percentage yield (APY) of _____% for this dividend period.]

3* [As of the last dividend declaration date/ (date)], if your [daily balance/average daily balance] was $_____ or less, the dividend rate paid on the entire balance in your account will be _____% with an annual percentage yield (APY) of _____%. /or If your [daily balance/average daily balance] is $_____ or less, the prospective dividend rate of _____% will be paid on the entire balance in your account with a prospective annual percentage yield (APY) of _____% for this dividend period.

[*Fixed-rate*—You will be paid this rate for [(time period)/at least 30 calendar days]./ *Variable-rate*—The dividend rate and APY may change every (dividend period) as determined by the credit union board of directors.]

NOTE: Tiering Method A pays the stated dividend rate that corresponds to the applicable deposit tier on the full balance in the account. This example contemplates a two-tier system. The option (1, 2 or 3) most closely matching the terms of the account should be chosen as the appropriate disclosure. For tiered-rate accounts, a disclosure may be added about the prospective rate. Note that the prospective rate disclosure options match the required tiered-rate disclosures based on the previous dividend declaration date. A disclosure regarding the fixed-rate or variable-rate nature of the account must be added, as is provided in the last set of brackets.

Tiering Method B

1* [As of [the last dividend declaration date/ (date)], a dividend rate of _____% was paid only on the portion of your [daily balance/average daily balance] that was greater than $_____. The annual percentage yield (APY) for this tier ranged from _____% to _____%, depending on the balance in the account. /or A prospective dividend rate of _____% will be paid only on the portion of your [daily balance/average daily balance] that is greater than $_____ with a prospective annual percentage yield (APY) ranging from _____% to _____%, depending on the balance in the account, for this dividend period.]

2* [As of [the last dividend declaration date/ (date)], a dividend rate of _____% was paid only on the portion of your [daily balance/average daily balance] that was greater than $_____ but less than $_____. The annual percentage yield (APY) for this tier ranged from _____% to _____%, depending on the balance in the account. /or A prospective dividend rate of _____% will be paid only on the portion of your [daily balance/average daily balance] that is greater than $_____, but less than $_____] with a prospective annual percentage yield (APY) ranging from _____% to _____%, depending on the balance in the account, for this dividend period.]

3* [As of [the last dividend declaration date/ (date)], if your [daily balance/average daily balance] was $_____ or less, the dividend rate paid on the entire balance was _____%, with an annual percentage yield (APY) of _____%. /or If your [daily balance/ average daily balance] was $_____ or less, the prospective dividend rate paid on the entire balance in your account will be _____% with a prospective annual percentage yield (APY) of _____% for this dividend period.

NOTE: Tiering Method B pays different stated dividend rates corresponding to applicable account tiers, on the applicable balance in each tier of the account. For example, a credit union might pay a 3% dividend on account funds of $500 or below, and pay a 4% dividend on the portion of the same account that exceeds $500. The example contemplates an account with two tiers, but additional tiers are possible. The option (1, 2 or 3) most closely matching the terms of the account should be chosen as the appropriate disclosure. Note that the prospective rate disclosure options match the required tiered-rate disclosures based on the previous dividend declaration date.

Tiered-rate accounts can be either fixed-rate or variable-rate accounts. The last sentence offers an option of either fixed-rate or variable-rate disclosures. Thus, the disclosures outlined above must be made in addition to either: (i) Disclosure of the period the fixed-rates are in effect or (ii) the variable-rate disclosures. Tiered-rate accounts are also subject to the requirement for disclosure of the balance computation method, see paragraph (e) to this appendix.

(b) *Nature of Dividends (§ 707.4(b)(8))*

Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

NOTE: The Board of Directors declares dividends based on current income and available earnings of the credit union after providing for the required reserves at the end of the month. The dividend rate and annual percentage yield shown may reflect either the last dividend declaration date on the account or the earnings the credit union anticipates having available for distribution. This disclosure only applies to share and share draft (as opposed to deposit) accounts and should be grouped with the Rate Information to make the disclosures more meaningful. This disclosure also does not apply to term share accounts for reasons discussed in the supplementary information regarding §§ 707.3(e) and 707.4(b)(8).

(c) *Compounding and Crediting (§ 707.4(b)(2))*

[Dividends/Interest] will be compounded (frequency) and will be credited (frequency).

and, if applicable:

If you close your [share/deposit] account before [dividends/interest] [are/is] paid, you will not receive the accrued [dividends/interest].

and, if applicable (for dividend-bearing accounts):

For this account type, the dividend period is (frequency), for example, the beginning date of the first dividend period of the calendar year is (date) and the ending date of such dividend period is (date). All other dividend periods follow this same pattern of dates. The dividend declaration date follows the ending date of a dividend period, and for the example is (date).

NOTE: Where the word ''(frequency)'' appears, time periods must be inserted to coincide with those specified in board resolutions of each credit union's board of directors. A disclosure of dividend period was added to § 707.4(b)(2)(i) in the final rule to assist members in knowing when dividend rate and APY disclosures would be given by a credit union using the optional statement rule of § 707.6(a). The dividend declaration date is important for purposes of § 707.4(a)(2)(ii), request disclosures, § 707.4(b)(2), account opening disclosures, and § 707.8(c)(2), advertising disclosures. The Board believes that this is critical information for dividend-bearing accounts, but that provision by an example (whether of the first dividend period of the year, or of any randomly chosen dividend period) is favorable to providing a list of such dates for the entire year or for a period of years (although these methods would also be permissible). As noted in the supplementary information to § 707.2(j), dividend declaration date, the dividend period and actual dividend distribution date may vary. Thus, it is possible for crediting periods and dividend periods not to coincide, though the Board believes that credit unions should make every effort to attempt to coordinate the two periods.

(d) *Minimum Balance Requirements (§ 707.4(b)(3)(i))*

(i) *To open the account*

The minimum balance required to open this account is $_____.

or, for first share account at a credit union

The minimum required to open this account is the purchase of a (par value of a share) share in the credit union.

(ii) *To avoid imposition of fees*

You must maintain a minimum daily balance of $_____ in your account to avoid a service fee. If, during any (time period), your account balance falls below the required minimum daily balance, your account will be subject to a service fee of $_____ for that (time period).

or

You must maintain a minimum average daily balance of $_____ in your account to avoid a service fee. If, during any (time period), your average daily balance is below the required minimum, your account will be subject to a service fee of $_____ for that (time period).

(iii) *To obtain the annual percentage yield disclosed*

You must maintain a minimum daily balance of $_____ in your account each day to obtain the disclosed annual percentage yield.

or

You must maintain a minimum average daily balance of $_____ in your account to obtain the disclosed annual percentage yield.

(iv) *Absence of minimum balance requirements*

No minimum balance requirements apply to this account.

(v) *Par value*

The par value of a share in this credit union is $_____.

NOTE: Where the words ''(time period)'' appear, time periods should be inserted to coincide with those specified in board resolutions of each credit union's board of directors. As the supplementary information to § 707.4(b)(3)(i) explains, the par value of a share to establish membership is a critical disclosure to be made to potential members of credit unions. The par value disclosure is required by § 707.4(b)(3)(i) as being analogous to a minimum balance account opening requirement.

(e) *Balance Computation Method (§ 707.4(b)(3)(ii))*

(i) *Daily Balance Method*

[Dividends/Interest] [are/is] calculated by the daily balance method which applies a daily periodic rate to the balance in the account each day.

(ii) *Average Daily Balance Method*

[Dividends/Interest] [are/is] calculated by the average daily balance method which applies a periodic rate to the average daily balance in the account for the period. The average daily balance is calculated by adding the balance in the account for each day of the period and dividing that figure by the number of days in the period.

NOTE: Any explanation of balance computation method must contain enough information for members to grasp the means by which dividends or interest will be calculated on their accounts. Using a shorthand form, such as ''day in/day out'' for the daily balance method or ''average balance'' for the average daily balance method, without more information, is insufficient. In addition, any disclosure based on the equivalency of the

two allowable methods, such as stating that the average daily balance method was the same as the daily balance method, is impermissible and misleading.

(f) *Accrual of Dividends/Interest on Noncash Deposits (§704.4(b)(3)(iii))*

[Dividends/Interest] will begin to accrue on the business day you [place/deposit] noncash items (e.g. checks) to your account.

or

[Dividends/Interest] will begin to accrue no later than the business day we receive provisional credit for the [placement/deposit] of noncash items (e.g. checks) to your account.

NOTE: Accrual information is not included in the explanation of balance computation method required by §707.4(b)(4)(ii). In addition, the disclosures required by TISA do not affect the substantive requirements of the EFAA and Regulation CC.

The EFAA and Regulation CC control, and any modifications to them should occasion credit unions to revisit this disclosure with a view to revising it to reflect current law.

(g) *Fees and Charges (§707.4(b)(4))*

The following fees and charges may be assessed against your account:

(Service/explanation)—$_____.
(Service/explanation)—$_____.

NOTE: Fees and charges may be disclosed in an account disclosure, or separately in a Rate and Fee Schedule (see section B–11 of this appendix). In either event, the disclosure should also specify when the fee will be assessed by using phrases such as ''per item,'' ''per month,'' or ''per inquiry.''

(h) *Transaction Limitations (§707.4(b)(5))*

The minimum amount you may [withdraw/write a draft for] is $_____

During any statement period, you may not make more than six withdrawals or transfers to another credit union account of yours or to a third party by means of a preauthorized or automatic transfer or telephonic order or instruction. No more than three of the six transfers may be made by check, draft, debit card, if applicable, or similar order to a third party. If you exceed the transfer limitations set forth above in any statement period, your account will be subject to [closure by the credit union/a fee of $_____.

NOTE: This paragraph satisfies the requirements of §707.4(b)(6) with respect to Regulation D limitations on share accounts and money market accounts. These are some of the more common limitations applicable.

The credit union reserves the right to require a member intending to make a withdrawal from any account (except a share draft account) to give written notice of such intent not less than seven days and up to 60 days before such withdrawal.

NOTE: This disclosure is limited to federal credit unions with Bylaws containing this limitation. See *Standard Federal Credit Union Bylaws,* Art. III, section 5(a). Similar disclosures are required of any state-chartered credit unions having similar limitations in their bylaws, or under state law. This limitation does not directly relate to the ''number'' or ''amount'' of transactions, and accordingly, may not be necessary under §707.4(b)(5), but would, if applicable, be required by §707.3(b).

(i) *Disclosures Related to Term Share Accounts (§707.4(b)(6))*

(i) *Time requirements*

Your account will mature on (date).

or

Your account will mature after (time period).

(ii) *Early withdrawal penalties*

We [will/may] impose a penalty if you withdraw [any/all] of the [funds/principal] in your account before the maturity date. The penalty will equal [_____ [days'/weeks'/months'] [dividends/interest] on your account.

or

We [will/may] impose a penalty of $_____ if you withdraw [any/all] of the [funds/principal] before the maturity date.

If you withdraw some of your funds before maturity, the [dividend/interest] rate for the remaining funds in your account will be _____%, with an annual percentage yield of _____%.

NOTE: In most cases, the dividend rate and annual percentage yield on the funds remaining in the account after early withdrawal are the same as before the withdrawal. Accordingly, the disclosure of dividend rate and annual percentage yield after withdrawal is required only if the dividend rate and APY will change.

(iii) *Withdrawal of Dividends/Interest Prior to Maturity*

The annual percentage yield is based on an assumption that [dividends/interest] will remain in the account until maturity. A withdrawal will reduce earnings.

NOTE: This disclosure may be used if the credit union compounds dividends/interest and allows withdrawal of accrued dividends/interest before maturity. This disclosure alerts members that the annual percentage yield is based on an assumption that the dividends/interest remain on deposit until maturity.

(iv) *Renewal Policies*

1. *Automatically Renewable Term Share Accounts*

Your term share account will automatically renew at maturity. You will have a grace period of _____ [calendar/business] days after the maturity date to withdraw the funds in the account without being charged an early withdrawal penalty.

or

Your term share account will automatically renew at maturity. There is no grace period following the maturity of this account.

2. *Non-Automatically Renewable Term Share Accounts*

This account will not renew automatically at maturity. If you do not renew the account, your account will [continue to earn/no longer earn] [dividends/interest] after the maturity date.

NOTE: These disclosures should agree with the necessary pre-maturity notices for term share accounts in B–3 of this appendix.

(j) Bonuses (§ 704.4(b)(7))

You will [be paid/receive] [$_____/(description of item)] as a bonus [when you open the account/on (date)].

You must maintain a minimum [daily balance/average daily balance] of $_____ to obtain the bonus.

To earn the bonus, [$_____/your entire principal] must remain on deposit [for (time period)/until (date)].

NOTE: These disclosures follow the requirements of § 707.4(b)(7) and should be used as applicable. Further information may also be added, especially if it clarifies the conditions and timing of receiving the bonus, or better informs the member about the bonus.

B–2 MODEL CLAUSES FOR CHANGES IN TERMS (§ 707.5(a))

On (date), the (type of fee) will increase to $_____.

On (date), the [dividend/interest] rate on your account will decrease to _____%, with an annual percentage yield (APY) of _____%.

On (date), the [minimum daily balance/average daily balance] required to avoid imposition of a fee will increase to $_____.

NOTE: These examples apply to the more common changes necessitating a change in terms notice. However, any change, amendment or modification reducing the APY or adversely affecting the members holding such accounts must be disclosed. For such changes not contemplated by the model clauses, the Board recommends the use of as simple language as possible to convey the change, along with cross-referencing to the particular sections or paragraph numbers of the account opening disclosures, when to do so will assist members in reviewing and understanding the change.

B–3 MODEL CLAUSES FOR PRE-MATURITY NOTICES FOR TERM SHARE ACCOUNTS (§ 707.5(b–d))

(a) *Maturity Date*

Your term share account will mature on _____.

(b) *Nonrenewal*

Unless your term share account is renewed, it will not accrue further [dividends/interest] after the maturity date.

(c) *Rate Information*

The [dividend/interest] rate and annual percentage yield that will apply to your term share account if it is renewed have not yet been determined. That information will be available on _____. After that date, you may call the credit union during regular business hours at (telephone number) to find out the [dividend/interest] rate and annual percentage yield (APY) that will apply to your term share account if it is renewed.

NOTE: Pre-maturity notices should follow the requirements of § 707.5(b–d) as closely as possible. Care should be taken to explain any grace periods used. See discussion of use of alternative timing in supplementary information to § 707.2(o) and § 707.5(b–d).

B–4 SAMPLE FORM (SIGNATURE CARD/APPLICATION FOR MEMBERSHIP)

Application for Membership/Account Signature Card

ACCOUNT NUMBER _____

_____ _____ _____
(last name) (first name) (middle name)

_____
(street address) (apartment number)

_____ _____ _____
(city) (state) (zip code)

_____ _____
(home telephone number) (business telephone number)

___–___–_____ _____
(Social Security # or TIN) (date of birth)

_____ _____
(mother's maiden name) (employer, occupation)

I hereby make application for membership in and agree to conform to the Bylaws, as amended, of _____Credit Union (the ''Credit Union''). I certify that: I am within the field of membership of this Credit Union; the information provided on this application is true and correct; and my signature on this

card applies to all accounts under my name at this Credit Union. I also agree to be bound to the terms and conditions of any account that I have in the Credit Union now or in the future.

_____

(signature of applicant)

This application approved_____(date) by the (Check one)

( ) Board ( ) Exec. Committee
( ) Membership Officer

Signed: _____

(Secretary; Exec. Cmte. Member, or Membership Officer)

NOTE: This form is modeled on NCUA Form FCU 150, Application for Membership, as discussed in the *Accounting Manual for FCUs*, §§ 5030.1, 5150.3. It is noted that other information can also be requested on the signature card, as long as it is in accordance with federal and state laws. For example, information identifying the member, such as a state driver's license number, could be added. The types of accounts that the signature applies to could be specified. Furthermore, the Board notes that this card contains much identification information that may not be necessary for all credit unions; common sense should guide credit union boards of directors in designing their applications for membership/signature cards. However, the Board believes that the information solicited on this form is reasonable and prudent for many credit unions. Payable on death designations, joint account language required under state law, life savings beneficiary designations, and other like variations and designations may be added to the card if so desired. The proposed signature card/ application for membership form contained taxpayer certification language. One commenter noted that the IRS may always change its requirements in this area, which are beyond the authority of the Board. Therefore, the Board has deleted reference to the IRS taxpayer certification required by 26 USC 3406, but notes that such certification must be made in accordance with applicable law and IRS rules. The information may be included on the front and back of a standard size signature card, or on the front of a large size signature card. However, no account terms may be included on a signature card unless a copy of the signature card is provided to the member at the time of account opening. The Board recommends that credit unions refrain from this practice, and instead use standard account disclosures. One reason for this is that if laws, regulations or credit union policies change, discrepancies may result between them and the earlier signature card terms. Given the longevity of credit union membership, signature cards may well be in use for up to or over a century. In addition, as signature cards are relatively small, they probably will not contain enough space to make all desired and required disclosures. Fragmentation of terms, some on signature cards, some on separate disclosures, could easily lead to member confusion. As terms are usually construed against the drafter, credit unions should be very careful in their use of account terms and conditions varying from those provided as model clauses and sample forms in this appendix.

B–5 SAMPLE FORM (TERM SHARE (CERTIFICATE) ACCOUNT)

Term Share Certificate

_____

Date Issued

_____

Account Number

_____

Certificate Number

_____

Social Security Number

This is to certify that (name(s)) _____[is/ are] the owner(s) of a term share certificate account in the _____Credit Union (the ''Credit Union'') in the amount of _____Dollars ($_____). This term share certificate account may be redeemed on (maturity date) _____only upon presentation of the certificate to the Credit Union. The dividend rate of this certificate account is ___% with an annual percentage yield of ___%. The annual percentage yield and dividend rate assume that dividends are to be [check one] ( ) added to principal/( ) paid to regular share account number _____/ ( ) mailed to owner(s). This account is subject to all terms and conditions stated in the Term Share Certificate Account Disclosures, as they may be amended from time to time, and incorporates the same by reference into this agreement.

_____

Authorized signature

_____

Authorized signature

NOTE: This form is modeled on NCUA Form FCU 107SCP, Credit Union Share Certificate, as discussed in the *Accounting Manual for FCUs*, §§ 5030.1, 5150.6. It is simplified to reflect the term share (certificate) account agreement, the parties involved, the maturity term and the annual percentage yield and dividend rate. All other terms are incorporated by reference. This should allow the credit union maximum flexibility in fashioning certificate, and other term share account, products. If a credit union so desired, other terms and conditions could be incorporated into the term share certificate itself, as long as a copy is presented to the member

at the account opening. Care should also be taken to ensure that the term share certificate format addresses any necessary state law concerns. As the FRB's Regulation D on reserve requirements permits all term share accounts to be represented by a transferable or nontransferable, or a negotiable or nonnegotiable, certificate, instrument, passbook, statement or otherwise, and still be considered a ''time deposit'', the Board has made no entry on this sample form regarding such terms, leaving the decision instead to each credit union's board of directors. 12 CFR 202.4(c)(2).

B–6 Sample Form (Regular Share Account Disclosures)

Regular Share Account Disclosures

1. *Rate information.* As of April 1, 1995, the dividend rate was 5.00% and the annual percentage yield (APY) was 5.13% on your regular share account. In addition, the credit union estimates a prospective dividend rate of 5.25% and a prospective APY of 5.39% on your share account for this dividend period. The dividend rate and annual percentage yield may change every quarter as determined by the credit union board of directors.

2. *Compounding and crediting.* Dividends will be compounded daily and will be credited quarterly. For this account type, the dividend period is quarterly, for example, the beginning date of the first dividend period of the calendar year is January 1 and the ending date of such dividend period is March 31. All other dividend periods follow this same pattern of dates. The dividend declaration date follows the ending date of a dividend period, and for the example is April 1. If you close your regular share account before dividends are credited, you will not receive accrued dividends.

3. *Minimum balance requirements.* The minimum balance to open this account is the purchase of a $5 share in the Credit Union. You must maintain a minimum daily balance of $500 in your account to avoid a service fee. If, during any day during a quarter, your account balance falls below the required minimum daily balance, your account will be subject to a service fee of $5 for that quarter.

4. *Balance computation method.* Dividends are calculated by the daily balance method which applies a daily periodic rate to the principal in your account each day.

5. *Accrual of dividends.* Dividends will begin to accrue on the business day you deposit noncash items (e.g., checks) to your account.

6. *Fees and charges.* The following fees and charges may be assessed against your account.

a. Statement copies—$5.00 per statement.

b. Account inquiries—$3.00 per inquiry.

c. Dormant account fee—$10.00 per month.

d. Wire transfers—$8.00 per transfer.

e. Minimum balance service fee—$5.00 per quarter.

f. Share transfer—$1.00 per transfer.

g. Excessive share withdrawals $1.00 per item.

7. *Transaction limitations.* During any statement period, you may not make more than six withdrawals or transfers to another credit union account of yours or to a third party by means of a preauthorized or automatic transfer or telephonic order or instruction. No more than three of the six transfers may be made by check, draft, debit card, if applicable, or similar order to a third party. If you exceed the transfer limitations set forth above in any statement period, your account will be subject to closure by the credit union or to a fee of $1.00 per item.

8. *Nature of dividends.* Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

9. *Bylaw Requirements.* A member who fails to complete payment of one share within _____ of his admission to membership, or within _____ from the increase in the par value in shares, or a member who reduces his share balance below the par value of one share and does not increase the balance to at least the par value of one share within _____ of the reduction may be terminated from membership at the end of a dividend period. [All blanks should be filled with time chosen by credit union board of directors, but must be at least 6 months.] Shares may be transferred only from one member to another, by written instrument in such form as the Credit Union may prescribe. The Credit Union reserves the right, at any time, to require members to give, in writing, not more than 60 days notice of intention to withdraw the whole or any part of the amounts so paid in by them. No member may withdraw shareholdings that are pledged as required on security on loans without the written approval of the credit committee or a loan officer, except to the extent that such shares exceed the member's total primary and contingent liability to the Credit Union. No member may withdraw any shareholdings below the amount of his/her primary or contingent liability to the Credit Union if he/she is delinquent as a borrower, or if borrowers for whom he/she is comaker, endorser, or guarantor are delinquent, without the written approval of the credit committee or loan officer.

10. *Par value of shares; Dividend period.* The par value of a regular share in this Credit Union is $5. The dividend period of the Credit Union is quarterly.

11. *National Credit Union Share Insurance Fund.* Member accounts in this Credit Union are federally insured by the National Credit Union Share Insurance Fund.

12. *Other Terms and Conditions.* [In this item, which may be titled or subdivided in

any manner by each credit union, NCUA suggests that the following issues be covered or handled: Statutory lien or setoff; expenses (garnishments and bankruptcy orders and holds on account); joint ownership accounts; trust accounts; payable-on-death accounts; retirement accounts; Uniform Transfer to Minor Act accounts; sole proprietorship accounts; escrow and custodial accounts; corporation accounts; not-for-profit corporation accounts; voluntary association accounts; partnership accounts; public unit accounts; powers of attorney (guardianship orders); tax disclosures and certifications; Uniform Commercial Code variances; amendments; reliance on signature card; change of address; incorporations of other documents by reference, such as expedited funds availability policies, service charges schedules or electronic banking disclosures; ability to suspend services; and operational matters (stop payment orders—verbal and written, satisfactory identification, refusal of deposits not in proper form, wire transfers, stale check deposits, availability of periodic statements or passbook feature.)]

NOTE: This form is modeled on the share account disclosures in the *Accounting Manual for FCUs*, §5150.7. The disclosures are for a variable-rate, daily balance method dividend calculation regular share account in an FCU with a $500 minimum balance to avoid service fees. For the example, the account was opened on May 1, 1995. Other terms are self-explanatory. The dividend rate paid and annual percentage yield disclosures will reflect the prospective dividend rate for a given dividend period. Item nos. 1–8 reflect standard TISA and part 707 disclosures discussed in sections B–1 through B–3 of this appendix. Note that if the credit union limits the maximum amount of shares which may be held by one member under *NCUA Standard FCU Bylaws*, Art. III, section 2, that this should be stated in item no. 7, transaction limitations. Item no. 9 reflects various terms provided in Art. III, sections 3–6 of the *NCUA Standard FCU Bylaws*. If this were a passbook account, then the requirements of Art. IV, Receipting for Money—Passbooks, in the *NCUA Standard FCU Bylaws* would also be included in item no. 9. Item no. 10 reflects the par value amount of regular shares in a federal credit union, pursuant to section 117 of the FCU Act, 12 U.S.C. 117, and Art. XIV, section 3 of the *NCUA Standard FCU Bylaws*. It also states the dividend period of the credit union, which is set by the board of directors. Item no. 11 addresses the requirements of 12 CFR part 740. Nonfederally insured credit unions (NICUs) would be expected to disclose information required by section 151 of the Federal Deposit Insurance Corporation Improvement Act of 1991. 12 USC 1831t. By December 19, 1992, all NICUs were required to include conspicuously on all periodic statements of account, signature cards, passbooks, share certificates and other similar instruments of deposit and in all advertising a notice that the credit union is not federally insured. Additional disclosures will be required of NICUs by June 19, 1994. Item no. 12 is inserted to ensure that credit unions add other account terms and conditions not covered by the proposed regulation. These sorts of terms are contemplated by proposed §707.3(b), requiring that the disclosures reflect the terms of the legal obligation between the member and the credit union. This list is not meant to be exhaustive, but to give a general idea of other topics often covered in share account contracts. Item no. 12 is not expressly required by either TISA or part 707, but any of these terms that are disclosed must be accurate and not misleading. Also the Board strongly recommends that such terms are included in account opening disclosures to inform the membership and to clearly set forth the legal relationship between the members and their credit union.

B–7 SAMPLE FORM (SHARE DRAFT ACCOUNT DISCLOSURES)

Share Draft Account Disclosures

1. *Rate information.* As of January 1, 1995, the dividend rate was 3.00% and the annual percentage yield (APY) was 3.04% on your share account. In addition, the prospective dividend rate on your account is 3.15% with a prospective annual percentage yield (APY) of 3.20% for the current dividend period. The dividend rate and APY may change every dividend period as determined by the credit union board of directors.

2. *Compounding and crediting.* Dividends will be compounded monthly and will be credited monthly. For this account type, the dividend period is monthly, for example, the beginning date of the first dividend period of the calendar year is January 1 and the ending date of such dividend period is January 31. All other dividend periods follow this same pattern of dates. The dividend declaration date follows the ending date of a dividend period, and for the example above is February 1. If you close your share draft account before dividends are credited, you will not receive accrued dividends.

3. *No Minimum balance requirements apply to this account.*

4. *Balance computation method.* Dividends are calculated by the average daily balance method which applies a periodic rate to the average daily balance in the account for the period. The average daily balance is calculated by adding the balance in the account for each day of the period and dividing that figure by the number of days in the period.

5. *Accrual of dividends.* Dividends will begin to accrue no later than the business day we receive provisional credit for the placement

of noncash items (e.g. checks) to your account.

6. *Fees and charges.* The following fees and charges may be assessed against your account.

a. Statement copies—$5.00 per statement.

b. Account inquiries—$3.00 per inquiry.

c. Dormant account fee—$10.00 per month.

d. Wire transfers—$8.00 per transfer.

e. Overdrafts/Returned Items—$5.00 per draft.

f. Share transfer—$1.00 per transfer.

g. Excessive share withdrawals—$1.00 per item.

h. Certified checks—$5.00 per check.

i. Stop Payment Order—$5.00 per order.

j. Check Printing Fee—$12.00 per 200 checks (varies depending on style of check ordered).

7. *No transaction limitations apply to this account.*

8. *Nature of dividends.* Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

9. *Bylaw Requirements.* A member who fails to complete payment of one share within _____ of his admission to membership, or within _____ from the increase in the par value in shares, or a member who reduces his share balance below the par value of one share and does not increase the balance to at least the par value of one share within _____ of the reduction may be terminated from membership at the end of a dividend period. [All blanks should be filled with time chosen by credit union board of directors, but must be at least 6 months.] Shares may be transferred only from one member to another, by written instrument in such form as the Credit Union may prescribe. The Credit Union reserves the right, at any time, to require members to give, in writing, not more than 60 days notice of intention to withdraw the whole or any part of the amounts so paid in by them. Shares paid in under an accumulated payroll deduction plan may not be withdrawn until credited to a member's account. No member may withdraw shareholdings that are pledged as required on security on loans without the written approval of the credit committee or a loan officer, except to the extent that such shares exceed the member's total primary and contingent liability to the Credit Union. No member may withdraw any shareholdings below the amount of his/her primary or contingent liability to the Credit Union if he/she is delinquent as a borrower, or if borrowers for whom he/she is comaker, endorser, or guarantor are delinquent, without the written approval of the credit committee or loan officer.

10. *Par value of shares; Dividend period.* The par value of a regular share in this Credit Union is $5. The dividend period of the Credit Union is monthly, beginning on the first of a month and ending on the last day of the month.

11. *National Credit Union Share Insurance Fund.* Member accounts in this Credit Union are federally insured by the National Credit Union Share Insurance Fund.

12. *Other Terms and Conditions.* [See section B–6, item 12, of this appendix].

NOTE: This form is modeled on the share account disclosures in the *Accounting Manual for FCUs*, §5150.7. The disclosures are for a variable-rate, average daily balance method dividend calculation share draft account in an FCU with no minimum balance requirement. For purposes of this example, the account was opened on January 15, 1995. The Credit Union has monthly dividend periods. Other terms are self-explanatory. The dividend rate paid and annual percentage yield disclosures will reflect the prospective dividend rate for a given dividend period. The disclosures are very similar to the ones in section B–6 of appendix B, except for the rollback and par value disclosures, which have been removed from the final rule and appendices.

B–8 SAMPLE FORM (MONEY MARKET SHARE ACCOUNT DISCLOSURES)

Money Market Share Account Disclosures

1. *Rate information.* As of January 1, 1995, if your average daily balance was $500 or more, the dividend rate paid on the entire balance in your account was 4.75%, with an annual percentage yield (APY) of 4.85%. If your average daily balance is $500 or more, a prospective dividend rate of 4.95% will be paid on the entire balance in your account with a prospective APY of 5.00% for this dividend period on your account. The dividend rate and APY may change every dividend period as determined by the credit union board of directors.

2. *Compounding and crediting.* Dividends will be compounded monthly and will be credited quarterly. If you close your share money market account before dividends are credited, you will not receive accrued dividends.

3. *Minimum balance requirements.* The minimum balance required to open this account is $500. You must maintain a minimum daily balance of $500 in your account to avoid a service fee. If, during any (time period), your account falls below the required minimum daily balance, your account will be subject to a service fee of $5 for that (time period).

4. *Balance computation method.* Dividends are calculated by the average daily balance method which applies a periodic rate to the average daily balance in your account for the period. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

5. *Accrual of dividends.* Dividends will begin to accrue on the business day you deposit noncash items (e.g., checks) to your account.

6. *Fees and charges.* The following fees and charges may be assessed against your account.

a. Statement copies—$5.00 per statement.

b. Account inquiries—$3.00 per inquiry.

c. Dormant account fee—$10.00 per month.

d. Wire transfers—$8.00 per transfer.

e. Minimum balance service fee—$5.00 per (time period).

f. Share transfer—$1.00 per transfer.

g. Excessive share withdrawals—$1.00 per item.

h. Certified checks—$5.00 per check.

i. Stop Payment Order—$5.00 per order.

j. Check Printing Fee—$12.00 per 200 checks (varies depending on style of check ordered).

7. *Transaction limitations.* During any statement period, you may not make more than six withdrawals or transfers to another credit union account of yours or to a third party by means of a preauthorized or automatic transfer or telephonic order or instruction. No more than three of the six transfers may be made by check, draft, debit card, if applicable, or similar order to a third party. If you exceed the transfer limitations set forth above in any statement period, your account will be subject to closure by the credit union or to a fee of $1.00 per item.

8. *Nature of dividends.* Dividends are paid from current income and available earnings, after required transfers to reserves at the end of a dividend period.

9. *Bylaw Requirements.* [This section should reflect any requirements concerning share accounts in the FISCU's bylaws or charter.]

10. *Par value of shares; Dividend period.* The par value of a regular share in this Credit Union is $50. The dividend period of the Credit Union is monthly, beginning on the first of a month and ending on the last day of the month.

11. *National Credit Union Share Insurance Fund.* Member accounts in this Credit Union are federally insured by the National Credit Union Share Insurance Fund.

12. *Other Terms and Conditions.* [See section B–6, item 12, of this appendix.]

NOTE: This form is modeled on the share account disclosures in the Accounting Manual for FCUs, §5150.7 and on the share draft account disclosures in section B–7 of this appendix. The disclosures are for a variable-rate, tiered-rate (method A, option 1), average daily balance method dividend calculation, money market share account in a FISCU with a $500 minimum balance to open the account and to avoid service fees. For purposes of this example, the account was opened on January 29, 1995. Other terms are self-explanatory. The dividend rate paid and annual percentage yield disclosures will reflect the prospective dividend rate for a given dividend period. Note that the contents of Item 9, Bylaw requirements, must be tailored to the specific bylaws of a FISCU or NICU. Also note the high par value amount in Item 10.

B–9 SAMPLE FORM (TERM SHARE (CERTIFICATE) ACCOUNT DISCLOSURES)

Term Share (Certificate) Account Disclosures

1. *Rate information.* [Repeat rates disclosed on face of term share certificate, *see* §B–5, Sample Form (Term Share (Certificate) Account)].

2. *Compounding and crediting.* Dividends will be compounded monthly and will be credited annually. If you close your certificate account before dividends are credited, you will not receive accrued dividends.

3. *Minimum balance requirements.* The minium balance required to open this account is $500.

4. *Balance computation method.* Dividends are calculated by the daily balance method, which applies a daily periodic rate to the principal in your account each day.

5. *Accrual of dividends.* Dividends will begin to accrue on the business day you deposit noncash items (e.g., checks) to your account.

6. *Fees and charges.* The following fees and charges may be assessed against your account.

a. Statement copies—$5.00 per statement.

b. Account inquiries—$3.00 per inquiry.

c. Share transfer— $1.00 per transfer.

7. *Transaction limitations.* After the account is opened, you may not make deposits into the account until the maturity date stated on the certificate.

8. *Maturity date.* Your account will mature on January 1, 1996.

9. *Early withdrawal penalties.* We may impose a penalty if you withdraw any of the funds before the maturity date. The penalty will equal three months' dividends on your deposit.

10. *Renewal policies.* Your certificate account will automatically renew at maturity. You will have a grace period of 10 business days after the maturity date to withdraw the funds in the account without being charged an early withdrawal penalty.

11. *Bonus.* You will receive a new (insert brand name) toaster-oven as a bonus when you open the account after December 31, 1994, and before June 30, 1995. You must maintain your entire principal on deposit until the maturity date of your certificate account to obtain the bonus.

12. [Reserved]

13. *Bylaw Requirements.* [This section should reflect any requirements concerning share accounts in the FISCU's bylaws or charter.]

14. *Par value of shares; Dividend period.* The par value of a regular share in this Credit Union is $25. The dividend period of the Credit Union on this type of account is annual,

beginning on the date the account is opened, and ending on the stated maturity date, unless renewed.

15. *National Credit Union Share Insurance Fund.* Member accounts in this Credit Union are federally insured by the National Credit Union Share Insurance Fund.

16. *Other Terms and Conditions.* [See section B–6, item 12, of this appendix.]

NOTE: Even though this disclosure if for an account at a FISCU, this form is modeled on the share account disclosures in the *Accounting Manual for FCUs,* §5150.7 and upon the regular share account disclosures in section B–6 of this appendix. The disclosures are for a fixed-rate, daily balance method dividend calculation, automatically renewing term share certificate account in a FISCU with a $500 minimum balance to open the account and a ten day grace period. For the example, the account is opened on January 1, 1995 and matures on January 1, 1996. Other terms are self-explanatory. The dividend rate paid and annual percentage yield disclosures reflect the contracted, prospective dividend rate for a given dividend period. Note the special disclosures for term share certificate accounts, items nos. 8–10. Note also the bonus disclosure, item no. 11.

B–10 SAMPLE FORM (PERIODIC STATEMENT)

Periodic Statement

_____

Member Name

_____

Account Number

[Transaction account activity by date.]

[Average daily balance of $1,500 for the month, daily compounding.]

Your account earned $6.72, with an annual percentage yield earned of 5.40%, for the statement period from May 1 through and including May 31. In addition, your account earned $15 in extraordinary dividends for this period. Any fees assessed against your account are shown in the body of the periodic statement and are identified by the code at the bottom margin of this statement.

Service Charge Codes

SC–1 Stop Payment Order Fee
SC–2 Statement Copy Fee
SC–3 Draft Return Fee
SC–4 Transfer from Shares
SC–5 Microfilm Copy
SC–6 Share Draft Printing Fee
SC–7 Dormant Account Fee
SC–8 Wire Transfer Fee
SC–9 Excessive Share Withdrawal Fee
SC–10 _____

Other Transactions

D Dividends
EC Error Correction
OR Overdraft Returned
OL Overdraft Loan
OS Overdraft Share Transfer

NOTE: This form is modeled on the share draft statement of account, Form FCU 107G–SD, in the *Accounting Manual for FCUs,* §5150.4. All information is self-explanatory. Codes of transactions are not required, but are a common credit union practice. The information regarding fees could also be included on the line of the periodic statement showing when the fees were debited from the account. Alternatively, a credit union could show all fees debited against the account for the statement period in a special area of the periodic statement. Clarity to the member of the required information—annual percentage yield earned; amount of dividends; fees imposed and length of period—is the important goal. An additional disclosure regarding the dollar value of any extraordinary dividends earned must be added to those statements showing the payment of such extraordinary dividends to the member.

B–11 SAMPLE FORM (RATE AND FEE SCHEDULE)

Rate and Fee Schedule

This Rate and Fee Schedule for all Accounts sets forth certain conditions, rates, fees and charges applicable to your regular share, share draft, and money market accounts at the _____ Federal Credit Union as of _____[insert date of delivery to member]. This schedule is incorporated as part of your account agreement with the _____ Federal Credit Union.

Regular Share

Dividend Rate as of Last Dividend Declaration Date _____%.

Annual Percentage Yield as of Last Dividend Declaration Date _____%.

Prospective Dividend Rate _____%.

Prospective Annual Percentage Yield _____%.

Dividends Compounded [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily].

Dividends Credited—At close of a dividend period.

Dividend Period [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily].

Minimum Opening Deposit $5.00 par value share.

Minimum Monthly Balance [None, $ amount].

Share Draft

Dividend Rate as of Last Dividend Declaration Date _____%.

Annual Percentage Yield as of Last Dividend Declaration Date _____%.

Prospective Dividend Rate _____%.

Prospective Annual Percentage Yield _____%.

Dividends Compounded [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily].

Dividends Credited—At close of a dividend period.

Dividend Period [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily].

Minimum Opening Deposit [None, $ amount].

Minimum Monthly Balance [None, $ amount].

Money Market

Dividend Rate as of Last Dividend Declaration Date _____%.

Annual Percentage Yield as of Last Dividend Declaration Date _____%.

Prospective Dividend Rate _____%.

Prospective Annual Percentage Yield _____%.

Dividends Compounded [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily].

Dividends Credited—At close of a dividend period.

Dividend Period [Annually, Semiannually, Quarterly, Monthly, Weekly, Daily].

Minimum Opening Deposit [None, $ amount].

Minimum Monthly Balance [None, $ amount].

The following fees may be assessed in connection with your accounts:

Fees Applicable to All Accounts

Returned item fee—$____.00 per item.

Account reconciliation fee—$____.00 per hour.

Statement copies fee—$____.00 per statement.

Certified draft fee—$____.00 per draft.

Wire transfer fee—$____.00 per transfer.

Account inquiry fee—$____.00 per inquiry.

Dormant account fee—$____.00 per month.

Minimum balance service fee—$____.00 per day.

Share transfer fee—$____.00 per transfer.

Excessive share withdrawals fee—$____.00 per item.

Share Draft Account Fees

Monthly service fee—$____.00 per month.

Overdraft transfers fee—$____.00 per overdraft.

Drafts returned insufficient funds fee—$____.00 per draft.

Stop payment order fee—$____.00 per order.

Draft copy fee—$____.00 per copy.

Check printing fee—$____.00 per 200 drafts.

Money Market Share Account Fees

Monthly service fee—$____.00 per month.

Check printing fee—$____.00 per 200 drafts.

NOTE: This illustration is for use of an FCU. The information provided on a Rate and Fee Schedule can be presented in any format. To ensure that it is a part of the account agreement, if used, it should be incorporated by reference into the appropriate share account disclosures. The figures used are illustrative only, except for the overdraft transfer fee of $1.00 per overdraft and the excessive share transfer fee of $1.00 per item, which are set in the *NCUA Standard FCU Bylaws*, Art. III, sections 4 and 5(f), respectively.

[58 FR 50445, Sept. 27, 1993, as amended at 59 FR 13436, 13437, Mar. 22, 1994]

APPENDIX C TO PART 707—OFFICIAL STAFF INTERPRETATIONS

Introduction

1. *Official status.* This commentary is the means by which the staff of the Office of General Counsel of the National Credit Union Administration issues official staff interpretations of Part 707 of the NCUA Rules and Regulations. Good faith compliance with this commentary affords protection from liability under section 271(f) of the Truth in Savings Act (TISA), 12 U.S.C. 4311.

Section 707.1—Authority, Purpose, Coverage, and Effect on State Laws

(c) Coverage

1. *Foreign applicability.* Part 707 applies to all credit unions that offer share and deposit accounts to residents (including resident aliens) of any state as defined in §707.2(v) and that offer accounts insurable by the National Credit Union Share Insurance Fund (NCUSIF) whether or not such accounts are insured by the NCUSIF. Corporate credit unions designated as such by NCUA under 12 CFR 704.2 (definition of ''corporate credit union'') are exempt from part 707.

2. *Persons who advertise accounts.* Persons who advertise accounts are subject to the advertising rules. This includes agent and agented accounts, such as a member who subdivides interests in a jumbo term share certificate account for sale to other parties or among members who form a certificate account investment club. For example, if an agent places an advertisement that offers members an interest in an account at a credit union, the advertising rules apply to the advertisement, whether the account is held by the agent or directly by the member.

3. *Nonautomated credit unions.* Nonautomated credit unions with an asset size of $2 million or less, after subtracting any nonmember deposits, are exempt from TISA and part 707. NCUA defines a ''nonautomated credit union'' as a credit union without sufficient data processing capability and capacity to establish, operate and maintain a

share and loan software system to timely and accurately process all account transactions of all members. The nonautomated credit union exemption is available to all credit unions meeting the asset size and automation standards of this comment, including newly chartered credit unions. If any of the credit unions eligible for this exemption grow to have more than $2 million in assets as of December 31 of any year, the NCUA Board will require such credit unions to comply with TISA and part 707 on January 1 of one year after such credit union loses its exemption eligibility. Similarly, if a credit union becomes sufficiently automated to operate a complete share and loan system, such credit union will be entitled to the same compliance phase-in period.

(d) Effect on State Laws

1. *Preemption of state laws/Inconsistent requirements.* State law requirements that are inconsistent with the requirements of TISA and part 707 are preempted to the extent of the inconsistency. A state law is inconsistent if it requires a credit union to make disclosures or take actions that contradict the requirements of the federal law. A state law is also contradictory if it requires the use of the same term to represent a different amount or a different meaning than the federal law, requires the use of a term different from that required in the federal law to describe the same item, or permits a method of calculating dividends or interest on an account different from that required in the federal law.

2. *Preemption determinations.* A credit union, state, or other interested party may request the Board to determine whether a state law requirement is inconsistent with the federal requirements. A request for a determination should be addressed to NCUA's Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314. Written preemption requests should cite (or include a copy of) the allegedly inconsistent state law, demonstrate the inconsistency with TISA and part 707 and the burden on credit unions, and formally request a preemption determination. The Office of General Counsel may provide other interested parties, particularly affected states, an informal opportunity to comment on any request for a preemption determination, unless it finds that such notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest. NCUA will publicize any preemption determinations using any means readily at its disposal.

3. *Effect of preemption determinations.* After the Board, through its Office of General Counsel, determines that a state law is inconsistent, a credit union may not make disclosures using the inconsistent term or take actions relying on the inconsistent law.

4. *Reversal of determination.* The Board reserves the right to reverse a determination for any reason bearing on the coverage or effect of state or federal law.

Section 707.2—Definitions

(a) Account

1. *Covered accounts.* Examples of accounts subject to the regulation are:

i. Dividend-bearing and interest-bearing accounts.

ii. Non-dividend-bearing and non-interest-bearing accounts.

iii. Accounts opened as a condition of obtaining a credit card.

iv. Escrow accounts with a consumer purpose, such as an account established by a member to escrow rental payments, pending resolution of a dispute with the member's landlord.

v. Accounts held by a parent or custodian for a minor under a state's Uniform Gift to Minors Act (or Uniform Transfers to Minors Act).

vi. Individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts.

vii. Payable-on-Death (POD) or ''Totten trust'' accounts.

2. *Other accounts.* Examples of accounts *not* subject to the regulation are:

i. Mortgage escrow accounts for collecting taxes and property insurance premiums.

ii. Accounts established to make periodic disbursements on construction loans.

iii. Trust accounts opened by a trustee pursuant to a formal written trust agreement (not merely declarations of trust on a signature card such as a ''Totten trust,'' or an IRA or SEP account).

iv. Accounts opened by an executor in the name of decedent's estate.

v. Accounts of individuals operating businesses as sole proprietors.

vi. Certificates of indebtedness. Some credit unions borrow funds from their members through a certificate of indebtedness that sets forth the terms and conditions of the repayment of the borrowing, such as federal credit unions do through 12 CFR 701.38. Such an account does not represent an account in a credit union and is not covered by part 707.

vii. Unincorporated nonbusiness association accounts.

3. *Other investments.* The term ''account'' does not apply to these products. Examples of products not covered are:

i. Government securities.

ii. Mutual funds.

iii. Annuities.

iv. Securities or obligations of a credit union.

v. Contractual arrangements such as repurchase agreements, interest rate swaps, and bankers acceptances.

vi. Purchases of U.S. Savings Bonds through a credit union.

vii. Services offered through a group purchasing plan or a credit union service organization (CUSO).

4. *Options.* All dividend-bearing and interest-bearing accounts are either fixed-rate or variable-rate accounts.

5. *Use of synonyms.* Generally, it is not the purpose of part 707 to prohibit specific descriptive terms for accounts. For example, credit unions can use adjectives and trade names to describe accounts such as ''Best Share Draft Account,'' or ''Ultra Money Market Share Account.'' Synonyms for share, share draft, money market share, and term share accounts may be used to describe various types of credit union share and deposit accounts as long as the synonym is accurate and not misleading and, for account disclosures, is used in conjunction with the correct legal term. For example, the following synonyms may be used:

i. The term ''checking account'' may be used to describe share draft accounts.

ii. The term ''money market account'' may be used to describe money market share accounts.

iii. The term ''savings account'' may be used to describe regular share and share accounts.

iv. The terms ''share certificate,'' ''certificate account,'' or ''certificate'' may be used to describe share certificates and other dividend-bearing term share accounts.

v. However, under no circumstances may a credit union describe a share account as a deposit account, or vice versa. For example, the term ''certificate of deposit'' or ''CD'' may not be used to describe share certificates and other dividend-bearing term share accounts. Similarly, the terms ''time account'' (used in Regulation DD, 12 CFR 230.2(u)) and ''time deposit'' (used in Regulation D, 12 CFR 204.2(c)) may not be used to describe term share accounts.

(b) Advertisement

1. *Covered messages.* Advertisements include commercial messages in visual, oral, or print media that invite, offer, or otherwise announce generally to members and potential members the availability of member accounts such as:

i. Telephone solicitations.

ii. Messages on automated teller machine (ATM) screens (including any printout).

iii. Messages on a computer screen in a credit union's lobby (including any printout) other than a screen viewed solely by the credit union's employee.

iv. Messages in a newspaper, magazine, or promotional flyer or on radio or television.

v. Messages promoting an account that are provided along with information about the member's existing account at a credit union and that promote another account at the credit union (such as account promotional messages on the periodic statement).

2. *Other messages.* Examples of messages that are *not* advertisements are:

i. Rate sheets published in newspapers, periodicals, or trade journals (unless the credit union or share and deposit broker that offers accounts at the credit union pays a fee to have the information included or otherwise controls publication).

ii. Telephone conversations initiated by a member or potential member about an account.

iii. An in-person discussion with a member about the terms for a specific account.

iv. Information provided to members about their existing accounts, such as on IRA disbursements, notices for automatically renewable term share accounts sent before renewal, or current rates recorded on a voice response machine.

(c) Annual Percentage Yield.

1. *General.* The annual percentage yield (APY) is required for disclosures for new accounts, oral responses to inquiries about rates; disclosures provided upon request; initial disclosures (if the credit union chooses to provide full disclosures instead of the abbreviated notice); notices prior to the renewal of a term share account, if known at the time the notice is sent, and in advertising. The annual percentage yield shows the total amount of dividends for a 365 day period (or a 366 day period for a leap year) on an assumed principal amount based on the dividend rate and frequency of compounding as a percentage of the assumed principal (for accounts such as share or share draft accounts) or for the total amount of dividends over the term of the account for term share accounts. The annual percentage yield assumes the principal amount remains in the account for 365 days (366 days for leap year) or for the term of the account.

2. *How Annual Percentage Yield Differs from Annual Percentage Yield Earned.* The annual percentage yield (APY) differs from the annual percentage yield earned (APYE). The annual percentage yield earned is required for periodic statements only. The annual percentage yield earned shows the total amount of dividends earned for the dividend or statement period as a percent of the actual average daily balance in the member's account. Unlike the annual percentage yield, the annual percentage yield earned is affected by additions and withdrawals during the period. The annual percentage yield and the annual percentage yield earned must be calculated according to the formulas provided in Appendix A to this rule.

(d) Average Daily Balance Method

1. *General.* One of the two required methods (the daily balance is the other) of determining the balance upon which dividends must be accrued and paid. The average daily balance method requires the application of a periodic rate to the average daily balance in the account for the average daily balance calculation period. The average daily balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

(e) Board.

1. *General.* The NCUA Board.

(f) Bonus

1. *General.* Bonuses include items of value offered as incentives to members, such as an offer to pay the final installment deposit for a holiday club account if the final installment is over $10. Bonuses do not include the payment of dividends (including extraordinary dividends), the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits, or other consideration aggregating $10 or less per year.

2. *Examples.* The following are examples of bonuses.

i. A credit union offers $25 to potential members for becoming a member and opening an account. The $25 could be provided by check, cash, or direct deposit.

ii. A credit union offers $25 to a member with only a regular share account to open a share draft account. The $25 could be provided by check, cash, or direct deposit.

iii. A credit union offers a portable radio with a value of $20 to members and potential members for opening a share draft account.

iv. A credit union pays the final installment deposit for a holiday club account if over $10.

3. *Examples not comprising bonuses.* The following are examples of items that are *not* bonuses:

i. Discount coupons distributed by credit unions for use at restaurants or stores.

ii. A credit union offers $20 to any member if the member is responsible for encouraging a potential member to open an account. The $20 is not a bonus because the $20 is not paid to the individual opening the account. Any item, including cash, given or offered to a third party (that is not a joint member or joint owner in an account being opened) in exchange for a member or potential member opening (or a member renewing or adding to) an account is not a bonus.

iii. A credit union offers $25 to a member if the member can locate his name in the body of a newsletter.

iv. Life savings benefits. Many credit unions offer life savings benefits to beneficiaries of deceased members. Because the benefit accrues to a third party, such life savings plans offered are not bonuses.

v. A credit union offers to pay annual membership dues in a benevolent organization for a class of members.

4. *De minimis rule.* Items with a *de minimis* value of $10 or less are not bonuses. Credit unions may rely on the valuation standard used by the Internal Revenue Service (IRS) to determine if the value of the item is *de minimis.* Items required to be reported by the credit union under IRS rules are bonuses under this regulation. Examples of items of *de minimis* values are:

i. Disability insurance premiums on a share account valued at an amount of $10 or less per year.

ii. Coffee mugs, T-shirts or other merchandise with a market value of $10 or less per year.

5. *Aggregation.* In determining if an item valued at $10 or less is a bonus, credit unions must aggregate per account per calendar year items that may be given to members. In making this determination, credit unions aggregate per account only the market value of items that may be given for a specific promotion. To illustrate, assume a credit union offers in January to give members an item valued at $7 for each calendar quarter during the year that the average account balance in a share draft account exceeds $10,000. The bonus rules are triggered, since members are eligible under the promotion to receive up to $28 during the year. However, the bonus rules are not triggered if an item valued at $7 is offered to members opening a share draft account during the month of January, even though in November the credit union introduces a new promotion that includes, for example, an offer to existing share draft accountholders for an item valued at $8 for maintaining an average balance of $5,000 for the month.

6. *Waiver or reduction of a fee or absorption of expenses.* Bonuses do not include value received by members through the waiver or reduction of fees for credit union-related services (even if the fees waived exceed $10), such as the following:

i. Waiving a safe deposit box rental fee for one year for members who open a new account.

ii. Waiving fees for travelers checks for members, and waiving check and share draft printing fees.

iii. Nondiscriminatorily waiving all fees for a particular class of members, such as seniors or minors.

iv. Discounts on interest rates charged for loans at the credit union.

v. Rebates of loan interest already paid by a member.

vi. Discounts on application fees charged for loans at the credit union.

vii. Packaged, linked, or tied-account services.

7. *Non-dividend membership benefits.* Such benefits are not bonuses because they are sporadic in nature, often difficult to value, and providing non-dividend membership benefits is a long-standing unique credit union practice. (See commentary to §707.2(r) for examples of such benefits.)

(g) Credit Union

1. *General.* Includes credit unions in the United States, Puerto Rico, Guam, U.S. Virgin Islands, and U.S. territories. Applies to credit unions whether or not the accounts in the credit union are federally, state, privately insured, or uninsured.

(h) Daily Balance Method

1. *General.* One of the two required methods (the average daily balance is the other) of determining the balance upon which dividends must be accrued and paid. The daily balance method requires the application of a daily periodic rate to the full amount of principal in the account each day.

(i) Dividend and Dividends

1. *General.* Member savings placed in share accounts are equity investments, and the returns earned on these accounts are dividends. Federal credit unions may only offer dividend-bearing and non-dividend-bearing share accounts. State-chartered credit unions may offer both share and deposit accounts if permitted by state law. State law, including without limitation regulations and official interpretations, will determine if returns earned in accounts in state-chartered credit unions are dividends. Dividends exclude the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits and extraordinary dividends. Dividend-bearing accounts must be either fixed-rate or variable-rate accounts.

2. *Procedure.* Credit unions must follow appropriate law (state law for state-chartered credit unions and federal law for federal credit unions) in determining dividend policies and declaring dividends. Generally, dividends may be viewed as a portion of the available account and undivided earnings of the credit union which is set apart, after required transfer to reserves, by valid act of the board of directors, for distribution among the members. As a matter of legal procedure, members are usually not entitled to dividends until the following steps are completed: (1) The board of the credit union develops a nondiscriminatory dividend policy, by establishing dividend periods, dividend credit determination dates dividend distribution dates, any associated penalties (if applicable), and the method of dividend computation for each type of share account; (2) the provisions for required transfers to reserves are made; (3) sufficient and available prior and/or current earnings are available at the end of the dividend period; (4) the board formally makes a dividend declaration in accordance with the credit union's dividend policy; and (5) dividends must be paid to members by a credit to the appropriate share account, payment by check or share draft, or by a combination of the two methods.

3. *When available.* Credit unions must follow the law of their primary chartering authority to determine when dividends are available. Generally, it is the declaration of the dividend itself which creates the dividend and the member has no right to receive a dividend until it is so declared. The decision of when to declare dividends lies within the official discretion of each credit union's board of directors and cannot be abrogated by contract. An agreement to pay dividends on a share account is generally interpreted not as an obligation to pay the stipulated dividends absolutely and unconditionally, but as an undertaking to pay them out of the earnings when sufficiently accumulated from which dividends in general are properly payable. Generally, ''prospective rates'' are rates set in good faith in advance of the close of a dividend period, that may be altered if sufficient funds are not available, or in the event of a superseding event, such as a strike, plant closure, significant fluctuation in market rates and/or a significant change in financial structure, natural disaster or emergency that alters the assumptions under which the ''prospective rates'' were made. It is the intent of TISA that all disclosure be accurate when made, and credit unions are urged to make every effort to ratify disclosed ''prospective rates.'' ''Prospective rates'' may also be referred to as ''projected rates'' or similar wording, but not as ''estimated rates.'' (See comment 3(b)–2, prohibiting use of estimates).

4. *Sample dividend resolutions.* (i) The following resolution may be used where the dividend rates are set after the close of a dividend period.

RESOLUTION OF BOARD OF DIRECTORS FOR THE DECLARATION OF DIVIDENDS

A. I, _____, certify that I am Secretary of _____ Credit Union Board of Directors, and that the following is a correct copy of the resolution for declaring dividend adopted by the _____ Credit Union at a meeting of the Board of Directors duly and properly held on _____, 19_____. This resolution appears in the minutes of this meeting and has not been rescinded or modified.

B. Resolved, that

(1) The Board of Directors has developed a nondiscriminatory dividend policy, by establishing dividend periods, dividend credit determination dates, dividend distribution

dates, any associated penalties (if applicable), and the method of dividend computation for each type of share account;

(2) The required transfers to reserves have been made; and

(3) Sufficient and available prior and/or current earnings are available at the end of this dividend period.

C. Resolved, further, that the Board of Directors now formally makes a dividend declaration in accordance with the Credit Union's dividend policy and authorizes that on _____, 19_____, dividends must be paid to members by a credit to the appropriate share account, payment by share draft or by a combination of the two methods.

D. I further certify that the Board of Directors of this Credit Union has, and the time of adoption of this resolution had, full power and lawful authority to adopt the foregoing resolutions and that this resolution revokes any prior resolution.

In witness whereof, this is my signature and the date on which I signed this Resolution.

_____

Signature

_____

Date

[Attach list of accounts with dividend rates for each type of account.]

(ii) The following resolution may be used where the dividend rates are set before the close of a dividend period.

RESOLUTION OF BOARD OF DIRECTORS FOR THE DECLARATION OF DIVIDENDS

A. I, _____, certify that I am the Secretary of _____ Credit Union, and that the following is a correct copy of the resolution for declaring dividends adopted by the _____ Credit Union at a meeting of the Board of Directors duly and properly held on _____, 19_____. This resolution appears in the minutes of that meeting and has not been rescinded or modified.

B. Resolved, that the Board of Directors has adopted a nondiscriminatory dividend policy, by establishing dividend periods, dividend credit determination dates, dividend distribution dates, any associated penalties (if applicable) and the method of dividend computation for each type of share account.

C. Resolved, that it is the policy and practice of the Board of Directors to meet periodically to establish prospective dividend rates for each type of dividend-bearing share account.

D. Resolved, that if the required transfers to reserves have been made and there are sufficient and available prior and/or current earnings available at the end of a dividend period, the officers of the Credit Union are authorized to pay dividends at the rate prospectively established by the Board of Directors for each account for the dividend period. The officers may pay the dividends without any further action of the Board of Directors. The act of paying the dividends shall constitute the declaration of the dividends and shall be a ratification of the prospective dividend rate.

In witness whereof, this is my signature and the date on which I signed this Resolution.

_____

Signature

_____

Date

[Attach list of accounts with prospective dividend rates for each type of account.]

5. *Referencing.* Except where specifically stated otherwise, use of the term ''share'' in part 707, as in ''share account,'' also refers to ''deposit,'' as in ''deposit account,'' where appropriate (for interest-bearing or non-interest-bearing deposit accounts at some state-chartered credit unions).

(j) Dividend Declaration Date

1. *General.* The importance of the dividend declaration date is to tie the last paid dividend to a certain period of time to place members and potential members on notice that the last paid dividend is different from the next dividend to be paid. In order to achieve this purpose, a credit union may use any of the following methods:

i. ''As of 3/15/95'' (the date the board of directors last met and declared the last paid dividend).

ii. ''As of 3/31/95'' (the last day of the last dividend period upon which a dividend has been paid).

iii. ''For the period 1/1/95 to 3/31/95'' (the last dividend period upon which a dividend has been paid).

iv. ''For the first quarter of 1995'' (the last dividend period upon which a dividend has been paid).

v. ''For April 1995'' (the last dividend period upon which a dividend has been paid).

vi. ''As of the last dividend declaration date'' (the last dividend period upon which a dividend has been paid).

(k) Dividend Period

1. *General.* The dividend period is to be set by a credit union's board of directors for each account type, e.g., regular share, share draft, money market share, and term share. The most common dividend periods are weekly, monthly, quarterly, semi-annually, and annually. Dividend periods need not agree with calendar months, e.g., a monthly dividend period could begin March 15 and end April 14.

(l) Dividend Rate

1. *General.* The dividend rate does not reflect compounding. Compounding is reflected in the ''annual percentage yield'' definition.

2. *Referencing.* Except where specifically stated otherwise, use of the term ''dividend rate'' in part 707 also refers to ''interest rate,'' where appropriate (for interest-bearing and non-interest-bearing deposit accounts at some state-chartered credit unions).

(m) Extraordinary Dividends

1. *General.* The definition encompasses all irregularly scheduled and declared dividends, and as dividends, extraordinary dividends are exempt from the ''bonus'' disclosure requirements. Extraordinary dividends do not have to be disclosed on account disclosures, but the dollar amount of an extraordinary dividend credited to the account during the statement period does have to be separately disclosed on the periodic statement for the dividend period during which the extraordinary dividends are earned. Extraordinary dividends, like ordinary dividends, do not include the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses or non-dividend membership benefits. See comments 2(f) 1 through 7 and 2(i) 1 through 4. Extraordinary dividends may be calculated by any means determined by the board of directors of a credit union and may not be used in the annual percentage yield earned calculation.

2. *Use of synonym.* Extraordinary dividends may be described as ''bonus dividends.''

(n) Fixed-Rate Account

1. *General.* Includes all accounts in which the credit union, by contract, agrees to give at least 30 days advance written notice of decreases in the dividend rate. Thus, credit unions can decrease rates only after providing advance written notice of rate decreases, *e.g.*, a ''change-in-terms notice.''

(o) Grace Period

1. *General.* A period after maturity of an automatically renewing term share account during which the member may withdraw funds without being assessed a penalty. Use of a ''grace period'' is discretionary, not mandatory. This definition does not refer to the ''grace period'' account, which is a synonym for ''federal rollback method'' or ''in by the 10th'' accounts, which are prohibited by TISA and part 707.

(p) Interest

1. *General.* Member savings placed in deposit accounts are debt investments, and the return earned on these accounts is interest. Federal credit unions are not authorized to offer any interest-bearing deposit accounts. State-chartered credit unions may offer both share and deposit accounts if permitted by state law. State law, including without limitation regulations and official interpretations, will determine if returns earned in accounts in state-chartered credit unions are interest. Interest excludes the payment of a bonus or other consideration worth $10 or less given during a year, the waiver of reduction of a fee, the absorption of expenses, non-dividend membership benefits, and extraordinary dividends.

2. *Differences between dividends and interest.* Generally, dividends are returns on an equity investment (shares); interest is return on a debt investment (deposits). Dividends, in general, are not properly payable until declared at the close of a dividend period; interest, in general, is properly payable daily according to the deposit contract. Dividend rates are prospective until actually declared; interest rates are set according to contract in advance and are earned on that basis. Share accounts establish a member (owner)/credit union (cooperative) relationship; deposit accounts establish a depositor (creditor)/depository (debtor) relationship.

3. *Referencing.* Except where specifically stated otherwise, use of the terms ''dividend'' or ''dividends'' in part 707 also refers to ''interest'' where appropriate (for interest-bearing and non-interest-bearing deposit accounts at some state-chartered credit unions).

(q) Member

1. *Professional capacity.* Examples of accounts held by a natural person in a professional capacity for another are:

i. Attorney-client trust accounts.

ii. Trust, estate and court-ordered accounts.

iii. Landlord-tenant security accounts.

2. *Other accounts.* Examples of accounts *not* held in a professional capacity include accounts held by parents for a child under the Uniform Gifts to Minors Act (or Uniform Transfers to Minors Act.

3. *Retirement plans.* IRAs and SEP accounts are member accounts to the extent that funds are invested in accounts subject to the regulation. Keogh accounts, like sole proprietor accounts, are not subject to the regulation.

(r) Non-Dividend Membership Benefits

1. *General.* Term reflects unique credit union practices that are difficult to value, encourage community spirit, and are not granted in such quantity as to be includable as calculable dividends.

2. *Examples.* Examples include:

i Food, refreshments, and drawings and raffles at annual meetings, member functions, and branch openings.

ii. Travel club benefits.

iii. Prizes offered at annual meetings, such as U.S. Savings Bonds, a deposit of funds into the winner's account, trips, and other gifts. Such prizes are not bonuses because they are offered as an incentive to increase attendance at the annual meeting, and not to entice members to open, maintain, or renew accounts or increase an account balance.

iv. Life savings benefits.

(s) Passbook Account

1. *Relation to Regulation E.* Passbook accounts include accounts accessed by preauthorized electronic fund transfers to the account (as defined in 12 CFR §205.2(j)), such as an account credited by direct share and deposit of social security payments. Accounts that permit access by other electronic means are not ''passbook accounts,'' and any statements that are sent four or more times a year must comply with the requirements of §707.6.

(t) Periodic Statement

1. *General.* Periodic statements are not required by part 707. Passbook and term share accounts are exempt from periodic statement requirements.

2. *Examples.* Periodic statements do not include:

i. Additional statements provided solely upon request.

ii. Information provided by computer through home electronic credit union account services.

iii. General service information such as a quarterly newsletter or other correspondence that describes available services and products.

(u) Potential Member

1. *General.* A potential member is a natural person eligible for membership in a credit union, who has not yet taken the steps necessary to become a member. The term also includes natural person nonmembers eligible to hold accounts in a credit union pursuant to relevant federal or state law.

2. *Verification of eligibility.* It is recommended that credit unions have sound written procedures in place to identify those eligible for membership. If these procedures include verification measures, such as an application process, verification telephone call or letter to an employer or association within the field of membership, witnessing by an existing member, or similar procedure, then the credit union may first verify the membership eligibility of a potential member before providing account disclosures or other information to the potential member. This process of verifying a member's eligibility status, making a recommendation for membership, and providing account disclosures should be completed within 20 calendar days. This period also applies when potential members not on credit union premises request disclosures.

3. *Nonmembers.* Within its sole discretion, the board of directors of a credit union may provide TISA disclosures to nonmembers who are ineligible for membership or to hold an account at the credit union. If disclosures are made to such nonmembers, it is the position of the Board that no civil liability can accrue to the credit union for any errors in such disclosures. (See commentary to §707.3(d)).

(v) State

1. *General.* Territories and possessions include American Samoa, Guam, the Mariana Islands, and the Marshall Islands.

(w) Stepped-Rate Account

1. *General.* Stepped-rate accounts are those accounts in which two or more dividend rates (known at the time the account is opened) will take effect in succeeding periods.

2. *Example.* An example of a stepped-rate account is a one-year term share certificate account in which a 5.00% dividend rate is paid for the first six months, and 5.50% for the second six months.

(x) Term Share Account

1. *Relation to Regulation D.* Regulation D permits, in limited circumstances, the withdrawal of funds without penalty during the first six days after a ''time deposit'' is opened. (See 12 CFR 204.2(c)(1)(i).) But the fact that a member makes a withdrawal as permitted by Regulation D does not disqualify the account from being a term share account for purposes of this regulation (such as withdrawals upon the death of the member, or within a ''grace period'' for automatically renewable term share accounts).

2. *Club accounts.* Club accounts, including Christmas club, holiday club, and vacation club accounts may be either term share or regular share accounts, depending on the terms of the account. Although club accounts typically have a maturity date, they are not term share accounts unless they also require a penalty of at least seven days' dividends for withdrawals during the first six days after the account is opened.

(y) Tiered-Rate Account

1. *General.* Tiered-rate accounts are those accounts in which two or more dividend rates are paid on the account and are determined by reference to a specified balance level. Tiered-rate accounts are of two types: Tiering Method A and Tiering Method B. In Tiering Method A accounts, the credit union pays the applicable tiered dividends rate on the entire amount in the account. This

method is also known as the ''hybrid'' or ''plateau'' tiered-rate account. In Tiering Method B accounts, the credit union does not pay the applicable tiered dividends rate on the entire amount in the account, but only on the portion of the share account balance that falls within each specified tier. This method is also known as the ''pure'' or ''split-rate'' tiered-rate account. (See Appendix A, part I, D.)

2. *Example.* An example of a tiered-rate account is one in which a credit union pays a 5.00% dividend rate on balances below $1,000, and 5.50% on balances $1,000 and above.

3. *Term share accounts.* Term share accounts that pay different rates based solely on the amount of the initial share and deposit are not tiered-rate accounts.

4. *Minimum balance accounts.* A requirement to maintain a minimum balance to earn dividends does not make an account a tiered-rate account. If dividends are not paid on amounts below a specified balance level, then the account has a minimum balance requirement (required to be disclosed under §707.4(b)(3)(i)), but the account does not constitute a tiered-rate account. A zero rate (0%) cannot constitute a tier. Minimum balance accounts are single rate accounts with a minimum balance requirement.

(z) Variable-Rate Account

1. *General.* Includes accounts in which the credit union does not contract to give at least 30 days advance written notice of decreases in the dividend rate. An account meets this definition whether the rate change is determined by reference to an index, by use of a formula, or merely at the discretion of the credit union's board of directors. An account that permits one or more rate adjustments prior to maturity at the member's option, such as a rate relock option, is a variable-rate account.

2. *Differences between fixed-rate and variable-rate accounts.* All ccounts must either be fixed-rate or variable-rate accounts. Classifying an account as variable-rate affects credit unions three ways:

i. Additional account disclosures are required (§707.4(b)(1)(ii));

ii. Rate decreases are exempted from change-in-terms requirements (§707.5(a)(2)(i)); and

iii. Advertising notice required (§707.8(c)(1)).

Fixed-rate accounts require a contract term obligating the credit union to a 30-day advance, written notice to members before decreasing the dividend rate on the account. Term changes adversely affecting the member and rate decreases cannot take effect until 30 days after such fixed-rate change-in-terms notices are mailed or delivered to members (§707.5(a)).

Section 707.3—General Disclosure Requirements

(a) Form

1. *General.* All required disclosures (e.g., account disclosures, change-in-terms notices, term share renewal/maturity notices, statement disclosures and advertising disclosures) must be made clearly and conspicuously, in a form the member may retain. Disclosures need be made only as applicable (e.g., disclosures for a non-dividend-bearing account would not include disclosure of annual percentage yield, dividend rate, or other disclosures pertaining to dividend calculations).

2. *Design requirements.* Disclosures must be presented in a format that allows members and potential members to readily understand the terms of their account. Credit unions are not required to use a particular type size or typeface, nor are credit unions required to state any term more conspicuously than any other term. Disclosures may be made:

i. In any order.

ii. In combination with other disclosures or account terms.

iii. In combination with disclosures for other types of accounts, as long as it is clear to members and potential members which disclosures apply to their account.

iv. On more than one page and on the front and reverse sides.

v. By using inserts to a document or filling in blanks.

vi. On more than one document, as long as the documents are provided at the same time.

3. *Consistent terminology.* A credit union must use the same terminology to describe terms or features that are required to be disclosed. For example, if a credit union describes a monthly fee (regardless of account activity), as a ''monthly service fee'' in account opening disclosures, the periodic statements and change-in-terms notices must use the same terminology so that members and potential members can readily identify the fee.

(b) General

1. *Terms and conditions.* Credit unions are required to have disclosures reflect the terms of the legal obligation between the credit union and a member at the time the member opens the account. This provision does not impose any contract terms or supersede state or other laws that define how the legal obligations between a credit union and its membership are determined.

2. *Specificity of legal obligation.* Credit unions may refer to the calendar month or to roughly equivalent intervals during a calendar year as a ''month.'' Use of estimates is prohibited in TISA disclosures.

3. *Foreign language.* Disclosures may be made in any foreign language, if desired by

the board of directors of a credit union. However, disclosures must also be provided in English, upon request.

(c) Relation to Regulation E

1. *General rule.* Compliance with Regulation E (12 CFR part 205) is deemed to satisfy the disclosure requirements of this regulation, such as when:

i. A credit union changes a term that triggers a notice under Regulation E, and the timing and disclosure rules of Regulation E for sending change-in-terms notices.

ii. A member adds an ATM access feature to an account, and the credit union provides disclosures pursuant to Regulation E, including disclosure of fees before the member receives ATM access. (See 12 CFR 205.7.)

iii. A credit union complying with the timing rules of Regulation E discloses at the same time fees for electronic services (such as balance inquiry fees imposed if the inquiry is made at an ATM) that are required to be disclosed by this regulation, but not by Regulation E.

iv. A credit union relies on Regulation E's rules regarding disclosures of limitations on the frequency and amount of electronic fund transfers, including security-related exceptions. But any limitation on the number of ''intra-institutional transfers'' to or from the member's other accounts at the credit union during a given time period must be disclosed, even though intra-institutional transfers are exempt from Regulation E.

(d) Multiple Members

1. *General.* When an account has multiple natural person member accountholders, delivery of disclosures to any member accountholder or agent authorized by the accountholder satisfies the disclosure requirements of part 707.

(e) Oral Response to Inquiries

1. *Application of rule.* Credit unions need not provide rate information orally. Disclosures need be made only as appropriate. For example, the requirement to give a telephone number for a member to call about rates for interest-bearing accounts and dividend-bearing term share accounts, would not be necessary for members calling the credit union for information. Also, the disclosure reqirements are applicable only to credit union employees and volunteers acting in the ordinary course of credit union business.

2. *Relation to advertising.* The advertising rules do not cover an oral response to a question about rates.

3. *Existing accounts.* This paragraph does not apply to oral responses about rate information for existing term share accounts or accounts not currently offered. For example, if a member holding a one-year term share account requests dividend rate information about the account during the term, the credit union need not disclose the annual percentage yield, unless the member is calling for rate information under a maturity notice.

(f) Rounding and Accuracy Rules for Rates and Yields

(f)(1) Rounding

1. *Permissible rounding.* The annual percentage yield, annual percentage yield earned and dividend rate must be rounded to the nearest one-hundredth of one percentage point (.01%) when disclosed. Examples of permissible rounding are an annual percentage yield calculated to be 5.644%, rounded down and shown as 5.64%; 5.645% would be rounded up and disclosed as 5.65%. For account disclosures, the dividend rate may be expressed to more than two decimal places.

(f)(2) Accuracy

1. *Annual percentage yield and annual percentage yield earned.* The tolerance for annual percentage yield and annual percentage yield earned calculations is designed to accommodate inadvertent errors. Credit unions may not purposely incorporate the one-twentieth of one percentage point (.05%) tolerance into their calculation of yields.

2. *Dividend rate.* There is no tolerance for an inaccuracy in the dividend rate.

Section 707.4—Account Disclosures

(a) Delivery of Account Disclosures

(a)(1) Account Opening

1. *New accounts.* New account disclosures must be provided when:

i. A term share account that does not automatically rollover is renewed by a member.

ii. A member changes the term for a renewable term share account (from a one-year term share account to a six-month term share account, for instance) (see comment 5(b)–5 regarding disclosure alternatives).

iii. A credit union transfers funds from an account to open a new account not at the member's request, unless the credit union previously gave account disclosures and any change-in-terms notices for the new account (e.g., funds in a money market share account are transferred by a credit union to open a new account for the member, such as a share draft account, because the member exceeded transaction limitations on the money market share account).

iv. A credit union accepts a deposit from a member to an account that the credit union had previously deemed to be ''closed,'' under applicable federal or state law, for the purpose of treating accrued, but uncredited, dividends as forfeited dividends. New account numbers are not required by this requirement.

2. *Acquired accounts.* New account disclosures need not be given when a credit union acquires an account through an acquisition of, or merger with, another credit union (but see §707.5(a) regarding advance notice requirements if terms are changed).

3. *Combination disclosures.* New account disclosures need not be given when a member has already received disclosures covering several accounts, and opens a new account properly disclosed by the already received combination disclosures, if the new account is opened within a reasonable amount of time after receipt of the combination disclosures and if the received disclosures and terms are accurate at the time the new account is opened.

(a)(2) Requests

(a)(2)(i)

1. *Inquiries versus requests.* A response to an oral inquiry (by telephone or in person) about rates and yields or fees does not trigger the duty to provide account disclosures. But, when a member asks for written information about an account (whether by telephone, in person, or by other means), the credit union must provide disclosures unless the account is no longer offered to the public.

2. *General requests.* When member's or potential member's request disclosures about a type of account (a share draft account, for example), a credit union that offers several variations may provide disclosures for any one of them. No disclosures need be made to nonmembers, though a credit union may provide disclosures to nonmembers within its sole discretion.

3. *Timing for response.* Twenty calendar days is a reasonable time for responding to a request for account information that a member does not make in person.

(a)(2)(ii)(A)(2)

1. *Recent rates.* Credit unions comply with this paragraph if they disclose an interest rate (or dividend rate on a dividend-bearing term share account) and annual percentage yield accurate within the seven calendar days preceding the date they send the disclosures.

(a)(2)(ii)(B)

1. *Term.* Describing the maturity of a term share account as ''1 year'' or ''6 months,'' for example, illustrates a response stating the maturity of a term share account as a term rather than a date (e.g., ''June 1, 1995'').

(b) Content of Account Disclosures

(b)(1) Rate Information

(b)(1)(i) Annual Percentage Yield and Dividend Rate

1. *Rate disclosures.* In addition to the dividend rate and annual percentage yield, credit unions may disclose a periodic rate corresponding to the dividend rate. No other rate or yield (such as ''tax effective yield'') is permitted. If the annual percentage yield is the same as the dividend rate, credit unions may disclose a single figure but must use both terms.

2. *Fixed-rate accounts.* For fixed-rate term share accounts paying the opening rate until maturity, credit unions may disclose the period of time the dividend rate will be in effect by stating, or cross-referencing, the maturity date. For other fixed-rate accounts, credit unions may use a date (such as ''This rate will be in effect through June 30, 1995'') or a period (such as ''This rate will be in effect for at least 30 days'').

3. *Tiered-rate accounts.* Each dividend rate, along with the corresponding annual percentage yield for each specified balance level (or range of annual percentage yields, if appropriate), must be disclosed for tiered-rate accounts. (See Appendix A, Part I, Paragraph D.)

4. *Stepped-rate accounts.* A single composite annual percentage yield must be disclosed for stepped-rate accounts. (See Appendix A, Part I, Paragraph B.) The dividend rates and the period of time each will be in effect also must be provided. When the initial rate offered for a specified time on a variable-rate account is higher or lower than the rate that would otherwise be paid on the account, the calculation of the annual percentage yield must be made as if for a stepped-rate account. (See Appendix A, Part I, Paragraph C.)

5. *Minimum balance accounts.* If a credit union sets a minimum balance to earn dividends, the credit union may, but need not, state that the annual percentage yield is 0% for those days the balance in the account drops below the minimum balance level when using the daily balance method. Nor is a disclosure of 0% required for credit unions using the average daily balance method, if the member fails to meet the minimum balance required for the average daily balance period.

(b)(1)(ii) Variable Rates

(b)(1)(ii)(B)

1. *Determining dividend rates.* To disclose how the dividend rate is determined, credit unions must:

i. Identify the index and specific margin, if the dividend rate is tied to an index.

ii. State that rate changes are within the credit union's discretion, if the credit union does not tie changes to an index.

(b)(1)(ii)(C)

1. *Frequency of rate changes.* A credit union reserving the right to change rates at its discretion must state the fact that rates may change at any time.

(b)(1)(ii)(D)

1. *Limitations.* A floor or ceiling on rates or on the amount the rate may decrease or increase during any time period must be disclosed. Credit unions need not disclose the absence of limitations on rate changes.

(b)(2) Compounding and Crediting

(b)(2)(i) Frequency

1. *General.* Descriptions such as ''quarterly'' or ''monthly'' are sufficient. Irregular crediting and compounding periods, such as if a cycle is out short at year end for tax reporting purposes, need not be disclosed.

2. *Dividend period.* For dividend-bearing accounts, the dividend period must be disclosed. (A specific example must also be given, see Appendix B, § B–1(c).) The dividend period for term share accounts generally may be disclosed as the account's term (e.g., two years).

(b)(2)(ii) Effect of Closing an Account

1. *Deeming an account closed.* A credit union may, subject to state or other law, provide in account contracts the actions by members that will be treated as closing the account and that will result in the forfeiture of accrued but uncredited dividends. An example is the withdrawal of all funds from the account prior to the date dividends are credited. Credit unions are cautioned that bylaw requirements may prevent a credit union from deeming a member's account closed until certain time periods are extinguished if funds remain in a member's account. *NCUA Standard FCU Bylaws,* Art. III, § 3 (members have at least 6 months to replenish membership share before membership terminates and account is deemed closed). Such bylaw requirements may not be overridden without proper agency approval.

(b)(3) Balance Information

(b)(3)(i) Minimum Balance Requirements

1. *Par value.* Credit unions must disclose any minimum balance required to open the account, to avoid the imposition of a fee, or to obtain the annual percentage yield. Since members cannot generally maintain any accounts until the par value of the membership share is paid in full, this section requires that credit unions disclose the par value of a share necessary to become a member and maintain accounts at the credit union. The par value of a share and the minimum balance requirement do not have to be the same amount (e.g., a credit union may have a $5 par value for a membership share, in order for accounts to be opened and maintained, and a $100 minimum balance requirement, in order for the account to earn dividends).

2. *Disclosures.* The explanation of minimum balance computation methods may be combined with the balance computation method disclosures (§ 707.4(b)(3)(ii)) if they are the same. If a credit union uses different cycles for determining minimum balance requirements for purposes of assessing fees and for paying dividends, the credit union must disclose the specific cycle or time period used for each purpose (e.g., use of a midmonth statement cycle for determining dividends, and use of a calendar month cycle for determining fees). Credit unions may assess fees by using any method. If fees on one account are tied to the balance in another account, such provision must be explained (e.g., if share draft fees are tied to a minimum balance in the regular share account (or a combination of the share draft and regular share accounts), the share draft account must explain that fact and how the balance in the regular share account (or both accounts) is determined). The fee need not be disclosed in the account disclosures if the fee is not imposed on that account.

(b)(3)(ii) Balance Computation Method

1. *Methods and periods.* Credit unions may use different methods or periods to calculate minimum balances for purposes of imposing a fee (the daily balance for a calendar month, for example) and accruing dividends (the average daily balance for a statement period, for example). Each method and corresponding period must be disclosed.

(b)(3)(iii) When dividends begin to accrue

1. *Additional information.* Credit unions must include a statement as to when dividends begin to accrue for noncash deposits. Credit unions may disclose additional information such as the time of day after which deposits are treated as having been received the following business day, and may use additional descriptive terms such as ''ledger'' or ''collected'' balances to disclose when dividends begin to accrue. Under the ledger balance method, dividends begin to accrue on the day of deposit. Under the collected balance methods, dividends begin to accrue when provisional credit is received for the item deposited.

(b)(4) Fees

1. *Types of fees.* Fees related to the routine use of an account must be disclosed. The following are types of fees that must be disclosed in connection with an account:

i. Maintenance fees, such as monthly service fees.

ii. Fees related to share deposits or withdrawals.

iii. Fees for special services, such as stop payment fees, fees for balance inquiries or verification of share and deposits, fees associated with checks returned unpaid, fees for regularly sending to members share drafts that otherwise would be held by the credit union, and overdraft line of credit access fees (if charged against the share account).

iv. Fees to open or to close an account.

v. Fees imposed upon dormant or inactive accounts.

2. *Other fees.* Credit unions need not disclose fees such as the following:

i. Fees for services offered to members and nonmembers alike, such as fees for certain travelers checks, for wire transfers and automated clearinghouse (ACH) transfers, to process credit card cash advances, or to handle U.S. Savings Bond Redemption (even if different amounts are charged to members and nonmembers).

ii. Incidental fees, such as fees associated with state escheat laws, garnishment or attorneys fees, to change names on an account, to generate a midcycle periodic statement, to wrap loose coins, for photocopying, for statements returned to the credit union because of a wrong address, and locator fees.

3. *Amount of fees.* Credit unions are cautioned that merely providing fee information in an account disclosure may not be sufficient to gain the legal right to impose the fee involved under applicable law. Credit unions must state the amount and conditions under which a fee may be imposed. Naming and describing the fee typically satisfies this requirement. Some examples are:

i. ''$4.00 monthly service fee''.

ii. $7.00 and up'' or ''fee depends on style of checks ordered'' for check printing fees.

4. *Tied-accounts.* Credit unions must state if fees that may be assessed against an account are tied to other accounts at the credit union. For example, if a credit union ties the fees payable on a share draft account to balances held in the share draft account and in a regular share account, the share draft account disclosures must state that fact and explain how the fee is determined.

5. *Regulation E statements.* Some fees are required to be disclosed under both Regulation E (12 CFR 205.7) and part 707. If such fees, such as ATM transaction fees, are disclosed on a Regulation E statement, they need not be disclosed again on a periodic statement required under part 707.

(b)(5) Transaction Limitations

1. *General rule.* Examples of limitations on the number of dollar amount of share deposits or withdrawals that credit unions must disclose are:

i. Limits on the number of share drafts or checks that may be written on an account for a given time period.

ii. Limits on withdrawals or share deposits during the term of a term share account.

iii. Limitations required by Regulation D, such as the number of withdrawals permitted from money market share accounts by check to third parties each month (credit unions need not disclose reservation of right to require a notice for withdrawals from accounts required by federal or state law).

(b)(6) Features of Term Share Accounts

(b)(6)(i) Time Requirements

1. *''Callable'' term share accounts.* In addition to the maturity date, credit unions must state the date or the circumstances under which the credit union may redeem a term share account at the credit union's option (a ''callable'' term share account).

(b)(6)(ii) Early Withdrawal Penalties

1. *General.* The term ''penalty'' may, but need not, be used to describe the loss that may be incurred by members for early withdrawal of funds from term share accounts.

2. *Examples.* Examples of early withdrawal penalties are:

i. Monetary penalties, such a specific dollar amount (e.g., ''$10.00'') or a specific days' worth of dividends (e.g., ''seven days' dividends plus accrued but uncredited dividends, but only if the account is closed'').

ii. Adverse changes to terms such as the lowering of the dividend rate, annual percentage yield, or reducing the compounding or crediting frequency for funds remaining in shares or on deposit.

iii. Reclamation of bonuses.

3. *Relation to rules for IRAs or similar plans.* Penalties imposed by the Internal Revenue Code for certain withdrawals from IRAs or similar pension or savings plans are not early withdrawal penalties for purposes of this regulation.

4. *Disclosing penalties.* Penalties may be stated in months, whether credit unions assess the penalty using the actual number of days during the period or using another method such as a number of days that occurs in any actual sequence of the total calendar months involved. For example, stating ''one month's dividends'' is permissible, whether the credit union assesses 30 days' dividends during the month of April, or selects a time period between 28 and 31 days for calculating the dividends for all early withdrawals regardless of when the penalty is assessed.

(b)(6)(iv) Renewal Policies

1. *Rollover term share accounts.* Credit unions are not required to provide a grace period, to pay dividends during the grace period, or to disclose whether or not dividends will be paid during the grace period. Credit unions offering a grace period on term share accounts must give the length of the grace period. Commentary, Appendix B, Model Clauses, § B–1(i)(iv).

2. *Nonrollover term share accounts.* Credit unions that pay dividends on funds following the maturity of term share accounts that do not renew automatically need not state the rate (or annual percentage yield) that may be paid.

(b)(7) Bonuses

1. *General.* Credit unions are required to state the amount and type of bonus, and disclose any minimum balance or time requirement to obtain the bonus and when the bonus will be provided. If the minimum balance or time requirement is otherwise required to be disclosed, credit unions need not duplicate the disclosure for purposes of this paragraph.

(b)(8) Nature of Dividends

1. *General.* Dividends are not payable until declared and unless sufficient current and undivided earnings are available after required transfers to reserves at the close of a dividend period. A disclosure explaining dividends educates members and protects credit unions in the event that a prospective dividend cannot be paid, or is not properly payable. This disclosure is required for all dividend-bearing share accounts. Term share accounts need not include a statement regarding the nature of dividends.

2. *State-chartered credit unions with interest-bearing deposit accounts.* State law controls the nature of accounts (i.e., whether an account is a share account or a deposit account). If a member of a state-chartered credit union is opening only an interest-bearing deposit account, or is requesting account disclosures only for an interest-bearing deposit account (if state law requires the depositor to hold a share account), the disclosures must generally include the following information on any dividend-bearing share portion of the account (e.g., membership share): the par value of a share; a statement that the portion of the deposit that represents the par value of the membership share will earn dividends, and that dividends are paid from current income and available earnings after required transfers to reserves. Further additional disclosures, such as a separate dividend rate and annual percentage yield for the membership share, are not required (if the additional disclosures would agree with the remainder of the account which is invested in an interest-bearing deposit).

(c) Notice to Existing Accountholders

1. *General.* Only members who receive periodic statements (provided regularly at least four times per year) and who hold accounts of the type offered by the credit union as of the compliance date of part 707 (generally January 1, 1995) must receive the notice. If following receipt of the notice members request disclosures, credit unions have twenty calendar days from receipt of the request to provide the disclosures. Rate and annual percentage yield information in such disclosures must conform to that required for disclosures upon request. As an alternative to including the notice in or on the periodic statement, the final rule permits credit unions to send the account disclosures themselves, as long as they are sent at the same time as the periodic statement (the disclosures may be mailed either with the periodic statement or separately).

2. *Form of the notice.* The notice may be included on the periodic statement, in a member newsletter, or on a statement stuffer or other insert, if it is clear and conspicuous. The notice cannot be sent in a separate mailing from the periodic statement.

3. *Timing.* The notice may accompany the first periodic statement after the compliance date for part 707, or the periodic statement for the first cycle beginning after that date. For example, a credit union's statement cycle is December 15, 1994-January 14, 1995. The statement is mailed on January 15, The next cycle is January 15, 1995 through February 14, 1995, and the statement for that cycle is mailed on February 15. The credit union may provide the notice either on or with the January 15 statement or on or with the February 15 statement, as it covers the first cycle after January 1, 1995.

4. *Early compliance.* Credit unions that provide the notice to existing members prior to the compliance date of part 707, must be prepared to provide accurate and timely disclosures when, following receipt of the notice, members ask for account disclosures. Such disclosures must be provided even if they are requested before the compliance date of part 707. Credit unions who provide early notice to existing members need to comply with other aspects of part 707, but need not provide disclosures already provided in compliance with part 707.

Section 707.5—Subsequent Disclosures

(a) Change in Terms

(a)(1) Advance Notice required

1. *Form of notice.* Credit unions may provide a change-in-term notice on or with a regular periodic statement or in another mailing

(such as a highlighted portion of a newsletter or statement stuffer insert). If a credit union provides notice through revised account disclosures, the changed term must be highlighted in some manner. For example, credit unions may state that a particular fee has been changed (also specifying the new amount) or use an accompanying letter that refers to the changed term. Credit unions are cautioned that unless credit unions have reserved the right to change terms in the account agreement or disclosures, a change-in-terms notice may not be sufficient to amend the terms under applicable law.

2. *Effective date.* An example of a language for disclosing the effective date of a change is: ''As of May 11, 1995''.

3. *Terms that change upon the occurrence of an event.* A credit union offering terms that will automatically change upon the occurrence of a stated event need not send an advance notice of the change provided the credit union fully describes the conditions of the change in the account opening disclosures (and sends any change-in-term notices regardless of whether the changed term affects that member's account at that time).

4. *Examples.* Examples of changes not requiring an advance change-in-terms notice are:

i. The termination of employment for employee-members for whom account maintenance or activity fees were waived during their employment by the credit union.

ii. The expiration of one year in a promotion described in the account opening disclosures to ''waive $4.00 monthly service charges for one year''.

(a)(2) No Notice Required

(a)(2)(ii) Check Printing Fees

1. *Increase in fees.* A notice is not required for an increase in fees for printing share drafts (or deposit and withdrawal slips) even if the credit union adds some amount to the price charged by the vendor.

(b) Notice Before Maturity for Term Share Accounts Longer Than One Month That Renew Automatically.

1. *Maturity dates on nonbusiness days.* In determining the term of a term share account, credit unions may disregard the fact that the term will be extended beyond the disclosed number of days if the maturity date falls on a nonbusiness day. For example, a holiday or weekend may cause a ''one-year'' term share account to extend beyond 365 days (or 366, in a leap year), or a ''one-month'' term share account to extend beyond 31 days.

2. *Disclosing when rates will be determined.* Ways to disclose when the annual percentage yield will be available include the use of:

i. A specific date, such as ''October 28''.

ii. A date that is easily discernible, such as ''the Tuesday prior to the maturity date stated on the notice'' or ''as of the maturity date stated on this notice''.

3. *Alternative timing rule.* Under the alternative timing rule, a credit union that offers a 10-day grace period would have to provide the disclosures at least 10 calendar days prior to the scheduled maturity date.

4. *Club accounts.* If members have agreed to the transfer of payments from another account to a club term share account for the next club period, the credit union must comply with the requirements for automatically renewable term share accounts—even though members may withdraw funds from the club account at the end of the current club period.

5. *Renewal of a term share account.* In the case of a change-in-terms that becomes effective if a rollover term share account is subsequently renewed:

i. If the change is initiated by the credit union, the disclosure requirements of this paragraph apply. (Section 707.5(a) applies if the change becomes effective prior to the maturity of the existing term share account.)

ii. If the change is initiated by the member, the account opening disclosure requirements of §707.4(b) apply. (If the notice required by this paragraph has been provided, credit unions may give new account disclosures or disclosures that reflect the new term.)

6. *Example.* If a member receives a notice prior to maturity on a one-year term share account and requests a rollover to a six-month account, the credit union must provide either account opening disclosures including the new maturity date or, if all other terms previously disclosed in the prematurity notice remain the same, only the new maturity date.

(b)(1) Maturities of Longer Than One Year

1. *Highlighting changed terms.* Credit unions need not highlight terms that have changed since the last account disclosures were provided.

(c) Notice for Term Share Accounts One Month or Less That Renew Automatically

1. *Providing disclosures within a reasonable time.* Generally, 20 calendar days after an account renews is a reasonable time for providing disclosures. For term share accounts shorter than 20 days, disclosures should be given prior to the next scheduled renewal date. For example, if a term share account automatically renews every seven days, disclosures about an account that renews on Wednesday, December 6, 1995, should be given prior to Wednesday, December 13, 1995.

(d) Notice Before Maturity for Term Share Accounts Longer Than One Year That Do not Renew Automatically

1. *Subsequent account.* When funds are transferred following maturity of a nonrollover term share account, credit unions need not provide account disclosures unless a new account is established.

Section 707.6—Periodic Statement Disclosures

(a) Rule When Statement and Crediting Periods Vary

1. *General.* Credit unions are not required to provide periodic statements. If they provide periodic statements, disclosures need only be furnished to the extent applicable. For example, if no dividends are earned for a statement period, credit unions need not state that fact. Or, credit unions may disclose ''$0'' dividends earned and ''0%'' annual percentage yield earned.

2. *Regulation E interim statements.* When a credit union provides regular quarterly statements, and in addition provides a monthly interim statement to comply with Regulation E, the interim statement need not comply with this section unless it states dividend or rate information. (See 12 CFR 205.9). For credit unions that choose not to treat Regulation E activity statements as part 707 periodic statements, the quarterly periodic statement must reflect the annual percentage yield earned and dividends earned for the full quarter. However, credit unions choosing this option need not redisclose fees already disclosed on an interim Regulation E activity statement on the quarterly periodic statement. For credit unions that choose to treat Regulation E activity statements as part 707 periodic statements, the Regulation E statement must meet all part 707 requirements.

3. *Combined statements.* Credit unions may provide certain information about an account (such as a money market share account or regular share account) on the periodic statement for another account (such as a share draft account) without triggering the disclosures required by this section, as long as:

i. The information is limited to information such as the account number, the type of account, balance information, accountholders' names, and social security or tax identification number; and

ii. The credit union also provides members a periodic statement complying with this section for the account (the money market share account or regular share account, in the example).

4. *Other information.* Additional information that may be given on or with a periodic statement, includes:

i. Dividend rates and corresponding periodic rates to the dividend rate applied to balances during the statement period.

ii. The dollar amount of dividends earned year-to-date.

iii. Bonuses paid (or any *de minimis* consideration of $10 or less).

iv. Fees for other products, such as safe deposit boxes.

v. Accounts not covered by the periodic statement disclosure requirements (passbook and term share accounts) may disclose any information on the statement related to such accounts, so long as such information is accurate and not misleading.

5. *When statement and crediting periods vary.* This rule permits credit unions, on dividend-bearing share accounts, to report the annual percentage yield earned and the amount of dividends earned on a statement other than on each periodic statement when the dividend period does not agree with, varies from, or is different than, the statement period. For dividend-bearing share accounts, credit unions may disclose the required information either upon each periodic statement, or on the statement on which dividends are actually earned (credited or posted) to the member's account. In addition, for accounts using the average daily balance method of calculating dividends, when the average daily balance period and the statement periods do not agree, vary or are different, credit unions may also report annual percentage yield earned and the dollar amount of dividends earned on the periodic statement on which the dividends or interest is earned. For example, if a credit union has quarterly dividend periods, or uses a quarterly average daily balance on an account, the first two monthly statements may not state annual percentage yield earned and dividends earned figures; the third ''monthly'' statement will reflect the dividends earned and the annual percentage yield earned for the entire quarter. The fees imposed disclosure must be given on the periodic statement on which they are imposed.

6. *Length of the period.* Credit unions must disclose the length of both the dividend period (or average daily balance calculation period) and the statement period. For example, a statement could disclose a statement period of April 16 through May 15 and further state that ''the dividends earned and the annual percentage yield earned are based on your dividend period (or average daily balance) for the period April 1 through April 30.''

7. *Dividend period more frequent than statement period.* Credit unions that calculate dividends on a monthly basis, but send statements on a quarterly basis, may disclose a single dividend (and annual percentage yield earned) figure. Alternatively, a credit union may disclose three dividends earned and three annual percentage yield earned figures,

one of each month in the quarter, as long as the credit union states the number of days (or beginning and ending date) in each dividend period if it varies from the statement period.

8. *Additional voluntary disclosures.* For credit unions not disclosing the annual percentage yield earned and dividends earned on all periodic statements, credit unions may place a notice on statements without dividends and annual percentage yield earned figures, that the annual percentage yield earned and dollar amount of dividends earned will appear on the first statement at the close of the dividend (or average daily balance) period, or similar wording. Credit unions may also choose to include a telephone number to call for interim information, if desired by a member.

(b) Statement Disclosures

(b)(1) Annual Percentage Yield Earned

1. *Ledger and collected balances.* Credit unions that accrue interest using the collected balance method may use either the ledger or collected balance methods to determine the balance used to determine the annual percentage yield earned. Ledger balance means the record of the balance in a member's account, as per the credit union's records. (The ledger balance may reflect additions and deposits for which the credit union has not yet received final payment). Collected balance means the record of balance in a member's account reflecting collected funds, that is, cash or checks deposited in the credit union which have been presented for payment and for which payment has actually been received. (See Regulation CC, 12 CFR 229.14).

(b)(2) Amount of Dividends or Interest

1. *Definition of earned.* The term ''earned'' is defined to include dividends and interest either ''accrued'' or ''paid and credited.'' Credit unions may use either the ''ledger'' or the ''collected'' balance for either option. (See 707.6(b)(1)1. and 707.7(c)2. of this appendix.)

2. *Accrued interest.* Credit unions must state the amount of interest that accrued during the statement period, even if it was not credited.

3. *Terminology.* In disclosing dividends earned for the period, credit unions must use the term ''dividends'' or terminology such as: ''Dividends paid,'' to describe dividends that have been credited; ''Dividends accrued,'' to indicate that dividends are not yet credited.

4. *Closed accounts.* If a member closes an account between crediting periods and forfeits accrued dividends, the credit union may not show any figures for ''dividends earned'' or annual percentage yield earned for the period (other than zero, at the credit union's option).

5. *Extraordinary dividends.* Extraordinary dividends are not a component of the annual percentage yield earned or the dividend rate, but are an addition to the member's account. The dollar amount of the extraordinary dividends paid, denoted as a separate, identified figure, must be disclosed on the periodic statement on which the extraordinary dividends are earned. A credit union may also disclose information regarding the calculation of the extraordinary dividends, and additional annual percentage yield earned and dividend rate figures taking into account the extraordinary dividend, so long as such information is accurate and not misleading.

(b)(3) Fees Imposed

1. *General.* Periodic statements must state fees disclosed under §707.4(b) that were debited to the account during the statement period, even if assessed for an earlier period.

2. *Itemizing fees by type.* In itemizing fees imposed more than once in the period, credit unions may group fees if they are the same type. But, the description must make clear that the dollar figure represents more than a single fee, for example, ''total fees for checks written this period.''

Examples of fees that may *not* be grouped together are:

i. Monthly maintenance with excess activity fees.

ii. ''Transfer'' fees, if different dollar amounts are imposed—such as $.50 for share deposits and $1.00 for withdrawals.

iii. Fees for electronic fund transfers with fees for other services, such as balance inquiry or maintenance fees.

3. *Identifying fees.* Statement details must enable the member to identify the specific fee. For example:

i. Credit unions may use a code to identify a particular fee if the code is explained on the periodic statement or in documents accompanying the statement.

ii. Credit unions using debit slips may disclose the date the fee was debited on the periodic statement and show the amount and type of fee on the dated debit slip.

4. *Relation to Regulation E.* Disclosure of fees in compliance with Regulation E complies with this section for fees related to electronic fund transfers (for example, totaling all electronic funds transfer fees in a single figure).

(b)(4) Length of Period

1. *General.* Credit unions providing the beginning and ending dates of the period must make clear whether both dates are included in the period. For example, stating ''April 1 through April 30'' would clearly indicate that both April 1 and April 30 are included in the period.

2. *Opening or closing an account mid-cycle.* If an account is opened or closed during the period for which a statement is sent, credit unions must calculate the annual percentage yield earned based on account balances for each day the account was open.

Section 707.7—Payment of Dividends

(a) Permissible Methods

1. *Prohibited calculation methods.* Calculation methods that do not comply with the requirement to pay dividends on the full amount of principal in the account each day include:

i. The ''rollback'' method, also known as the ''grace period'' or ''in by the 10th'' method, where credit unions pay dividends on the lowest balance in the account for the period.

ii. The ''increments of par value'' method, where credit unions only pay dividends on full shares in an account, e.g., a credit union with $5 par value shares pays dividends on $20 of a $24 account balance.

iii. The ''ending balance'' method, where credit unions pay dividends on the balance in the account at the end of the period.

iv. The ''investable balance'' method, where credit unions pay dividends on a percentage of the balance, excluding an amount credit unions set aside for reserve requirements.

v. The ''low balance'' method, where credit unions pay dividends on the lowest balance in the account for any day in that period.

2. *Use of 365-day basis.* Credit unions may apply a daily periodic rate that is greater than 1/365 of the dividend rate—such as 1/360 of the dividend rate—as long as it is applied 365 days a year.

3. *Periodic dividend payments.* A credit union can pay dividends each day on the account and still make uniform dividend payments. For example, for a one-year term share account, a credit union could make monthly dividend payments that are equal to 1/12 of the amount of dividends that will be earned for a 365-day period (or 11 uniform monthly payments—each equal to roughly 1/12 of the total amount of dividends—and one payment that accounts to the remainder of the total amount of dividends earned for the period).

4. *Leap year.* Credit unions may apply a daily rate of 1/366 or 1/365 of the dividend rate for 366 days in a leap year, if the account will earn dividends for February 29.

5. *Maturity of term share accounts.* Credit unions are not required to pay dividends after term share accounts mature. Examples include:

i. During any grace period offered by a credit union for an automatically renewable term share account, if the member decides during that period not to renew the account.

ii. Following the maturity of nonrollover term share accounts.

iii. When the maturity date falls on a holiday, and the member must wait until the next business day to obtain the funds.

6. *Dormant accounts.* Credit unions must pay dividends on funds in an account, even if inactivity or the infrequency of transactions would permit the credit union to consider the account to be ''inactive'' or ''dormant'' (or similar status) as defined by state or other law or the account contract.

7. *Insufficient funds.* Credit unions are not required to pay dividends on checks or share drafts deposited to a member's account that are returned for insufficient funds. If a credit union accrues dividends on a check that it later determines is not good, it may deduct from the accrued dividends any dividends attributed to the proceeds of the returned check. If dividends have already been credited before the credit union determines the item has insufficient funds, the credit union may deduct the amount of the check and associated dividends from the account balance. The amount deducted will not be reflected in the dividend amount and annual percentage yield earned reported for the next period.

8. *Account drawn below par value of a share.* If a member draws his or her account below the par value of a share, dividends would continue to accrue on the account so long as any minimum balance requirement is met. However, under the *NCUA Standard FCU Bylaws,* if a member who reduces his or her share balance below the value of a par value share and does not increase the balance within at least six months, the credit union may terminate the member's membership. State-chartered credit unions may have similar termination provisions.

(a)(2) Determination of Minimum Balance to Earn Dividends

1. *General.* Credit unions may set minimum balance requirements that must be met in order to earn dividends. However, credit unions must use the same method to determine a minimum balance required to earn dividends as they use to determine the balance upon which dividends will accrue and pay. For example, a credit union that calculates dividends on the daily balance method must use the daily balance method to determine if the minimum balance to earn dividends has been met. Similarly, a credit union that calculates dividends on the average daily balance method must use the average daily balance method to determine if the minimum to earn dividends has been met. Credit unions may have a par value of a share that is different from the minimum balance requirement to earn dividends. (See commentary to §707.4(b)(3)(i)).

2. *Daily balance accounts.* Credit unions that require a minimum balance to earn dividends may choose not to pay dividends for days when the balance drops below the required minimum balance if they use the

daily balance method to calculate dividends. For example, a credit union could set a minimum daily balance level of $200 and pay dividends only those days the $200 daily balance is maintained.

3. *Average daily balance accounts.* Credit unions that require a minimum balance to earn dividends may choose not to pay dividends for the average daily balance calculation period in which the average daily balance drops below the required minimum, if they use the average daily balance method to calculate dividends. For example, a credit union could set a minimum average daily balance level of $200 and pay dividends only if the $200 average daily balance is met for the calculation period.

4. *Beneficial method.* Credit unions may not require members to maintain both a minimum daily balance and a minimum average daily balance to earn dividends, such as by requiring the member to maintain a $500 daily balance and a prescribed average daily balance (whether higher or lower). But a credit union could offer a minimum balance to earn dividends that includes an additional method that is ''unequivocally beneficial'' to the member such as the following:

i. A credit union using the daily balance method to calculate dividends and requiring a $500 minimum daily balance could choose to pay dividends on the account (for those days the minimum balance is not met) as long as the member maintained an average daily balance throughout the month of $400.

ii. A credit union using the average daily balance method to calculate dividends and requiring a $400 minimum average daily balance could choose to pay dividends on the account as long as the member maintained a daily balance of $500 for at least half of the days in the period.

iii. A credit union using either the daily balance method or average daily balance method to calculate dividends that requires: (A) a $500 daily balance; or (B) a $400 average daily balance to pay dividends on the account.

5. *Paying on full balance.* Credit unions must pay dividends on the full balance in the account that meets the required minimum balance. For example, if $300 is the minimum daily balance required to earn dividends, and a member deposits $500, the credit union must pay the stated dividend rate on the full $500 and not just on the $200.

6. *Negative balances prohibited.* Credit unions must treat a negative account balance as zero to determine:

i. The daily or average daily balance on which dividends will be paid.

ii. Whether any minimum balance to earn dividends is met. (See commentary to Appendix A, Part II, which prohibits credit unions from using negative balances in calculating the dividends figure for the annual percentage yield earned.)

7. *Club accounts.* Credit unions offering club accounts (such as a ''holiday'' or ''vacation'' club accounts) cannot impose a minimum balance requirement for dividends based on the total number or dollar amount of payments required under the club plan. For example, if a plan calls for $10 weekly payments for 50 weeks, the credit union cannot set a $500 minimum balance and then pay only if the member makes all 50 payments.

8. *Minimum balances not affecting dividends.* Credit unions may use the daily balance, average daily balance, or other computation method to calculate minimum balance requirements not involving the payment of dividends—such as to compute minimum balances for assessing fees.

(b) Compounding and Crediting Policies

1. *General.* Credit unions choosing to compound dividends may compound or credit dividends annually, semi-annually, quarterly, monthly, daily, continuously, or on any other basis.

2. *Withdrawals prior to crediting date.* If members withdraw funds (without closing the account), prior to a scheduled crediting date, credit unions may delay paying the accrued dividends on the withdrawn amount until the scheduled crediting date, but may not avoid paying dividends.

3. *Closed accounts.* Subject to state or other law, a credit union may choose not to pay accrued dividends if members close an account prior to the date accrued dividends are credited, as long as the credit union has disclosed that fact. If accrued dividends are paid, accrued dividends must be paid on funds up until the account is closed or the account is deemed closed. For example, if an account is closed on a Tuesday, accrued dividends on the funds through Monday would be paid. Whether (and the conditions under which) credit unions are permitted to deem an account closed by a member is determined by state or other law, if any. Credit unions are cautioned that bylaw requirements may prevent a credit union from deeming a member's account closed until certain time periods are extinguished. (See *NCUA Standard FCU Bylaws,* Art. III, §3 (members have at least 6 months to replenish membership share before membership can terminate and the account is deemed closed). Such bylaw requirements may not be overridden without proper agency approval.)

(c) Date Dividends Begin to Accrue

1. *Relation to Regulation CC.* Credit unions may rely on the Expedited Funds Availability Act (EFAA) and Regulation CC (12 CFR part 229) to determine, for example, when a deposit is considered made for purposes of dividend accrual, or when dividends need not be paid on funds because a deposited check is later returned unpaid.

2. *Ledger and collected balances.* Credit unions may calculate dividends by using a ''ledger'' balance or ''collected'' balance method, as long as the crediting requirements of the EFAA are met (12 CFR 229.14).

3. *Withdrawal of principal.* Credit unions must accrue dividends on funds until the funds are withdrawn from the account. For example, if a check is debited to an account on a Tuesday, the credit union must accrue dividends on those funds through Monday.

Section 707.8—Advertising

(a) Misleading or Inaccurate Advertisements

1. *General.* All advertisements are subject to the rule against misleading or inaccurate advertisements, even though the disclosure applicable to various media differ. The word ''profit'' may be used when referring to dividend-bearing share accounts, as it reflects the nature of dividends. The word ''profit'' may not be used when referring to interest-bearing deposit accounts.

2. *Indoor signs.* An indoor sign advertising an annual percentage yield is not misleading or inaccurate if:

i. For a tiered-rate account, it also provides the upper and lower dollar amounts of the tier corresponding to the advertised annual percentage yield.

ii. For a term share account, it also provides the term required to obtain the advertised annual percentage yield.

3. *''Free'' or ''no cost'' accounts.* For purposes of determining whether an account can be advertised as ''free'' or ''no cost,'' maintenance and activity fees include:

i. Any fee imposed if a minimum balance requirement is not met, or if the member exceeds a specified number of transactions.

ii. Transaction and service fees that members reasonably expect to be imposed on an account on a regular basis (see comments 4(b)(4)–1 and 2).

iii. A flat fee, such as a monthly service fee.

iv. Fees imposed to deposit, withdraw or transfer funds, including per-check or per-transaction charges (for example, $.25 for each withdrawal, whether by check, in person).

4. *Other fees.* Examples of fees that are *not* maintenance or activity fees include:

i. Fees that are not required to be disclosed under § 707.4(b)(4).

ii. Check printing fees of any type.

iii. Fees for obtaining copies of checks, whether or not the original checks have been truncated or returned to the member periodically.

iv. Balance inquiry fees.

v. Fees assessed against a dormant account.

vi. Fees for using an ATM.

vii. Fees for electronic transfer services that are not required to obtain an account, such as preauthorized transfers or home electronic credit union services.

viii. Stop payment fees and fees for share drafts or checks returned unpaid.

5. *Similar terms.* An advertisement may not use a term such as ''fees waived'' if a maintenance or activity fee may be imposed because it is similar to the terms ''free'' or ''no cost.''

6. *Specific account services.* Credit unions may advertise a specific account service or feature as free as long as no fee is imposed for that service or feature. For example, credit unions offering an account that is free of deposit or withdrawal fees could advertise that fact, as long as the advertisement does not mislead members by implying that the account is free and that no other fee (a monthly service fee, for example) may be charged.

7. *Free for limited time.* If an account (or a specific account service) is free only for a limited period of time—for example, for one year following the account opening—the account (or service) may be advertised as free as long as the time period is stated.

8. *Conditions not related to share accounts.* Credit unions may advertise accounts as ''free'' for members that meet conditions not related to share accounts, such as the member's age. For example, credit unions may advertise a share draft account as ''free for persons over 65 years old,'' even though a maintenance or activity fee may be assessed on accounts held by members that are 65 or younger.

(b) Permissible Rates

1. *Tiered-rate accounts.* An advertisement for a tiered-rate account that states an annual percentage yield must also state the annual percentage yield for each tier, along with corresponding minimum balance requirements. Any dividend rates stated must appear in conjunction with the annual percentage yields for each tier.

2. *Stepped-rate accounts.* An advertisement that states a dividend rate for a stepped-rate account must state all the dividend rates and the time period that each rate is in effect.

3. *Representative examples.* An advertisement that states an annual percentage yield for a type of account (such as a term share account for a specified term) need not state the annual percentage yield applicable to every variation offered by the credit union or indicate that other maturity terms are available. In an advertisement stating that rates for an account may vary depending on the amount of the initial deposit or the term of a term share account, credit unions need not list each balance level and term offered. Instead, the advertisement may:

i. Provide a representative example of the annual percentage yields offered, clearly described as such. For example, if a credit

union offers a $25 bonus on all term share accounts and the annual percentage yield will vary depending on the term selected, the credit union may provide a disclosure of the annual percentage yield as follows: ''For example, our 6-month share certificate currently pays a 3.15% annual percentage yield.''

ii. Indicate that various rates are available, such as by stating short-term and longer-term maturities along with the applicable annual percentage yields: ''We offer share certificates with annual percentage yields that depend on the maturity you choose. For example, our one-month share certificate earns a 2.75% APY. Or, earn a 5.25% APY for a three-year share certificate.''

(c) When Additional Disclosures are Required

1. *Trigger terms.* The following are examples of information stated in advertisements that are not ''trigger'' terms:

i. ''One, three, and five year share certificates available''.

ii. ''Bonus rates available''.

iii. ''1% over our current rate,'' so long as the rates are not determinable from the advertisement.

(c)(2) Time Annual Percentage Yield is Offered

1. *Specified recent date.* If an advertisement discloses an annual percentage yield as of a specified date, that date must be recent in relation to the publication or broadcast frequency of the media used. For example, the printing date of a brochure printed once for an account promotion that will be in effect for six months would be considered ''recent,'' even though rates change during the six-month period. Dividend rates published in a daily newspaper or on television must be a rate offered shortly before (or on) the date the rates are published or broadcast. Similarly, dividend rates published in a daily newspaper or on television must be a rate reflecting either the preceding dividend period, or a prospective rate, and the option chosen should be noted.

2. *Reference to date of publication.* An advertisement may refer to the annual percentage yield as being accurate as of the date of publication, if the date is on the publication itself. For instance, an advertisement in a periodical may state that a rate is ''current through the date of this issue,'' if the periodical shows the date.

(c)(5) Effect of Fees

1. *Scope.* This requirement applies only to maintenance or activity fees as described in paragraph 8(a).

(c)(6) Features of Term Share Accounts

(c)(6)(i) Time Requirements

1. *Club accounts.* If a club account has a maturity date, but the term may vary depending on when the account is opened, credit unions may use a phrase such as: ''The maturity date of this club account is November 15; its term varies depending on when the account is opened.''

(c)(6)(ii) Early Withdrawal Penalties

1. *Discretionary penalties.* Credit unions imposing early withdrawal penalties on a case-by-case basis may disclose that they ''may'' (rather than ''will'') impose a penalty if that accurately describes the account terms.

(d) Bonuses

1. *General reference to ''bonus.''* General statements such as ''bonus checking'' or ''get a bonus when you open a checking account'' do not trigger the bonus disclosures.

(e) Exemption for Certain Advertisements

(e)(1) Certain Media

(e)(1)(i)

1. *ATM messages.* Messages provided on ATM or computer screens are eligible for this exemption.

(e)(1)(iii)

1. *Tiered-rate accounts.* Solicitations for tiered-rate accounts made through telephone response machines must provide all annual percentage yields and the balance requirements applicable to each tier.

(e)(2) Indoor Signs

(e)(2)(i)

1. *General.* Indoor signs include advertisements displayed on computer screens, banners, preprinted posters, and chalk or peg boards. Any advertisement inside the premises that can be retained by a member (such as a brochure or a printout from a computer) is not an indoor sign.

2. *Members outside the premises.* Advertisements may be ''indoor signs'' even though they may be viewed by members from outside. An example is a banner in a credit union's glass-enclosed branch office, that is located behind a teller facing members but is readable by passersby.

(e)(3) Newsletters

1. *General.* The partial exemption applies to all credit union newsletters, whether instituted before or after the compliance date of part 707. Nor must a newsletter be of any particular circulation frequency (e.g., weekly, monthly, quarterly, biannually, annually, or irregularly) or of any certain format (e.g.

magazine, bulletin, broadside, circular, mimeograph, letter, or pamphlet) in order to be eligible for the partial advertising exemption.

2. *Permissible Distribution*. In order for newsletters to retain the partial advertising exemption, newsletters can be sent to existing credit union members only. Any distribution reasonably calculated to reach only members is also acceptable, such as:

i. Mailing newsletters to existing members.

ii. Distributing newsletters at a function reasonably limited to members, such as an annual meeting or member picnic.

iii. Displaying or offering newsletters at a credit union lobby, branch, or office.

3. *Impermissible Distribution*. Distributing a newsletter in a place open to nonmembers, such as a sponsor's lunch room, is not reasonably calculated to reach only members, and such newsletter would be subject to all applicable advertising rules.

Section 707.9—Enforcement and Record Retention

(c) Record Retention

1. *Evidence of required actions.* Credit unions comply with the regulation by demonstrating they have done the following:

i. Established and maintained procedures for paying dividends and providing timely disclosures as required by the regulation, and

ii. Retained sample disclosures for each type account offered to members, such as account-opening disclosures, copies of advertisements, and change-in-term notices; and information regarding the dividend rates and annual percentage yields offered.

2. *Methods of retaining evidence.* Credit unions must be able to reconstruct the required disclosures or other actions. They need not keep disclosures or other business records in hard copy. Records evidencing compliance may be retained on microfilm, microfiche, or by other methods that reproduce records accurately (including computer files). Credit unions must retain copies of all printed advertisements and the text of all advertisements conveyed by electronic or broadcast media, and newsletters.

3. *Payment of dividends.* Credit unions must retain sufficient rate and balance information to permit the verification of dividends paid on an account, including the payment of dividends on the full principal balance.

[59 FR 59899, Nov. 21, 1994, as amended at 60 FR 21699, May 3, 1995; 61 FR 68129, Dec. 27, 1996]

PART 708a—MERGERS OR CONVERSIONS OF FEDERALLY-INSURED CREDIT UNIONS: NCUA APPROVAL

Sec.

708a.1 NCUA Board approval.
708a.2 Plan for merger or conversion to a non credit union institution.
708a.3 Submission of proposal to NCUA.
708a.4 Approval of proposal by NCUA.
708a.5 Approval of proposal by members.
708a.6 Certification and completion of merger or conversion.
APPENDIX A TO PART 708a—NOTICE TO MEMBERS OF SPECIAL MEETING, DISCLOSURE AND BALLOT

SOURCE: 60 FR 12661, Mar. 8, 1995, unless otherwise noted.

§708a.1 NCUA Board approval.

Section 205(b)(1) of the Federal Credit Union Act requires NCUA Board approval in advance of any transaction whereby a federally-insured credit union transfers all or any part of its members' accounts to any non credit union institution. This part establishes rules and procedures for any merger, conversion or other transaction in which a federally-insured credit union's share accounts or similar member accounts are transferred to a non credit union institution. Transactions where a federally-insured credit union transfers member accounts to another credit union are subject to the provisions of part 708b of this chapter. Compliance with this part 708a is in addition to any other federal or state laws and regulations which may be applicable to the proposed transaction, including state corporate laws and state and federal securities laws.

§708a.2 Plan for merger or conversion to a non credit union institution.

(a) *Proposition for merger or conversion*. The board of directors of the credit union shall approve a proposition for merger or conversion.

(b) *Plan for merger or conversion*. Upon approval of a proposition for merger or conversion by the board of directors, a plan for the transaction shall be prepared. The plan shall include:

(1) Current financial reports;

(2) Current delinquent loan schedules annotated to reflect collection problems;

(3) Combined financial report, if applicable;

(4) Contingencies;

(5) Explanation of any provisions for reserves, undivided earnings or dividends;

(6) Analyses of share values and explanation of any adjustments to member's share accounts;

(7) Analyses of the regulatory effect of the merger or conversion brought about by the change in government regulator;

(8) Explanation of any other relevant effects on the members; and

(9) Any additional information, as required by the NCUA Regional Director.

(c) *Nonpreferential treatment*. The plan for merger or conversion shall provide that, for a period of at least two years after the effective date of the transaction: –

(1) No director of the credit union may receive any compensation or any benefits not provided or available to other members; and

(2) No director or senior management official of the credit union shall be allowed to acquire stock in the resulting or continuing institution or any successor institution, on any terms other than those readily available to all members of the former credit union. This prohibition would include stock issued for services rendered prior to the merger or conversion. For purposes of this section, *senior management official* means the credit union's chief executive officer, any assistant chief executive officers and the chief financial officer.

§ 708a.3 Submission of proposal to NCUA.

(a) *Submissions to the NCUA Regional Director*. Upon approval of the plan by the board of directors of the credit union, the following will be submitted to the appropriate NCUA Regional Director:

(1) The plan, as described in § 708a.2(b) of this part;

(2) A resolution of the board of directors approving the plan;

(3) A written agreement from each member of the board of directors and each senior management official to comply with the terms of § 708a.2(c) (the agreement shall be executed by NCUA as well, in the event of approval of the transaction);

(4) A proposed merger or conversion agreement;

(5) A proposed Notice of Meeting, as described in appendix A of this part;

(6) A copy of the form ballot and any accompanying materials to be sent to the members, as described in appendix A of this part;

(7) A complete copy of the package [to be] submitted to any other regulatory agencies involved in the merger or conversion;

(8) A copy of an appraisal of the value of the credit union, if the proposal is to convert or merge the credit union either directly or indirectly into a stock institution, and any plan for sale or distribution of stock to the credit union's members, officials and employees; and

(9) In the case of a federally-insured state chartered credit union, evidence that the state supervisory authority is in agreement with the merger or conversion proposal.

(b) *Coordination with State Supervisory Authority*. In the event the proposal is filed with the NCUA prior to receiving consent from the state supervisory authority:

(1) The Board will coordinate with the state supervisory authority; and

(2) The Board will not approve any merger or conversion unless it is approved by the state supervisory authority.

(c) *Waiver of NCUA rules and approval by state supervisory authority*. A federally-insured state credit union may, on a case-by-case basis, request a waiver of this part 708a from the Board and receive authority to proceed under state rules and procedures. In making such a request, the credit union shall demonstrate that the concerns underlying this part 708a are adequately addressed and, in particular that:

(1) Proceeding under state rules present no financial risk to the credit union or the NCUSIF;

(2) Adequate safeguards exist against breach of duty by, or preferential treatment of directors, committee

members and others involved in the transaction; and

(3) The transaction is otherwise fair to members and carried out pursuant to an informed and decisive membership vote.

§ 708a.4 Approval of proposal by NCUA.

If NCUA finds that the proposal complies with the provisions of this part and does not present an undue risk to the NCUSIF or unduly prejudice the members, it may approve the proposal subject to such other specific requirements as may be prescribed to fulfill the stated purposes of the proposal. No proposal will be approved that does not *clearly* inform the members of the fundamental rights they would be giving up if their credit union converts or merges into a non credit union institution.

§ 708a.5 Approval of proposal by members.

(a) *Notification of members.* The members shall:

(1) Have the option of voting on the proposal either in person at a membership meeting or by mail ballot.

(2) Be given advance notice of the membership meeting in accordance with the provisions of appendix A of this part. The notice shall be delivered in person to each member, or mailed to each member at the address for such member as it appears on the records of the credit union, not more than 30 days nor less than 14 days prior to the date for the vote. The ballot to be used for the membership vote shall be in accordance with the provisions of appendix A of this part. The notice and ballot shall be provided to the members at the same time. If applicable, the notice and ballot shall be provided in both English as well as the native language of the majority of the members.

(3) Be made aware that the complete application and proposal are available for inspection at the credit union's branch offices during normal business hours.

(b) *Vote by members.* The proposal must be approved by the affirmative vote of a majority of the credit union's members.

(c) *Notice of Approval to members.* If the proposal for merger or conversion is approved by the membership and the NCUA Board, prompt and reasonable notice shall be given to all members.

§ 708a.6 Certification and completion of merger or conversion.

(a) *Certification of vote.* The board of directors shall certify the results of the membership vote to the Regional Director within 10 days after the vote is taken.

(b) *Completion.* Upon approval of the proposal by NCUA, the state supervisory authority (where the credit union is state chartered), the members and any federal agency with approval or regulatory authority for the transaction, the credit union may complete the merger or conversion.

(c) *Certification of completion.* Within 30 days after the effective date of the merger or conversion, the board of directors of the continuing institution shall certify the completion of the transaction to the Regional Director.

(d) *Cancellation of charter and insurance.* Upon NCUA's receipt of certification that the transaction has been completed, the charter of the federal credit union (if applicable) and the insurance certificate of the federally insured credit union will be canceled.

APPENDIX A TO PART 708a—NOTICE TO MEMBERS OF SPECIAL MEETING, DISCLOSURE AND BALLOT

(1) The Notice of Special Meeting must include the following:

(a) The date, time and place of the Meeting;

(b) A description of the matters to be voted upon at the Special Meeting;

(c) A statement in a prominent location in bold letters that ''A DISCLOSURE STATEMENT HAS BEEN PROVIDED TO YOU WITH THIS NOTICE OF SPECIAL MEETING. THE DISCLOSURE MUST BE READ BEFORE VOTING ON THE PROPOSED (''CONVERSION'' or ''MERGER'', as appropriate)'', and

(d) A statement that a Mail Ballot for the Special Meeting is enclosed.

(2) The Disclosure provided with the Notice must at a minimum provide the following information to the members:

(a) Factual information about the credit union, i.e. name and address of credit union and telephone number of contact person;

(b) Summary of the proposal which shall contain but not necessarily be limited to

current financial reports for the credit union and the other institution if a merger is proposed; a projected financial report for the continuing institution; analyses of share values; an explanation of any proposed share adjustments; and an explanation of any changes relative to insurance such as insurance of member accounts and life savings and loan protection insurance.

(c) Summary of the direct and indirect benefits to the credit union members, as well as any disadvantages, including a clear explanation of the nature of the change in the members' ownership interest in the reserves and undivided earnings of the credit union as a result of the merger or conversion;

(d) Summary of the direct and indirect benefits to management and other key persons at the credit union and at the new institution, including a comparison of salaries for those individuals employed by both the credit union and the new institution; copies of the certifications from the directors and committee members that they will receive no compensation either directly or indirectly from the new institution for a period of two years; and disclosure of any relationship by blood or marriage, of any of the officers, directors, key personnel or principal stockholders of the proposed institution to any officials or employees of the credit union.

(e) For each director, officer, key employee and consultant of the proposed institution, state in detail the names, positions, addresses, age and description of employment and educational background. Include any petitions for bankruptcy, civil judgments (indicate the plaintiff and the amount of the judgment), criminal conviction (indicate the nature of the charge) and any administrative action taken by a federal or state agency.

(f) Description of how the proposed merger/conversion results in a new financial institution without the unique characteristics of a credit union, for example, that the board of directors (that is, any new board members, since §708a.2(c) prohibits compensation for a period of 2 years) may be compensated as officials instead of offering volunteer services, that the credit union will lose its tax exempt status, and any changes in the voting power of members.

(g) A dollar expenditure comparison chart of the estimated increases/decreases in regulatory and insurance fees;

(h) Itemized expenses incurred to date in the conversion process with an estimate as to future expenses;

(i) Management's discussion and analysis of the proposed conversion, including its economic advisability and how it will serve the needs of the members of the merging or converting credit union;

(j) Business and properties of the proposed institution—describe in detail the assets of the credit union and whether these assets will be transferred to the proposed institution and how the members will or will not benefit from the transfer;

(k) Description and comparison of the competition of the proposed institution and why the proposed institution believes it can effectively compete;

(l) In any transaction where the new or resulting institution is a stock institution, identify the principal owners of the proposed stock institution (those who will beneficially own directly or indirectly 1% or more of the common and preferred stock outstanding) starting with the largest common stockholder. Indicate by footnote if the price paid was for a consideration other than cash and the nature of any such consideration. Indicate the number of shares to be individually owned by officers, directors and key personnel of the new institution; and

(m) State in bold on the cover ''PLEASE READ THIS DISCLOSURE DOCUMENT. IT CONTAINS IMPORTANT INFORMATION ABOUT YOUR CREDIT UNION.''

(3) The Mail Ballot must:

(a) State at the top in bold letters using 12 point pitch or greater that ''THE ATTACHED DISCLOSURE STATEMENT MUST BE READ BEFORE VOTING ON THE PROPOSED (''CONVERSION'' or ''MERGER'', as appropriate)'';

(b) The issues for the member to vote on should be stated as follows:

Please vote for either (a) or (b) by checking the appropriate box.

(a) Approve the merger ☐

(b) Disapprove the merger ☐

(c) Advise the member of the right to terminate the mail ballot and attend and vote at the Special Meeting.

PART 708b—MERGERS OF FEDERALLY-INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

Sec.
708b.0 Scope.
708b.1 Definitions.

Subpart A—Mergers

708b.101 Mergers generally.
708b.102 Special provisions for Federal insurance.
708b.103 Preparation of merger plan.
708b.104 Submission of merger proposal to NCUA.
708b.105 Approval of merger proposal by NCUA.
708b.106 Approval of the merger proposal by members.
708b.107 Certificate of vote on merger proposal.

708b.108 Completion of merger.

Subpart B—Voluntary Termination or Conversion of Insured Status

708b.201 Termination of insurance.
708b.202 Notice to members of termination of insurance.
708b.203 Conversion of insurance.
708b.204 Notice to members of conversion of insurance.

Subpart C—Forms

708b.301 Termination of insurance.
708b.302 Conversion of insurance.
708b.303 Modifications to notice.

AUTHORITY: 12 U.S.C. 1766, 1785, 1786, 1789.

SOURCE: 52 FR 12374, Apr. 16, 1987. Redesignated at 59 FR 48792, Sept. 23, 1994, unless otherwise noted.

§708b.0 Scope.

(a) Subpart A of this part prescribes the procedures for merging one or more credit unions with a continuing credit union where at least one of the credit unions is federally insured.

(b) Subpart B of this part prescribes the procedures and notice requirements for termination of Federal insurance or conversion of Federal insurance to nonfederal insurance, including termination or conversion resulting from a merger.

(c) Subpart C of this part sets forth the forms to be used for terminating Federal insurance or converting from Federal insurance to nonfederal insurance.

(d) Nothing in this part shall operate as a restriction or otherwise impair the authority of NCUA to approve a merger pursuant to section 205(h) of the Act.

(e) This part does not address procedures or requirements that may be applicable under state law for a state credit union.

§708b.1 Definitions.

(a) *Continuing credit union* means the credit union which will continue in operation after the merger.

(b) *Merging credit union* means the credit union which will cease to exist as an operating credit union at the time of the merger.

(c) *State credit union* means any credit union organized and operated according to the laws of any state, the several territories and possessions of the United States, or the Commonwealth of Puerto Rico. Accordingly, *state authority* means the appropriate state or territorial regulatory or supervisory authority for any such credit union.

(d) *Federally-insured* means insured by the Board through the National Credit Union Share Insurance Fund (NCUSIF).

(e) *Nonfederally-insured* means insured by a private or cooperative insurance fund or guaranty corporation organized or chartered under state law.

(f) *Uninsured* means there is no share or deposit insurance available on the credit union accounts.

(g) The terms *terminate, termination* and *terminating,* when used in reference to insurance, refer to the act of canceling Federal insurance and mean that the credit union will become uninsured.

(h) The term *convert, conversion* and *converting,* when used in reference to insurance, refer to the act of canceling Federal insurance and simultaneously obtaining share or deposit insurance from another insurance carrier. They mean that after cancellation of Federal insurance the credit union will be nonfederally insured.

Subpart A—Mergers

§708b.101 Mergers generally.

(a) In any case where a merger will result in the termination of Federal insurance or conversion to nonfederal insurance, the merging credit union must comply with the provisions of subpart B in addition to this subpart A.

(b) No federally-insured credit union shall merge with any other credit union without the prior written approval of the Board.

(c) Where the continuing credit union is a Federal credit union, there must be compliance with the chartering policies of the Board.

(d) Where the continuing or merging credit union is a state credit union, the merger must be permitted by state law or authorized by the state authority.

§708b.102 Special provisions for Federal insurance.

(a) Where the continuing credit union is federally insured, an NCUSIF deposit

and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed on the additional share accounts insured as a result of the merger of a nonfederally-insured or uninsured credit union with a federally-insured credit union.

(b) Where the continuing credit union is nonfederally insured or uninsured but desires to be federally insured as of the date of the merger, an application shall be submitted to the appropriate Regional Director when the merging credit union requests approval of the merger proposal. An NCUSIF deposit and a prorated insurance premium (unless waived in whole or in part for all insured credit unions during that year) will be assessed on any additional share accounts insured as a result of the merger.

(c) Where the continuing credit union is nonfederally insured or uninsured and does not make application for insurance, but the merging credit union is federally insured, the continuing credit union is entitled to a refund of the merging credit union's NCUSIF deposit and to a refund of the unused portion of the NCUSIF share insurance premium (if any). If the continuing credit union is uninsured, the refund will be made only after expiration of the one-year period of continued insurance coverage noted in paragraph (e) of this section.

(d) Where the continuing credit union in nonfederally insured, NCUSIF insurance of the member accounts of a merging federally-insured credit union ceases as of the effective date of the merger. (Refer to subpart B, §§ 708b.203 and 708b.204 and subpart C, § 708b.302(b).)

(e) Where the continuing credit union is uninsured, NCUSIF insurance of the member accounts of the merging federally-insured credit union will continue for a period of one year, subject to the restrictions in section 206(d)(1) of the Act as noted in the Notice of Termination set forth in § 708b.301(b)(3). (Refer to subpart B, §§ 708b.201 and 708b.202, and subpart C, § 708b.301(b).)

[52 FR 12374, Apr. 16, 1987. Redesignated at 59 FR 48792, Sept. 23, 1994 and amended at 59 FR 67620, Dec. 30, 1994]

§ 708b.103 Preparation of merger plan.

(a) Upon the approval of a proposition for merger by the boards of directors of the credit unions, a plan for the proposed merger shall be prepared. The plan shall include:

(1) Current financial reports;

(2) Current delinquent loan schedules annotated to reflect collection problems;

(3) Combined financial report;

(4) Analyses of share values;

(5) Explanation of any proposed share adjustments;

(6) Explanation of any provisions for reserves, undivided earnings or dividends;

(7) Provisions with respect to notification and payment of creditors;

(8) Explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts;

(9) Provisions for determining that all assets and liabilities of the continuing credit union will conform with the requirements of the Act (where the continuing credit union is a Federal credit union); and

(10) Proposed charter amendments (where the continuing credit union is a Federal credit union). These amendments, if any, will usually pertain to the name of the credit union and the definition of its field of membership.

§ 708b.104 Submission of merger proposal to NCUA.

(a) Upon approval of the merger plan by the boards of directors of the credit unions, the following information will be submitted to the Regional Director:

(1) The merger plan, as described in this part;

(2) Resolutions of the boards of directors;

(3) Proposed Merger Agreement;

(4) Proposed Notice of Special Meeting of the Members (for merging Federal credit unions);

(5) Copy of the form of Ballot to be sent to the members (for merging Federal credit unions);

(6) Evidence that the state's supervisory authority is in agreement with the merger proposal (for states which require such agreement prior to NCUA approval); and

(7) Application and Agreement for Insurance of Member Accounts (for continuing state credit unions desiring to become federally insured).

§708b.105 Approval of merger proposal by NCUA.

(a) In any case where the continuing credit union is federally insured, and the merging credit union is nonfederally insured or uninsured, a determination shall be made by NCUA as to the potential risk to the National Credit Union Share Insurance Fund (NCUSIF).

(b) If NCUA finds that the merger proposal complies with the provisions of this part and does not present an undue risk to the NCUSIF, it may approve the proposal subject to such other specific requirements as may be prescribed to fulfill the intended purposes of the proposed merger. In the event NCUA determines that the merging credit union, if it is a Federal credit union, is in danger of insolvency, and that the proposed merger would reduce the risk or avoid a threatened loss to the National Credit Union Share Insurance Fund, NCUA may permit the merger to become effective without an affirmative vote of the membership of the merging Federal credit union, notwithstanding the provisions of §708b.106; *Provided,* That the continuing credit union is federally insured.

(c) Any proposed charter amendments for a continuing Federal credit union will be approved contingent upon the completion of the merger.

[52 FR 12374, Apr. 16, 1987. Redesignated at 59 FR 48792, Sept. 23, 1994 and amended at 59 FR 67620, Dec. 30, 1994]

§708b.106 Approval of the merger proposal by members.

(a) When the merging credit union is a Federal credit union, the members shall:

(1) Have the right to vote on the merger proposal in person at the annual meeting, if within 60 days after NCUA approval, or at a special meeting to be called within 60 days of such approval, or by mail ballot, received no later than the date and time announced for the annual meeting or the special meeting called for that purpose.

(2) Be given advance notice of the meeting at which the merger proposal is to be submitted, in accordance with the provisions of article V, Meetings of Members, Federal Credit Union Bylaws. The notice shall:

(i) Specify the purpose of the meeting and the time and place;

(ii) Include a summary of the merger plan, which shall contain, but not necessarily be limited to, current financial reports for each credit union, a combined financial report for the continuing credit union, analyses of share values, explanation of any proposed share adjustments, explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts (refer to subpart B, §§708b.202 and 708b.204);

(iii) State reasons for the proposed merger;

(iv) Provide name and location (to include branches) of the continuing credit union;

(v) Inform the members that they have the right to vote on the merger proposal in person at the meeting or by written ballot to be received no later than the date and time announced for the annual meeting or the special meeting called for that purpose; and

(vi) Be accompanied by a Ballot for Merger Proposal.

(b) The proposal to merge a Federal credit union into a federally-insured credit union must be approved by an affirmative vote of a majority of the members of the merging credit union who vote on the proposal. If the continuing credit union is uninsured, the voting requirements of §708b.201(c) apply; if it is nonfederally insured, the voting requirements of §708b.203(c) apply.

[52 FR 12374, Apr. 16, 1987. Redesignated at 59 FR 48792, Sept. 23, 1994 and amended at 59 FR 67620, Dec. 30, 1994]

§708b.107 Certificate of vote on merger proposal.

The board of directors of the merging Federal credit union shall certify the results of the membership vote to the Regional Director within 10 days after the vote is taken.

§ 708b.108 Completion of merger.

(a) Upon approval of the merger proposal by NCUA and by the state supervisory authority (where the continuing or merging credit union is a state credit union) and by the members of each credit union where required, action may be taken to complete the merger.

(b) Upon completion of the merger, the board of directors of the continuing credit union shall certify the completion of the merger to the Regional Director within 30 days after the effective date of the merger.

(c) Upon NCUA's receipt of certification that the merger has been completed, then the charter of the merging Federal credit union (if applicable) and the insurance certificate of any merging federally-insured credit union will be canceled.

Subpart B—Voluntary Termination or Conversion of Insured Status

§ 708b.201 Termination of insurance.

(a) A state credit union may terminate Federal insurance, if permitted by state law, either on its own or by merging into an uninsured credit union.

(b) A Federal credit union may terminate Federal insurance only by merging into, or converting its charter to, an uninsured state credit union.

(c) Termination of insurance must be approved by the affirmative vote of a majority of the credit union's members. The credit union must notify the Board, through the Regional Director, in writing at least 90 days prior to termination and the membership vote must have been obtained within one year prior to giving the Board notice.

(d) No federally-insured credit union shall terminate Federal insurance without the prior written approval of the Board. The Board will approve or disapprove the termination in writing within 90 days after being notified by the credit union.

§ 708b.202 Notice to members of termination of insurance.

(a) When a federally-insured credit union proposes to terminate Federal insurance, including termination due to a merger or conversion of charter, it shall provide its members with written notice of the proposal to terminate and of the date set for the membership vote. The Notice of Proposal shall be as set forth in either § 708b.301 (a)(1) or (b)(1), or as provided in § 708b.301(c), as the circumstances warrant.

(b) The notice shall be delivered in person to each member, or mailed to each member at the address for such member as it appears on the records of the credit union, not more than 30 nor less than 7 days prior to the date of the vote. The membership shall be given the opportunity to vote by mail ballot. The ballot to be used shall be as set forth in either § 708b.301 (a)(2) or (b)(2), as the circumstances warrant. The notice of the proposal and the ballot may be provided to members at the same time.

(c) If the proposition for termination of insurance is approved by the membership and the Board, prompt and reasonable notice of termination shall be given to all members in the form set forth in either § 708b.301(a)(3) or (b)(3), as the circumstances warrant.

[52 FR 12374, Apr. 16, 1987. Redesignated at 59 FR 48792, Sept. 23, 1994 and amended at 59 FR 67620, Dec. 30, 1994]

§ 708b.203 Conversion of insurance.

(a) A federally-insured state credit union may convert to nonfederal insurance, if permitted by state law, either on its own or by merging into a nonfederally-insured credit union.

(b) A Federal credit union may convert to nonfederal insurance only by merging into, or converting its charter to, a nonfederally-insured state credit union.

(c) Conversion of Federal to nonfederal insurance must be approved by an affirmative vote of a majority of the credit union's members who vote on the proposition, provided at least 20 percent of the total membership participates in the voting. The credit union must notify the Board, through the Regional Director, in writing at least 90 days prior to conversion. Notice to the Board may be given when membership approval is solicited or after membership approval is obtained.

(d) No federally-insured credit union shall convert to nonfederal insurance without the prior written approval of the Board. The Board will approve or

disapprove the conversion in writing within 90 days after being notified by the credit union.

§708b.204 Notice to members of conversion of insurance.

(a) When a federally-insured credit union proposes to convert to non-federal insurance, including conversion due to a merger or conversion of charter, it shall provide its members with written notice of the proposal to convert and of the date set for the membership vote. Notice of the proposal shall be as set forth in either §708b.302(a)(1) or (b)(1), or as provided in §708b.302(c), as the circumstances warrant.

(b) The notice shall be delivered in person to each member, or mailed to each member at the address for such member as it appears on the records of the credit union, not more than 30 nor less than 7 days prior to the date for the vote. The membership shall be given the opportunity to vote by mail ballot. The ballot to be used for the membership vote shall be as set forth in either §708b.302(a)(2) or (b)(2), as the circumstances warrant. The notice of the proposal and the ballot may be provided to the members at the same time.

(c) If the proposition for conversion of insurance is approved by the membership and the Board, prompt and reasonable notice shall be given to all members in the form set forth in either §708b.302(a)(3) or (b)(3), as the circumstances warrant.

[52 FR 12374, Apr. 16, 1987. Redesignated at 59 FR 48792, Sept. 23, 1994 and amended at 59 FR 67620, Dec. 30, 1994]

Subpart C—Forms

§708b.301 Termination of insurance.

(a) A federally-insured state credit union shall use the following language for purposes of terminating Federal insurance:

(1) *Notice of Proposal to Terminate Federal Insurance*

(Date) _____

The Board of Directors of _____ Credit Union has approved a proposition to terminate Federal share (deposit) insurance, ($100,000, provided by the National Credit Union Administration (NCUA), an agency of the Federal Government). Termination of Federal insurance may only take place upon approval by a majority of our members. The membership vote will be taken on (date). (Add directions regarding membership meeting and/or mail ballot.)

If approved, any deposits made by you after the date of termination, either new deposits or additions to existing accounts, will not be insured by the NCUA.

Accounts in the Credit Union on the day of termination, up to a maximum of $100,000 for each member, will continue to be insured, as provided in the Federal Credit Union Act, for one (1) year after the close of business on the day of termination, but any withdrawals after the close of business on that date will reduce the insurance coverage by the amount of the withdrawal.

(2) The ballot for obtaining membership approval to terminate Federal insurance shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that if termination of Federal insurance is approved, any new deposits or additions to existing accounts made by me will not be insured by the National Credit Union Administration, an agency of the Federal Government. I also understand that my accounts in the Credit Union on the date of termination, up to a maximum of $100,000, will continue to be insured for one (1) year after the date of termination, but that any withdrawals after the date of termination will reduce the insurance coverage by the amount of the withdrawal.

[ ] Approve termination of insurance.

[ ] Do not approve termination of insurance.

Signed _____

Member's Name

Date _____

(3) *Notice of Termination*

(Date) _____

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Unions Act will terminate as of the close of business on the _____ day of _____ .

2. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration.

3. Accounts in the Credit Union on the _____ day of _____, up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after the close of business on the _____ day of _____; Provided, however, that any

withdrawals after the close of business on the _____ day of _____, _____, will reduce the insurance coverage by the amount of such withdrawals.
(Name of Credit Union)
(Address)

(b) A federally-insured credit union that is merging with an uninsured credit union shall use the following language for purposes of terminating Federal insurance:

(1) *Notice of Proposal to Merge and Terminate Federal Insurance*

The Board of Directors of (merging) Credit Union has approved a proposition to merge the Credit Union into the (continuing) Credit Union. The merger must be approved by a majority of the members of (merging) Credit Union. The membership vote will be taken on (date). (Add directions regarding membership meeting and/or mail ballot.)

If the membership approves the merger, the share (deposit) insurance you now have (up to $100,000 provided by the National Credit Union Administration, (NCUA), an agency of the Federal Government) will be affected as follows:

Any deposits made by you after the effective date of the merger, either new deposits or additions to existing accounts, will not be insured by the NCUA. Accounts in the (merging) Credit Union on the date of the merger, up to a maximum of $100,000 for each member, will continue to be insured, as provided in the Federal Credit Union Act, for one (1) year after the close of business on the date of the merger, but any withdrawals after the close of business on that date will reduce the insurance coverage by the amount of the withdrawal.

(2) The language for the ballot set forth in paragraph (a)(2) of this section, modified by substituting ''the merger and termination'' in lieu of ''termination'' each time it appears on the ballot, shall be used for obtaining membership approval to merge and terminate Federal insurance.

(3) *Notice of Merger and Termination of Federal Insurance*

1. The merger of the (merging) Credit Union into the (continuing) Credit Union has been approved, effective (date).

2. The status of the (merging) Credit Union as an insured credit union under the provisions of the Federal Credit Union Act will terminate as of the close of business on the ___ day of _____ (day preceding merger date).

3. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration.

4. Accounts in the Credit Union on the _____ day of _____, (day preceding merger date), up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after close of business on the _____ day of _____ (day preceding merger date); Provided, however, that any withdrawals after the close of business on the _____ day of _____, _____ (day preceding merger date), will reduce the insurance coverage by the amount of such withdrawals.
(Name of Credit Union)
(Address)

(c) A Federal credit union that is converting its charter to that of an insured state credit union shall use the language contained in paragraph (a) of this section, but shall modify the language in paragraph (a)(1) of this section to indicate that it is converting its charter and terminating Federal insurance.

[52 FR 12374, Apr. 16, 1987, as amended at 54 FR 43280, Oct. 24, 1989]

§ 708b.302 Conversion of insurance.

(a) A federally-insured state credit union shall use the following language for purposes of converting from Federal insurance to nonfederal insurance:

(1) *Notice of Proposal to Convert to Nonfederally-Insured Status*

The Board of Directors of _____ Credit Union has approved a proposition to convert from Federal share (deposit) insurance to nonfederal insurance. The conversion must be approved by a majority of the members who vote on the proposal and at least 20% of the entire membership must participate in the vote. The membership vote will be taken on (date). (Add directions regarding membership meeting and/or mail ballot.)

If the membership approves the conversion, the share (deposit) insurance you now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate on the effective date of the conversion. Shares (deposit) in the _____ Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(2) The ballot to obtain membership approval of the conversion shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that, if the conversion of insurance is approved, the share (deposit) insurance that I now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate upon the effective date of the conversion and my shares will be insured up to $_____ by _____, a corporation chartered by the State of _____.

[ ] Approve conversion of insurance.

[ ] Do not approve conversion of insurance.

Signed _____
Member's Name
Date _____

(3) *Notice of Conversion*

(Date) _____

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Union Act will cease as of the close of business on the _____day of _____, _____.

2. As of that date, your deposits will no longer be insured by the National Credit Union Share Insurance Fund.

3. Accounts in the credit union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(Name of Credit Union)
(Address)

(b) A federally-insured credit union that is merging with a nonfederally-insured credit union shall use the following language for purposes of converting from Federal to nonfederal insurance:

(1) *Notice of Proposal to Merge and Convert to Nonfederally-Insured Status*

The Board of Directors of (merging) Credit Union has approved a proposition to merge the Credit Union into (continuing) Credit Union. The merger must be approved by a majority of the members of (merging) Credit Union who vote on the proposal and at least 20% of the entire membership must participate in the vote. The membership vote will be taken on (date) (Add directions regarding membership meeting and/or mail ballot.)

If the membership approves the merger, the share (deposit) insurance you now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate on the effective date of the merger. Shares (deposit) in the (continuing) Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(2) The ballot to obtain membership approval shall contain the following language:

This ballot must be received by the Credit Union by (date for vote).

I understand that if the merger of the (merging) Credit Union into the (continuing) Credit Union is approved, the share (deposit) insurance that I now have (up to $100,000 provided by the National Credit Union Administration, an agency of the Federal Government) will terminate upon the effective date of the merger and my shares in the (continuing) Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

[ ] Approve merger and conversion of insurance.

[ ] Do not approve merger and conversion of insurance.

Signed _____
Member's Name
Date _____

(3) *Notice of Merger and Conversion of Insured Status*

(Date) _____

1. The merger of the (merging) Credit Union into the (continuing) Credit Union has been approved, effective (date).

2. As of that date, your shares (deposit) are no longer insured by the National Credit Union Administration.

3. Accounts in the (continuing) Credit Union will be insured up to $_____ by _____, a corporation chartered by the State of _____.

(Name of Credit Union)
(Address)

(c) A Federal credit union that is converting its charter to that of a nonfederally-insured credit union shall use the language contained in paragraph (a) of this section, but shall modify the language in paragraph (a)(1) of this section to indicate that it is converting its charter and converting from Federal insurance.

[52 FR 12374, Apr. 16, 1987, as amended at 54 FR 43280, Oct. 24, 1989]

§708b.303 Modifications to notice.

(a) Any modifications or additions to the notices or ballot concerning insurance coverage, and any additional communications concerning insurance coverage included with the notices or ballot, may be made with the approval of the Regional Director and, in the case of a state credit union, the appropriate state authority. Approval of such modifications, additions or additional communications will not be withheld unless it is determined that the credit

union, by inclusion or omission of information, would materially mislead or misinform its membership.

(b) Federally-insured state credit unions may include additional language in the notice and ballot regarding state requirements for mergers, where appropriate.

[52 FR 12374, Apr. 16, 1987, as amended at 54 FR 43280, Oct. 24, 1989]

PART 709—INVOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS AND ADJUDICATION OF CREDITOR CLAIMS INVOLVING FEDERALLY INSURED CREDIT UNIONS IN LIQUIDATION

Sec.

709.0 Scope.
709.1 Definitions.
709.2 NCUA Board as liquidating agent.
709.3 Challenge to revocation of charter and involuntary liquidation.
709.4 Powers and duties of liquidating agent.
709.5 Payout priorities in involuntary liquidation.
709.6 Initial determination of creditor claims by the liquidating agent.
709.7 Procedures for appeal of initial determination.
709.8 Administrative appeal of the initial determination.
709.9 Expedited determination of creditor claims.

AUTHORITY: 12 U.S.C. 1766; Pub. L. 101–73, 103 Stat. 183, 530 (1989) (12 U.S.C. 1787 *et seq.*).

SOURCE: 56 FR 56925, Nov. 7, 1991, unless otherwise noted.

§ 709.0 Scope.

The rules and procedures set forth in this part apply to charter revocations of Federal credit unions pursuant to 12 U.S.C. 1787(a)(1) (A), (B) and the involuntary liquidation and adjudication of creditor claims in all cases involving federally insured credit unions. Section 709.3 applies only to Federal credit unions. Remaining sections of this part are applicable to all federally insured credit unions. This part does not apply to share insurance claims arising out of the liquidation of a federally insured credit union. Insurance claims are decided pursuant to part 745 of this chapter.

§ 709.1 Definitions.

For the purposes of this part, the following definitions apply:

(a) *General Counsel* means the General Counsel of the National Credit Union Administration or any attorney assigned to the General Counsel's staff.

(b) *Liquidating Agent* means the NCUA Board or person(s) appointed by it with delegated authority to carry out the liquidation of the credit union.

(c) *Insolvent* means insolvency as that term is defined in § 700.1(j) of this chapter.

(d) *Claim* means a creditor's claim against the credit union in liquidation. This term does not include insurance claims arising out of the liquidation of a federally insured credit union. Insurance claims are decided pursuant to part 745 of this chapter.

(e) *Shareholder* means members, nonmembers, accountholders or any other party or entity that is the owner of a share, share certificate or share draft account or the equivalent of such accounts under state law.

§ 709.2 NCUA Board as liquidating agent.

(a) The Board, as liquidating agent, by operation of law and without any conveyance or other instrument, act or deed, shall succeed to all the rights, titles, powers, and privileges of the credit union, and of its shareholders, officers, and directors, with respect to the credit union and its assets, and such shareholders, officers, or directors, shall not thereafter have or exercise any such rights, powers, or privileges or act in connection with any assets or property of any nature of the credit union.

(b) The Board, as liquidating agent, shall take possession of and title to books, records, and assets of every description of such credit union to which such credit union has rights of possession and title to all offices and other facilities of such credit union.

§ 709.3 Challenge to revocation of charter and involuntary liquidation.

If a Federal credit union is determined to be insolvent and placed into liquidation pursuant to 12 U.S.C. 1787, the Federal credit union may, not later

than 10 days after the date on which the Board closes the credit union for liquidation, apply to the United States District Court for the Judicial district in which the principal office of the credit union is located or the United States District Court for the District of Columbia for an order requiring the Board to show cause why it should not be prohibited from continuing such liquidation. Notwithstanding other provisions of this part, the board of directors of the credit union may meet following the placing of the institution into liquidation for the sole purpose of considering and authorizing the filing of this action in the name of the credit union. No such action in the name of the credit union may be instituted without the authorization of the board of directors of the institution pursuant to a valid board of directors resolution. No credit union funds shall be available to pay expenses incurred in bringing a legal action to challenge the Board's liquidation action.

§709.4 Powers and duties of liquidating agent.

(a) *Inventory of assets.* As soon as practicable after taking possession, the liquidating agent shall inventory the assets of such credit union as of the date of taking possession, showing the value as carried on the books of the credit union, and the security therefor, if any, a brief description of the assets and any security, and a record of the credit union's creditor and accounts liabilities.

(b) *Notice to creditors.* The liquidating agent shall promptly publish a notice to the credit union's creditors to present their claims, together with proof, to the liquidating agent by a date specified in the notice. This date shall be not less than 90 days after the publication of the notice. The liquidating agent shall republish such notice approximately one and two months, respectively, after the initial publication. At the time of initial publication, the liquidating agent shall mail a notice similar to the published notice to any creditor shown on the credit union's books at the last address appearing therein. If the liquidating agent discovers the name of a creditor whose name does not appear on the credit union's books, a notice similar to the published notice shall be mailed to such creditor within 30 days after the discovery of the name and address.

(c) *General.* The liquidating agent shall collect all obligations and money due such credit union and may, to the extent consistent with its appointment, do all things desirable or expedient in its discretion to wind up the affairs of the credit union including, but not limited to, the following:

(1) Exercise all rights and powers of the credit union including, but not limited to, any rights and powers under any mortgage, deed of trust, chose in action, option, collateral note, contract, judgment or decree, or instrument of any nature;

(2) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any and all actions, suits, or other legal proceedings by and against the liquidating agent or the credit union or in which the liquidating agent, the credit union, or its creditors or shareholders, or any of them, shall have an interest, and in every way to represent the credit union, its shareholders and creditors, subject to the direction of General Counsel;

(3) Employ on a salary or fee basis such persons as in the judgment of the liquidating agent are necessary or desirable to carry out its responsibilities and functions, including, but not limited to, appraisers and Certified Public Accountants, and pay the costs out of the assets of the liquidated credit union;

(4) Employ or retain any attorney or attorneys designated by, or acceptable to, the General Counsel in connection with litigation or for legal advice and assistance, for the liquidation generally or in particular instances, and pay compensation and retainers of such attorney or attorneys, together with all expenses, including, but not limited to, the costs and expenses of any litigation, as approved by the General Counsel, out of the assets of the liquidated credit union;

(5) Execute, acknowledge, and deliver any and all deeds, contracts, leases, assignments, bills of sale, releases, extensions, satisfactions, and other instruments necessary or proper for any purposes, including, but not limited to,

the effectuation, termination, or transfer of real, personal or mixed property, or that shall be necessary or proper to liquidate the credit union, and any deed or other instrument executed pursuant to the authority hereby given shall be as valid and effective for all purposes as if the same had been executed as the act and deed of the credit union;

(6) With concurrence of General Counsel, disaffirm or repudiate any contract or lease to which the credit union is a party, the performance of which the liquidating agent, in his sole discretion, determines to be burdensome, and which disaffirmance or repudiation in the liquidating agent's sole discretion will promote the orderly administration of the credit union's affairs;

(7) Deposit, withdraw, or transfer funds, and otherwise exercise complete control over all investment or depository accounts maintained by or for the credit union at financial dispository or similar institutions;

(8) Do such things, and have such rights, powers, privileges, immunities, and duties, whether or not otherwise granted in this part 709, as shall be authorized, directed, conferred, or imposed from time to time by the Board, or as shall be conferred by the Federal Credit Union Act;

(9) Exercise such other authority as is conferred by the Federal Credit Union Act; and

(10) Where acting as liquidating agent for a state-chartered federally insured credit union, exercise all the rights, powers, and privileges granted by state law to such a liquidating agent.

(d) *Expenditure of funds of the liquidation.* The liquidating agent shall have power to:

(1) Pay all costs and expenses of the liquidation as determined by the liquidating agent;

(2) Pay off and discharge taxes and liens;

(3) Pay out and expend such sums as are deemed necessary or advisable for or in connection with the preservation, maintenance, conservation, protection, remodeling, repair, rehabilitation, or improvement of any asset or property of any nature of the credit union or the liquidating agent;

(4) Pay off and discharge any assessments, liens, claims, or charges of any kind against any asset or property of any nature on which the credit union or the liquidating agent has a lien by way of mortgage, deed of trust, pledge, or otherwise, or in which the credit union or liquidating agent has any interest;

(5) Settle, compromise, or obtain the release of, for cash or other consideration, claims and demands against the credit union or the liquidating agent; and

(6) Indemnify its employees and agents from the assets of the credit union against liabilities incurred in the good faith performance of their duties.

(e) *Assets, claims, and contracts.* The liquidating agent shall have power to:

(1) Sell for cash or on terms, exchange, assign, or otherwise dispose of, in whole or in part, any or all of the assets and property of the credit union, real, personal and mixed, tangible and intangible, of any nature, including any mortgage, deed of trust, chose in action, bond, note, contract, judgment, or decree, share or certificate of share of stock or debt, owing to the credit union or the liquidating agent; and

(2) Surrender, abandon, and release any chose in action, or other assets or property of any nature, whether the subject of pending litigation or not, and settle, compromise, modify, or release, for cash or other consideration, claims and demands in favor of the credit union or the liquidating agent.

§ 709.5 Payout priorities in involuntary liquidation.

(a) Claimants whose claims are secured shall receive their security. To the extent their respective claims exceed the value of the security for those claims, as determined to the satisfaction of the liquidating agent, they shall each have an unsecured claim against the credit union having priority as provided in paragraph (b) of this section.

(b) Unsecured claims against the liquidation estate that are proved to the satisfaction of the liquidating agent shall have priority in the following order:

(1) Administrative costs and expenses of liquidation;

(2) Claims for wages and salaries, including vacation, severance, and sick leave pay;

(3) Taxes legally due and owing to the United States or any state or subdivision thereof;

(4) Debts due and owing the United States, including the National Credit Union Administration;

(5) General creditors, and secured creditors (to the extent that their respective claims exceed the value of the security for those claims);

(6) Shareholders to the extent of their respective uninsured shares and the National Credit Union Share Insurance Fund to the extent of its payment of share insurance;

(7) In a case involving liquidation of a corporate credit union, membership capital share deposits of corporate credit unions; and

(8) In a case involving liquidation of a low-income designated credit union, any outstanding secondary capital accounts issued pursuant to the authority of §§701.34 or 741.204(c) of this chapter.

(c) Priorities are to be based on the circumstances that exist on the date of liquidation.

(d) If the repudiation or disaffirmance of any contract or lease gives rise to a claim for damages, such claim shall be considered a general creditor claim under paragraph (b)(5) of this section and not a cost or expense of liquidation under paragraph (b)(1) of this section.

(e) All unsecured claims of any category or class or priority described in paragraphs (b)(1) through (b)(7) of this section shall be paid in full, or provisions made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a category or class, payment shall be made pro rata. Notwithstanding anything to the contrary herein, the liquidating agent may, at any time, and from time to time, prior to the payment in full of all claims of a category or class with higher priority, make such distributions to claimants in priority categories described in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) of this section as the liquidating agent believes are reasonably necessary to conduct the liquidation, provided that the liquidating agent determines that adequate funds exist or will be recovered during the liquidation to pay in full all claims of any higher priority. If a surplus remains after making distribution in full on all allowed claims described in paragraphs (b)(1) through (b)(8) of this section, such surplus shall be distributed pro rata to the credit union's shareholders.

[56 FR 56825, Nov. 7, 1991, as amended at 61 FR 3791, Feb. 2, 1996]

§709.6 Initial determination of creditor claims by the liquidating agent.

(a)(1) Any party wishing to submit a claim against the liquidated credit union must submit a written proof of claim in accordance with the requirements set forth in the notice to creditors. A failure to submit a written claim within the time provided in the notice to creditors shall be deemed a waiver of said claim and claimant shall have no further rights or remedies with respect to such claim.

(2) Notwithstanding paragraph (a)(1) of this section, the liquidating agent may, at his discretion, consider an untimely claim provide the following two criteria are present:

(i) The claimant did not receive notice of the appointment of the liquidating agent in time to file a claim before the date provided for in the notice; and

(ii) The claim is filed in time to permit payment of the claim.

(b) The liquidating agent may require submission of supplemental evidence by the claimant and by interested parties in the event of a dispute concerning a claim against any asset of the liquidated credit union. In requiring the submission of supplemental evidence, the liquidating agent may set such limitations of time, scope, and size as the liquidating agent deems reasonable in the circumstances, and may refuse to include in the record submissions or portions of submissions not in compliance with such limitations or requirements. The liquidating agent shall compile such written record of a claim or dispute as, in its discretion, is deemed sufficient to provide a reasonable basis for allowing or disallowing a

claim or resolving a dispute. This written record shall be considered the administrative record.

(c) The liquidating agent shall determine whether to allow or disallow a claim and shall notify the claimant within 180 days from the date a claim against a credit union is filed pursuant to paragraph (a)(1) of the section. This 180-day period may be extended by written agreement between the claimant and the liquidating agent. Failure by the liquidating agent to determine a claim and notify the claimant within the 180-day period or, if the period is extended, within the extended period, shall be deemed a denial of the claim.

(d) If a claim or any portion thereof is disallowed, the notice to the claimant shall contain a statement of the reasons for the disallowance and an explanation of appeal rights pursuant to § 709.7 of this part.

(e) Notice of any determination with respect to a claim shall be sufficient if mailed to the most recent address of the claimant which appears:

(1) On the credit union's books;

(2) In the claim filed by the claimant; or

(3) In the documents submitted in the proof of claim.

(f) In the event the liquidating agent disallows all or part of a claim, the liquidating agent shall file with the Board, or its designated agent, a report of its determination. This report shall become part of the record and shall include the notice to the claimant and findings on all issues raised and decided by the liquidating agent.

§ 709.7 Procedures for appeal of initial determination.

In order to appeal all or part of an initial decision which disallows a claim, in whole or in part, a claimant must, within 60 days of the mailing of the initial determination, file an administrative appeal pursuant to § 709.8 of this part, or file suit against the liquidated credit union in the United States District Court for the District of Columbia or in the United States district court having jurisdiction over the place where the credit union's principal place of business is located, or continue an action commenced before the appointment of the liquidating agent. If the claimant does not appeal or file or continue a suit, any disallowance shall be final and the claimant shall have no further rights or remedies with respect to such claim.

§ 709.8 Administrative appeal of the initial determination.

(a) *General.* A claimant requesting an administrative appeal may request review pursuant to any of the procedures listed in paragraph (b) or (c) of this section. Any appeal of the initial determination must be in writing and must specify what type of appeal the claimant requests. The determination of whether to agree to a request for administrative appeal shall rest solely with the Board, which shall notify the claimant of its decision in writing. The 60 day period for filing a lawsuit in United States district court, provided for in § 709.7 of this part, shall be tolled from the date of claimant's request for an administrative appeal to the date of the Board's decision regarding that request.

(b) *Hearing on the record.* Except as provided herein, any hearing requested pursuant to this section shall be conducted in accordance with the provisions of subpart A, part 747, of this chapter. The Board shall render a final decision with respect to such claim after consideration of the hearing record and recommended decision. The Board's determination shall be subject to judicial review under chapter 7 of title 5, United States Code. Any claimant seeking judicial review of the Board's final decision under this paragraph must file a petition in the court of appeals for the circuit in which the principal office of the credit union is located, or in the United States Court of Appeals for the District of Columbia Circuit, within 30 days of the date of the Board's final decision. If a claimant does not file a petition before the end of the 30-day period, the Board's decision shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(1) *Burden of proof.* In any hearing on the record, the burden of proof to establish entitlement to any modification of the initial determination shall rest solely upon the claimant.

(2) *Order of procedure.* In any hearing on the record, at the time for opening arguments, counsel for the claimant shall argue first, and at the time for closing arguments, counsel for the claimant shall argue last.

(c) *Alternative dispute resolution.* Paragraphs (c) (1) and (2) of this section list alternatives for dispute resolution which may be available at the discretion of the Board. From time to time, the NCUA Board may authorize additional alternative dispute resolution processes.

(1) *Appeal to the Board.* Pursuant to this paragraph (c)(1), the claimant may file an appeal with the NCUA Board within the time provided for in § 709.7. The appeal must be in writing and filed with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. There shall be no personal appearance before the Board in connection with an appeal under this paragraph (c)(1).

(i) *Content of appeal.* Any appeal must include:

(A) A statement of the facts on which the appeal is based;

(B) A statement of the basis for the initial determination to which the claimant objects and the alleged error in such determination, including citations to applicable statutes and regulations;

(C) Any other evidence relied upon by the claimant which was not previously provided to the liquidating agent.

(ii) *Procedures for review of the appeal.* (A) Within 60 days of the date of the Board's receipt of an appeal, pursuant to paragraph (c)(1) of this section, the Board may request in writing that the claimant submit supplemental evidence in support of its appeal. If additional evidence is requested, the claimant shall have 45 days from the date of issuance of such request to provide such additional information. Failure by the claimant to provide such additional information may, as determined solely by the Board, result in denial of the claimant's appeal.

(B) Within 60 days from the date of the Board's receipt of an appeal, pursuant to paragraph (c)(1) of this section, the claimant may amend or supplement the appeal in writing. In the event the claimant does amend or supplement the appeal, the provisions of paragraph (c)(1)(ii)(A) of this section, with respect to requests for additional information and responses to such requests, shall apply with equal force to any such amendment or supplement to an appeal.

(iii) *Determination on appeal.* (A) Within 180 days from the date of receipt of an appeal by the Board, the Board shall issue a decision allowing or disallowing claimant's appeal.

(B) The decision by the Board on appeal shall be provided to the claimant in writing, stating the reasons for the decision, and shall constitute a final agency decision regarding the claimant's claim.

(C) Failure by the Board to issue a decision on appeal of the claimant's claim within the 180-day period provided for under paragraph (c)(1)(iii)(A) of this section shall be deemed to be a denial of such appeal for the purposes of paragraph (c)(1)(iv) of this section.

(iv) *Judicial review.* (A) For the purposes of seeking judicial review of actions taken pursuant to paragraph (c)(1) of this section, only a determination on appeal issued by the NCUA Board pursuant to this section shall constitute a final determination regarding a claim.

(B) A final determination by the Board is reviewable in accordance with the provisions of chapter 7, title 5, United States Code, by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit where the credit union's principal place of business is located. Any request for judicial review under this paragraph must be filed within 60 days of the date of the Board's final decision. If any claimant fails to file before the end of the 60-day period, the Board's decision shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(2) The following additional procedures for dispute resolution may be made available at the sole discretion of the Board: mediation; nonbinding arbitration; and neutral fact finding.

[56 FR 56925, Nov. 7, 1991, as amended at 59 FR 36041, July 15, 1994]

§ 709.9 Expedited determination of creditor claims.

(a) *General.* The provisions of this section establish procedures under which claimants may request expedited relief in lieu of the procedures set forth in § 709.6 of this part. A claimant shall be entitled to expedited determination of a claim only upon a showing that there exists a legally valid and enforceable or perfected security interest in assets of the liquidated credit union and that irreparable injury will occur if the routine claims procedure is followed.

(b) *Filing of request for expedited relief.* All requests for expedited relief must be filed within 30 days from the date of mailing, by the liquidating agent, of the notice to the creditor concerned. The request shall be deemed to be filed when received by the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. A copy of the request must be simultaneously served upon the liquidating agent for the credit union concerned. There shall be no right of personal appearance before the Board in connection with any claim submitted under this paragraph.

(c) *Content of request for expedited relief.* Any Request for Expedited Relief must contain the following:

(1) A clear and concise statement of the facts and issues on which the request is based;

(2) A clear and concise statement describing the nature of any security interests in any assets of the credit union;

(3) A clear and concise statement of the probable, imminent and irreparable harm likely to occur if expedited relief is not granted;

(4) An assessment of the likelihood of success on the merits of the underlying claim, including statutory citations and relevant documentation supporting the merits of the claim;

(5) Any other relevant documentation that supports the request;

(6) Citations to applicable statutes, regulations, or other legal authority; and

(7) A signed statement certifying that a copy of the request has been mailed or hand delivered to the liquidating agent on or before the day that the request was filed with the Board.

(d) *Burden of proof.* The burden of proving entitlement to expedited relief rests at all times with the requester.

(e) *Additional information.* The Board may order the filing of additional information and or documentation in order to make its determination. Such filing shall be on a date certain, and failure to provide the additional documentation or information may constitute the sole grounds for denial of the request.

(f) *Decision.* Before the end of the 90-day period beginning on the date a request if filed, the Board shall render its decision and provide it to the requester. The Board will determine whether to grant expedited review and allow or disallow the claim or whether such claim should be resolved pursuant to the claims process described in § 709.6 of this part.

(1) *Expedited review denied.* A decision by the Board that expedited review is not appropriate shall be final and the claim shall be decided pursuant to the claims adjudication process set forth in § 709.6 of this part.

(2) *Expedited review granted.* If expedited review is granted, the Board shall decide the claim. If the claim is disallowed, in whole or part, the decision shall contain a statement of each reason for the disallowance and the procedure for obtaining judicial review.

(g) *Period for filing or renewing suit.* Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the liquidating agent, seeking a determination of the claimant's rights with respect to its security interest after the earlier of:

(1) The end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(2) The date the Board denies all or part of the claim.

(h) *Statute of limitations.* If an action described in paragraph (g) of this section is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with paragraph (g) of this

section, the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim that was allowed by the Board). Such disallowance shall be final and the claimant shall have no further rights or remedies with respect to such claim.

[56 FR 56925, Nov. 7, 1991, as amended at 59 FR 36041, July 15, 1994]

PART 710—VOLUNTARY LIQUIDATION

Sec.

710.0 Scope.
710.1 Definitions.
710.2 Responsibility for conducting voluntary liquidation.
710.3 Approval of the liquidation proposal by members.
710.4 Transaction of business during liquidation.
710.5 Notice of liquidation to creditors.
710.6 Distribution of assets.
710.7 Retention of records.
710.8 Certificate of dissolution and liquidation.
710.9 Federally insured state credit unions.

AUTHORITY: 12 U.S.C. 1766(a), 1786, and 1787.

SOURCE: 58 FR 35365, July 1, 1993, unless otherwise noted.

§710.0 Scope.

This part describes the requirements that must be followed to accomplish the voluntary liquidation of a Federal credit union. Federally insured state credit unions are only subject to the notification requirement provided in §710.9; voluntary liquidation is to be accomplished in accordance with state law or procedures established by the state regulatory authority.

§710.1 Definitions.

For the purpose of this part, the following definitions apply:

(a) *Voluntary liquidation* means the dissolution of a solvent Federal credit union with the assets being sold or collected, liabilities paid, and shares distributed under the direction of the board of directors or its duly appointed liquidating agent.

(b) *Liquidation date* means the date the members vote to approve liquidation.

(c) *Liquidating agent* means the person or persons, including any legally recognized entity, appointed by the board of directors to liquidate the Federal credit union.

§710.2 Responsibility for conducting voluntary liquidation.

(a) The board of directors shall be responsible for conserving the assets, for expediting the liquidation, and for equitable distribution of the assets to the members.

(b) After voting to present the question of liquidation to the members, the board of directors may appoint a liquidating agent and delegate all or part of the board's responsibility to such agent and authorize reasonable compensation for the services provided.

(c) The board of directors shall determine that the liquidating agent and all persons who handle or have access to funds of the Federal credit union are adequately covered by surety bond and that either such coverage remains in effect, or the discovery period is extended, for at least four months after final distribution of assets.

(d) Within three days after the decision of the board of directors to submit the question of liquidation to the members, the Regional Director will be notified in writing, setting forth in detail the reasons for the proposed action. A balance sheet and income statement as of the previous month-end will be included with the notification. During the liquidation process, financial statements will be submitted to the Regional Director as requested.

(e) Promptly after the decision to present the question of liquidation to the members, the board of directors or liquidating agency shall develop a written plan for the liquidation of the assets and payment of shares (liquidation plan). The plan should provide for the liquidation of assets and payment of creditors and shareholders within one year of the liquidation date. If the liquidation period is projected to exceed one year, an explanation must be provided in the liquidation plan. A copy of the liquidation plan will be mailed to the Regional Director within 30 days of the date the board of directors votes to present the question of liquidation to the members.

§ 710.3 Approval of the liquidation proposal by members.

(a) When the board of directors decides to present the question of liquidation to the members, it shall act promptly to obtain the members' approval. The members shall be given advance notice of the membership meeting at which the liquidation proposal is to be submitted, in accordance with the provisions of Article V of the Federal Credit Union Bylaws. The notice shall:

(1) Inform members that they have the right to vote on the liquidation proposal in person at the membership meeting called for that purpose or by written ballot to be received no later than the time and date indicated on the notice.

(2) Include or be accompanied by a ballot for the liquidation proposal.

(b) The liquidation proposal must be approved by the affirmative vote of a majority of the Federal credit union members who vote on the proposal.

(c) If the members do not approve the liquidation, the board of directors, or if delegated the authority, the liquidating agent, must decide within seven days whether the Federal credit union should resume operations or, if good cause exists, to resubmit the question of liquidation to the members.

(d) If the members approve the liquidation, neither the members nor the board of directors may rescind the decision to liquidate unless the Regional Director concurs in the recision.

(e) The Regional Director will be notified in writing of the results of the membership vote on the voluntary liquidation proposal within three days of the date of the vote.

§ 710.4 Transaction of business during liquidation.

(a) Immediately upon decision by the board of directors to present the question of liquidation to the members, payments on shares, withdrawal of shares (except for transfer of shares to loans and interest), transfer of shares to another share account, granting of loans, and making of investments other than short-term investments shall be suspended pending action by the members on the proposal to liquidate. Collection of loans and interest, payment of necessary expenses, clearing of share drafts and credit card charges will continue.

(b) Upon approval of the members, payments on shares, withdrawal of shares (except for transfer of shares to loans and interest), transfer of shares to another share account, granting of loans, and making of investments other than short-term investments shall be discontinued permanently. Collection of loans and interest and payment of necessary expenses will continue during the period of liquidation. Members will be notified to discontinue the use of share drafts and credit cards, and items will not be cleared 15 days from the liquidation date.

(c) Approval of the Regional Director must be obtained prior to consummating any sale of assets which would not provide sufficient funds to pay shareholders at par.

§ 710.5 Notice of liquidation to creditors.

(a) When approval for liquidation is obtained from the members, the board of directors or the liquidating agent shall cause notice to be given to creditors to present their claims.

(1) Federal credit unions with assets in excess of $5 million as of the month end prior to the liquidation date shall publish the notice once a week in each of three successive weeks, in a newspaper of general circulation, in each county in which the Federal credit union maintains an office or branch for the transaction of business on the liquidation date. The first notice shall be published within seven days of the liquidation date.

(2) Federal credit unions with assets in excess of $500,000 but less than $5 million as of the month end prior to the liquidation date shall publish the notice once, in a newspaper of general circulation, in each county in which the Federal credit union maintains an office or branch for the transaction of business on the liquidation date. The notice shall be published within seven days of the liquidation date.

(3) Federal credit unions with assets less than $500,000 as of the month end prior to the liquidation date shall not be required to publish the notice.

(b) Within 10 days of the liquidation date, a copy of the notice of liquidation shall be mailed to all creditors reflected on the records of the Federal credit union.

(c) Creditors shall be provided 30 days from the liquidation date to submit their claims.

§710.6 Distribution of assets.

(a) With the approval of the regional director, a partial pro rata distribution of the Federal credit union's assets may be made to its members from cash funds available on authorization by the board of directors or liquidating agent. Payment of a partial distribution may exclude member accounts of less than $25.00.

(b) After all assets of the Federal credit union have been converted to cash or found to be worthless and all loans and debts owing to it have been collected or found to be uncollectible and all obligations of the Federal credit union have been paid, with the exception of shares due its members, the books shall be closed and the pro rata distribution to the members shall be computed. The computation shall be based on the total amount in each share account.

(c) Promptly after the pro rata distribution to members has been computed, checks shall be drawn for the amounts to be distributed to each member. The checks shall be mailed to the members at their last known address or handed to them in person.

(d) Unclaimed share accounts, unpaid claims, and unpaid claims of members or creditors who failed to cash their final distribution checks shall be trusteed or escheated in accordance with the laws of the state in which the member or creditor resides.

(e) The Regional Director will be notified in writing within three days when the final distribution of assets to the members is started.

§710.7 Retention of records.

(a) The board of directors or liquidating agent shall appoint a custodian for the Federal credit union's records which are to be retained after the final distribution of assets.

(b) All records of the liquidated Federal credit union necessary to establish that creditors were paid and that assets were equitably distributed to the members shall be retained by the custodian for a period of five years following the date of charter cancellation.

§710.8 Certificate of dissolution and liquidation.

Within 120 days after the final distribution of assets to members is started, a duly executed Certificate of Dissolution and Liquidation shall be filed with the Regional Director.

§710.9 Federally insured state credit unions.

A federal insured state credit union will notify the Regional Director in writing within three days after the board of directors' decision to liquidate is made. A balance sheet and income statement as of the previous month-end and a copy of any liquidation plan will be included with the notification to the Regional Director.

PART 711—MANAGEMENT OFFICIAL INTERLOCKS

Sec.
711.1 Authority, purpose, and scope.
711.2 Definitions.
711.3 Prohibitions.
711.4 Interlocking relationships permitted by statute.
711.5 Regulatory Standards exemption.
711.6 Management Consignment exemption.
711.7 Change in circumstances.
711.8 Enforcement.

AUTHORITY: 12 U.S.C. 1757 and 3201–3208.

SOURCE: 61 FR 50702, Sept. 27, 1996, unless otherwise noted.

§711.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq*).

(b) *Purpose.* The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect.

(c) *Scope.* This part applies to management officials of federally insured

credit unions. Section 711.4(c) exempts a management official of a credit union from the prohibitions of the Interlocks Act when the individual serves as a management official of another credit union. Therefore, the Interlocks Act prohibitions contained in this part only apply to a management official of a credit union when that individual also serves as a management official of another type of depository organization (usually a bank or thrift).

§ 711.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate.* (1) The term *affiliate* has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section 202, shares held by an individual include shares held by members of his or her immediate family. ''Immediate family'' means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship involving a depository institution based on common ownership does not exist if the appropriate federal supervisory agency determines, after giving the affected persons the opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the appropriate Federal supervisory agency considers, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person's ownership of shares in the other organization.

(b) *Anticompetitive effect* means a monopoly or substantial lessening of competition.

(c) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

(d) *Community* means a city, town, or village, and contiguous or adjacent cities, towns, or villages.

(e) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(f) *Critical* means important to restoring or maintaining a depository organization's safe and sound operations.

(g) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201) having its principal office located in the United States.

(h) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(i) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(j) *Depository organization* means a depository institution or a depository holding company.

(k) *District bank* means any State bank operating under the Code of Law of the District of Columbia.

(l) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(m) *Management official.* (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of $100 million or more;

(iii) A senior executive officer as that term is defined in 12 CFR 701.14(b)(2), or a person holding an equivalent position regardless of title;

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee serving in any of the capacities in this paragraph (m)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or

(iii) A person described in the provisions of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)) (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

(n) *Office* means a principal or branch office of a depository institution located in the United States. *Office* does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.

(o) *Person* means a natural person, corporation, or other business entity.

(p) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.

(q) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. NCUA will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. NCUA will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee.*

(r) *Total assets.* (1) The term *total assets* means assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(s) *United States* includes any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§711.3 Prohibitions.

(a) *Community.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same community.

(b) *RMSA.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same RMSA and each depository organization has total assets of $20 million or more.

(c) *Major assets.* A management official of a depository organization with total assets exceeding $1 billion (or any affiliate thereof) may not serve at the same time as a management official of an unaffiliated depository organization

with total assets exceeding $500 million (or any affiliate thereof), regardless of the location of the two depository organizations.

§ 711.4 Interlocking relationships permitted by statute.

The prohibitions of § 711.3 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

(a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;

(b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.*, respectively) (Edge Corporations and Agreement Corporations);

(c) A credit union being served by a management official of another credit union;

(d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(e) A State-chartered savings and loan guaranty corporation;

(f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired; and

(h)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The NCUA Board or its designee may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by NCUA.

(3) The NCUA Board or its designee may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period.

§ 711.5 Regulatory Standards exemption.

(a) *Criteria*. NCUA may permit an interlock that otherwise would be prohibited by the Interlocks Act and § 711.3 if:

(1) The board of directors of the depository organization (or the organizers of a depository organization being formed) that seeks the exemption provides a resolution to NCUA certifying that the organization, after the exercise of reasonable efforts, is unable to locate any other candidate from the community or RMSA, as appropriate, who:

(i) Possesses the level of expertise required by the depository organization and who is not prohibited from service by the Interlocks Act; and

(ii) Is willing to serve as a management official; and

(2) NCUA, after reviewing an application submitted by the depository organization seeking the exemption, determines that:

(i) The management official is critical to the safe and sound operations of the affected depository organization; and

(ii) Service by the management official will not produce an anticompetitive effect with respect to the depository organization.

(b) *Presumptions.* NCUA applies the following presumptions when reviewing any application for a Regulatory Standards exemption. A proposed management official is critical to the safe and sound operations of a depository institution if:

(1) That official is approved by NCUA to serve as a director or senior executive officer of that institution pursuant to 12 CFR 701.14 or pursuant to conditions imposed on a newly chartered credit union; and

(2) The institution had operated for less than two years, was not in compliance with minimum capital requirements, or otherwise was in a ''troubled condition'' as defined in 12 CFR 701.14 at the time the service under 12 CFR 701.14 was approved.

(c) *Duration of interlock.* An interlock permitted under this section may continue until NCUA notifies the affected depository organizations otherwise. NCUA may require a credit union to terminate any interlock permitted under this section if NCUA concludes, after giving the affected persons the opportunity to respond, that the determinations under paragraph (a)(2) of this section no longer may be made. A management official may continue serving the depository organization involved in the interlock for a period of 15 months following the date of the order to terminate the interlock. NCUA may shorten this period under appropriate circumstances.

§711.6 Management Consignment exemption.

(a) *Criteria.* NCUA may permit an interlock that otherwise would be prohibited by the Interlocks Act and §711.3 if NCUA, after reviewing an application submitted by the depository organization seeking an exemption, determines that the interlock would:

(1) Improve the provision of credit to low- and moderate-income areas;

(2) Increase the competitive position of a minority- or women-owned depository organization;

(3) Strengthen the management of a depository institution that has been chartered for less than two years at the time an application is filed under this part; or

(4) Strengthen the management of a depository institution that is in an unsafe or unsound condition as determined by NCUA on a case-by-case basis.

(b) *Presumptions.* NCUA applies the following presumptions when reviewing any application for a Management Consignment exemption:

(1) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(3) of this section if that official is approved by NCUA to serve as a director or senior executive officer of that institution pursuant to 12 CFR 701.14 or pursuant to conditions imposed on a newly chartered credit union and the institution had operated for less than two years at the time the service under 12 CFR 701.14 was approved; and

(2) A proposed management official is capable of strengthening the management of a depository institution described in paragraph (a)(4) of this section if that official is approved by NCUA to serve as a director or senior executive officer of that institution pursuant to 12 CFR 701.14 and the institution was in a ''troubled condition'' as defined under 12 CFR 701.14 at the time service under that section was approved.

(c) *Duration of interlock.* An interlock granted under this section may continue for a period of two years from the date of approval. NCUA may extend this period for one additional two-year period if the depository organization applies for an extension at least 30 days before the current exemption expires and satisfies one of the criteria specified in paragraph (a) of this section. The provisions set forth in paragraph (b) of this section also apply to applications for extensions.

§711.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption to the Interlocks Act if a change in circumstances causes the service to become prohibited under that Act. A change in circumstances may include, but is not

limited to, an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an acquisition, a merger, a consolidation, or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. NCUA may shorten this period under appropriate circumstances.

§ 711.8 Enforcement.

Except as provided in this section, NCUA administers and enforces the Interlocks Act with respect to federally insured credit unions, and may refer any case of a prohibited interlocking relationship involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part.

PART 721—FEDERAL CREDIT UNION INSURANCE AND GROUP PURCHASING ACTIVITIES

Sec.
721.1 Authority.
721.2 Reimbursement.

AUTHORITY: 12 U.S.C. 1757(16), 1766 and 1789.

§ 721.1 Authority.

A Federal credit union may make insurance and group purchasing plans involving outside vendors available to the membership (including endorsement), and may perform administrative functions on behalf of the vendors.

[47 FR 44243, Oct. 7, 1982]

§ 721.2 Reimbursement.

(a) For purposes of paragraph (b) of this section, the following definitions shall apply:

(1) *Dollar amount* shall mean $4 per single payment policy, $6 per combination policy, or $4 per annum for any other type of policy; and

(2) *Cost amount* shall mean the total of the direct and indirect costs to the Federal credit union of any administrative functions performed on behalf of the vendor. The Federal credit union must be able to justify this amount using standard accounting procedures.

(b) A Federal credit union may be reimbursed or compensated by a vendor for activities performed under § 721.1 as follows:

(1) Except as otherwise provided by applicable state insurance law, reimbursement or compensation is not limited with respect to insurance sales by the credit union or its employees which are directly related to an extension of credit by the credit union or directly related to the opening or maintenance of a share, share draft or share certificate account at the credit union;

(2) For insurance sales other than those described in paragraph (b)(1), a Federal credit union may receive an amount not exceeding the greater of the dollar amount or the cost amount;

(3) For group purchasing plans other than insurance, a Federal credit union may receive an amount not exceeding the cost amount.

(c) No director, committee member, or senior management employee of a Federal credit union or any immediate family member of any such individual may receive any compensation or benefit, directly or indirectly, in conjunction with any activity under this part. For purposes of this section, *immediate family member* means a spouse or other family member living in the same household; and *senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

(d) The prohibition contained in paragraph (c) of this section also applies to any employee not otherwise covered if the employee is directly involved in insurance or group purchasing activities unless the board of directors determines that the employee's involvement does not present a conflict of interest.

(e) All transactions with business associates or family members not specifically prohibited by paragraph (c) of this section must be conducted at

arm's length and in the interest of the credit union.

[50 FR 16464, Apr. 26, 1985, as amended at 52 FR 43571, Nov. 13, 1987]

PART 722—APPRAISALS

Sec.
722.1 Authority, purpose, and scope.
722.2 Definitions.
722.3 Appraisals required; transactions requiring a State certified or licensed appraiser.
722.4 Minimum appraisal standards.
722.5 Appraiser independence.
722.6 Professional association membership; competency.
722.7 Enforcement.

AUTHORITY: 12 U.S.C. 1766, 1789 and 3339.

SOURCE: 55 FR 30207, July 25, 1990, unless otherwise noted.

§722.1 Authority, purpose, and scope.

(a) *Authority.* Part 722 is issued by the National Credit Union Administration (''NCUA'') under title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA'') (Pub. L. 101–73, 103 Stat. 183, 1989) and 12 U.S.C. 1757 and 1766.

(b) *Purpose and scope.* (1) Title XI provides protection for federal financial and public policy interests in real estate-related transactions by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. This part implements the requirements of title XI and applies to all federally related transactions entered into by the National Credit Union Administration or by federally insured credit unions (''regulated institutions'').

(2) This part: (i) Identifies which real estate-related financial transactions require the services of an appraiser;

(ii) Prescribes which categories of federally related transactions shall be appraised by a state-certified appraiser and which by a state-licensed appraiser; and

(iii) Prescribes minimum standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of the National Credit Union Administration.

§722.2 Definitions.

(a) *Appraisal* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately-described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

(b) *Appraisal Foundation* means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(c) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(d) *Complex 1- to 4-family residential property appraisal* means one in which the property to be appraised, the form of ownership or market conditions are atypical.

(e) *Federally related transaction* means any real estate-related financial transaction entered into on or after August 9, 1990 that:

(1) The National Credit Union Administration, or any federally insured credit union, engages in or contracts for; and

(2) Requires the services of an appraiser.

(f) *Market value* means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised; and acting in what they consider their own best interests;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(g) *Real estate or real property* means an identified parcel or tract of land, including easements, rights of way, undivided or future interests and similar rights in a parcel or tract of land, but does not include mineral rights, timber rights, and growing crops, water rights and similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

(h) *Real estate-related financial transaction* means any transaction involving:

(1) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; or

(2) The refinancing of real property or interests in real property; or

(3) The use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(i) *State-certified appraiser* means any individual who has satisfied the requirements for certification in a state or territory whose criteria for certification as a real estate appraiser currently meet the minimum criteria for certification issued by the Appraiser Qualification Board of the Appraisal Foundation. No individual shall be a state-certified appraiser unless such individual has achieved a passing grade upon a suitable examination administered by a state or territory that is consistent with and eqivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualification Board. In addition, the Appraisal Subcommittee must not have issued a finding that the policies, practices, or procedures of a state or territory are inconsistent with title XI of FIRREA. The National Credit Union Administration may, from time to time, impose additional qualification criteria for certified appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

(j) *State-licensed appraiser* means any individual who has satisfied the requirements for licensing in a state or territory where the licensing procedures comply with title XI of FIRREA and where the Appraisal Subcommittee has not issued a finding that the policies, practices, or procedures of the State or territory are inconsistent with title XI. The NCUA may, from time to time, impose additional qualification criteria for licensed appraisers performing appraisals in connection with federally related transactions within its jurisdiction.

(k) *Tract development* means a project of five units or more that is constructed or is to be constructed as a single development.

(l) *Transaction value means:* (1) For loans or other extensions of credit, the amount of the loan or extension of credit; and

(2) For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

(3) For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

[55 FR 30207, July 25, 1990, as amended at 57 FR 28998, June 30, 1992]

§ 722.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $100,000 or less except if it is a business loan and then the transaction value is $50,000 or less;

(2) A lien on real property has been taken as collateral through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien;

(3) A lien on real estate has been taken for purposes other than the real estate's value;

(4) A lease of real estate is entered into, unless the lease is the economic

equivalent of a purchase or sale of the leased real estate;

(5) The transaction involves an existing extension of credit at the credit union, provided that:

(i) There is no advancement of new monies, other than funds necessary to cover reasonable closing costs; and

(ii) There has been no obvious and material change in market conditions or physical aspects of the property that threatens the adequacy of the credit union's real estate collateral protection after the transaction;

(6) The transaction involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities, and each loan or interest in a loan, pooled loan, or real property interest met the requirements of this regulation, if applicable, at the time of origination;

(7) The transaction is wholly or partially insured or guaranteed by a United States government agency or United States government sponsored agency; or

(8) The transaction either:

(i) Qualifies for sale to a United States government agency or United States government sponsored agency; or

(ii) Involves a residential real estate transaction in which the appraisal conforms to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation appraisal standards applicable to that category of real estate.

(b) *Transactions requiring a State-certified appraiser.* (1) (All transactions of $1,000,000 or more) All federally related transactions having a transaction value of $1,000,000 or more shall require an appraisal prepared by a state-certified appraiser.

(2) (Nonresidential transactions) All federally related transactions having a transaction value of more than $50,000, other than those involving appraisals of 1- to 4-family residential properties, shall require an appraisal prepared by a state-certified appraiser.

(3) (Complex residential transactions of $250,000 or more) All complex 1- to 4-family residential property appraisals rendered in connection with federally related transactions shall require a state-certified appraiser if the transaction value is $250,000 or more. A regulated institution may presume that appraisals of 1- to 4-family residential properties are not complex unless the institution has readily available information that a given appraisal will be complex. The regulated institution shall be responsible for making the final determination of whether the appraisal is complex. If, during the course of the appraisal, a licensed appraiser identifies factors that would result in the property, form of ownership, or market conditions being considered atypical, then either:

(i) The regulated institution may ask the licensed appraiser to complete the appraisal and have a certified appraiser approve and cosign the appraisal; or

(ii) The institution may engage a certified appraiser to complete the appraisal.

(c) *Transactions requiring either a State-certified or -licensed appraiser.* All appraisals for federally related transactions not requiring the services of a state-certified appraiser shall be prepared by either a state-certified appraiser or a state-licensed appraiser.

(d) *Valuation requirement.* Secured transactions exempted from appraisal requirements pursuant to paragraphs (a)(1) of this section and not otherwise exempted from this regulation or fully insured shall be supported by a written estimate of market value, as defined in this regulation, performed by an individual having no direct or indirect interest in the property, and qualified and experienced to perform such estimates of value for the type and amount of credit being considered.

(e) *Appraisals to address safety and soundness concerns.* NCUA reserves the right to require an appraisal under this subpart whenever the agency believes it is necessary to address safety and soundness concerns.

[55 FR 30207, July 25, 1990, as amended at 60 FR 51894, Oct. 4, 1995]

§722.4 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

(a) Conform to generally accepted appraisal standards as evidenced by the

Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation, 1029 Vermont Ave., NW., Washington, DC 20005;

(b) Be written and contain sufficient information and analysis to support the institution's decision to engage in the transaction;

(c) Analyze and report appropriate deductions and discounts for proposed construction or renovation, partially leased buildings, non-market lease terms, and tract developments with unsold units;

(d) Be based upon the definition of market value as set forth in § 722.2(f); and

(e) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this subpart.

[60 FR 51894, Oct. 4, 1995]

§ 722.5 Appraiser independence.

(a) *Staff appraiser.* If an appraisal is prepared by a staff appraiser, that appraiser must be independent of the lending, investment, and collection functions and not involved, except as an appraiser, in the federally related transaction, and have no direct or indirect interest, financial or otherwise, in the property. If the only qualified persons available to perform an appraisal are involved in the lending, investment, or collection functions of the credit union, the credit union shall take appropriate steps to ensure that the appraisers exercise independent judgment. Such steps include, but are not limited to, prohibiting an individual from performing an appraisal in connection with federally related transactions in which the appraiser is otherwise involved.

(b) *Fee Appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the credit union or its agent and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A credit union also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution; if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or transaction; and

(ii) The credit union determines that the appraisal conforms to the requirement of this regulation and is otherwise acceptable.

[55 FR 30207, July 25, 1990, as amended at 60 FR 51895, Oct. 4, 1995]

§ 722.6 Professional association membership; competency.

(a) *Membership in appraisal organization.* A state-certified appraiser or a state-licensed appraiser may not be excluded from consideration for an assignment for a federally related transaction solely by virtue of membership or lack of membership in any particular appraisal organization.

(b) *Competency.* All staff and fee appraisers performing appraisals in connection with federally related transactions must be state-certified or -licensed as appropriate. However, a state-certified or -licensed appraiser may not be considered competent solely by virtue of being certified or licensed. Any determination of competency shall be based upon the individual's experience and educational background as they relate to the particular appraisal assignment for which he or she is being considered.

§ 722.7 Enforcement.

Credit unions and institution-affiliated parties, including staff appraisers and fee appraisers, may be subject to removal and/or prohibition orders, cease-and-desist orders, and the imposition of civil money penalties pursuant to section 1786 of the Federal Credit Union Act, or any other applicable law.

PART 724—TRUSTEES AND CUSTODIANS OF PENSION PLANS

Sec.
724.1 Federal credit unions acting as trustees and custodians of pension plans.
724.2 Self-directed retirement plans.
724.3 Appointment of successor trustee or custodian.

AUTHORITY: 12 U.S.C. 1766 and 1787.

SOURCE: 55 FR 30211, July 25, 1990, unless otherwise noted.

§724.1 Federal credit unions acting as trustees and custodians of pension plans.

A federal credit union is authorized to act as trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States and forming part of a pension plan which qualifies or qualified for specific tax treatment under section 401(d) or 408 of the Internal Revenue Code, for its members or groups of its members, provided the funds of such plans are invested in share accounts or share certificate accounts of the federal credit union. All funds held in a trustee or custodial capacity must be maintained in accordance with applicable laws and rules and regulations as may be promulgated by the Secretary of Labor, the Secretary of the Treasury, or any other authority exercising jurisdiction over such trust or custodial accounts. The federal credit union shall maintain individual records for each participant which show in detail all transactions relating to the funds of each participant or beneficiary.

§724.2 Self-directed retirement plans.

A Federal credit union may act as trustee or custodian of individual retirement plans of its members established pursuant to section 401(d) or 408 of the Internal Revenue Code, and may facilitate transfers of plan funds to assets other than share and share certificates of the credit union, provided the conditions of §724.1 and the following additional conditions are met:

(a) All contributions of funds are initially made to a share or share certificate account in the Federal credit union;

(b) Any subsequent transfer of funds to other assets is solely at the direction of the member and the Federal credit union exercises no investment discretion and provides no investment advice with respect to plan assets (i.e., the credit union performs only custodial duties); and

(c) The member is clearly notified of the fact that National Credit Union Share Insurance Fund coverage is limited to funds held in share or share certificate accounts of NCUSIF-insured credit unions.

§724.3 Appointment of successor trustee or custodian.

Any plan operated pursuant to this part shall provide for the appointment of a successor trustee or custodian by a person, committee, corporation or organization other than the Federal credit union or any person acting in his capacity as a director, employee or agent of the Federal credit union upon notice from the Federal credit union or the Board that the Federal credit union is unwilling or unable to continue to act as trustee or custodian.

PART 725—NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY

Sec.

725.1 Scope.
725.2 Definitions.
725.3 Regular membership.
725.4 Agent membership.
725.5 Capital stock.
725.6 Termination of membership.
725.7 Special share accounts in federally chartered agent members.
725.8—725.16 [Reserved]
725.17 Applications for extensions of credit.
725.18 Creditworthiness.
725.19 Collateral requirements.
725.20 Repayment, security and credit reporting agreements; other terms and conditions.
725.21 Modification of agreements.
725.22 Advances to insurance organizations.
725.23 Other advances.

AUTHORITY: Secs. 301–307 Federal Credit Union Act, 92 Stat. 3719–3722 (12 U.S.C. 1795–1795f).

SOURCE: 44 FR 49437, Aug. 23, 1979, unless otherwise noted.

§725.1 Scope.

This part contains the regulations implementing the National Credit Union Central Liquidity Facility Act, subchapter III of the Federal Credit Union Act. The National Credit Union Administration Central Liquidity Facility is a mixed-ownership Government corporation within the National Credit Union Administration. It is managed by the National Credit Union Administration Board and is owned by its member credit unions. The purpose

of the Facility is to improve the general financial stability of credit unions by meeting their liquidity needs and thereby encourage savings, support consumer and mortgage lending and provide basic financial resources to all segments of the economy.

§ 725.2 Definitions.

As used in this part:

(a) *Agent* means an Agent member of the Facility.

(b) *Agent group* means an Agent member of the Facility consisting of a group of central credit unions, one of which is designated as the group's *Agent group representative* and authorized to transact business with the Facility on behalf of the group or any member of the group.

(c) *Agent loan* means an advance of funds by an Agent to a member natural person credit union to meet liquidity needs which have been the basis for a Facility advance.

(d) *Central credit union* means a Federal or state-chartered credit union primarily serving other credit unions. A credit union is primarily serving other credit unions when the total dollar amount of the shares and deposits received from other credit unions plus loans to other credit unions exceeds 50 percent of the total dollar amount of all shares and deposits plus loans during the qualifying period, as defined in paragraph (o) of this section.

(e) *Facility* or *Central Liquidity Facility* means the National Credit Union Administration Central Liquidity Facility.

(f) *Facility advance* means an advance of funds by the Facility to a Regular or Agent member.

(g) *Facility lending officer* means any employee of the Facility or the National Credit Union Administration who has been designated by the NCUA Board as a Facility lending officer.

(h) *Liquid assets* means the following unpledged assets:

(1) Cash on hand;

(2) Share or deposit accounts with remaining maturities of one year or less maintained in central credit unions or institutions insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation;

(3) Investments in obligations of the United States or any agency thereof, or securities fully guaranteed as to principal and interest thereby, which are authorized under 12 U.S.C. 1757(7) and which have a remaining maturity of one year or less;

(4) Common trust investments and similar investments in funds or securities authorized for Federal credit unions, the objectives of which are to provide daily liquidity for participating credit unions;

(5) Shares in the National Credit Union Administration Central Liquidity Facility or in special share accounts authorized by § 725.7 of this part;

(6) In the case of a federally-insured state-chartered credit union, any asset held in satisfaction of liquidity requirements imposed by applicable state law or regulation; and

(7) Balances maintained by federally-insured credit unions in a Federal Reserve bank, or in a pass-through account to a Federal Reserve bank, pursuant to the requirements of section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)).

(i) *Liquidity needs* means the needs of credit unions primarily serving natural persons for:

(1) Short-term adjustment credit available to assist in meeting temporary requirements for funds or to cushion more persistent outflows of funds pending an orderly adjustment of credit union assets and liabilities;

(2) Seasonal credit available for longer periods to assist in meeting seasonal needs for funds arising from a combination of expected patterns of movement in share and deposit accounts and loans; and

(3) Protracted adjustment credit available in the event of unusual or emergency circumstances of a longer term nature resulting from national, regional or local difficulties.

(j) *Management policies* means policies of a credit union with respect to membership, shares, deposits, dividends, interest rates, lending, investing, borrowing, safeguarding of assets, hiring, training and supervision of employees, and general operating and control practices and procedures.

(k) *Member* means a Regular or Agent member of the Facility, unless the context indicates otherwise.

(l) *Member natural person credit union* means a natural person credit union which is a member of an Agent or of any central credit union in an Agent group. Member natural person credit unions are not members of the Facility unless they are also Regular members of the Facility.

(m) *Natural person credit union* means a Federal or state-chartered credit union primarily serving natural persons. A credit union is primarily serving natural persons if it is not a central credit union as defined in paragraph (d) of this section.

(n) *NCUA Board* or *Board* means the National Credit Union Administration Board.

(o) *Paid-in and unimpaired capital and surplus* means the balance of the paid-in share accounts and deposits as of a given date, less any loss that may have been incurred for which there is no reserve or which has not been charged against undivided earnings, plus the credit balance (or less the debit balance) of the undivided earnings account as of a given date, after all losses have been provided for and net earnings or net losses have been added thereto or deducted therefrom. Statutory reserves or special reserves required by regulation or special agreement between the credit union and its regulatory authority or between the credit union and its member account insurer shall not be considered as part of surplus.

(p) *Qualifying Period* means:

(1) For initial qualification, any 7 months out of the 12 months immediately preceding the month in which application is made to become a member of the Facility; and

(2) For qualification during each subsequent calendar year, any 7 months out of the previous calendar year.

(q) *Stock subscription* means the stock subscription required for membership in the Facility. ''Total subscribed Facility stock'' is the sum of all members' stock subscriptions.

[44 FR 49437, Aug. 23, 1979, as amended at 53 FR 22472, June 16, 1988]

§725.3 Regular membership.

(a) A natural person credit union may become a Regular member of the Facility by:

(1) Making application on a form approved by the Facility;

(2) Subscribing to capital stock of the Facility in an amount equal to one-half of 1 percent of the credit union's paid-in and unimpaired capital and surplus, as determined in accordance with §725.5(b) of this part, and forwarding with its completed application funds equal to one-half of this stock subscription;[1] and

(3) Furnishing the following reports and documents with the completed membership application:

(i) A copy of the credit union's financial and statistical report for the most recent calendar month; and

(ii) Copies of the credit union's charter and bylaws, unless the credit union is federally chartered.

(b) A credit union which becomes a Regular member of the Facility after February 23, 1980, may not receive Facility advances without approval of the NCUA Board for a period of six months after becoming a member. This subsection shall not apply to any credit union which becomes a Regular member of the Facility within six months after such credit union is chartered, or which has had access to Facility funds through an Agent member of the Facility at any time within six months prior to becoming a Regular member of the Facility.

[44 FR 49437, Aug. 23, 1979, as amended at 47 FR 1371, Jan. 13, 1982]

§725.4 Agent membership.

(a) A central credit union or a group of central credit unions may become an Agent member of the Facility by (in the case of a group of central credit unions, each central credit union in the group must do each of the following except for paragraph (a)(2) of this section, which shall be done by the Agent group representative):

(1) Making application on a form approved by the Facility;

[1] A credit union which submits its application for membership prior to October 1, 1979, is not required to forward these funds to the Facility until October 1, 1979.

(2) Subscribing to the capital stock of the Facility in an amount equal to one-half of 1 percent of the paid-in and unimpaired capital and surplus (as determined in accordance with § 725.5(b) of this part) of all the central credit union's or central credit union group's member natural person credit unions, except those which are Regular members of the Facility or which have access to the Facility through, and are included in the stock subscription of, another Agent.[2] Upon approval of the application, the Agent shall forward funds equal to one-half of this initial stock subscription to the Facility.[3]

(3) Furnishing the following reports and documents with the completed membership application:

(i) A copy of the central credit union's financial and statistical report for the most recent calendar month;

(ii) Copies of the central credit union's charter and bylaws, unless such credit union is federally chartered; and

(iii) A list of all the central credit union's member natural person credit unions.

(4) Agreeing to submit to the supervision of the NCUA Board and to comply with all regulations and reporting requirements which the NCUA Board shall prescribe for Agent members;

(5) Agreeing to submit to periodic unrestricted examinations by the NCUA Board or its designee; and

(6) Obtaining the written approval of the NCUA Board.

(b) The NCUA Board may approve a central credit union or group of central credit unions as an Agent member of the Facility, provided the NCUA Board is satisfied that such credit union or credit union group meets certain criteria, including but not limited to the following (in the case of a group of central credit unions, each central credit union in the group must meet these criteria):

(1) The management policies are in writing, approved by the central credit union's board of directors, and reviewed annually by such board;

(2) Adequate internal controls are in place to assure accurate and timely reporting of transactions and the safeguarding of assets;

(3) The financial condition of the central credit union is sound with adequate reserves for losses;

(4) Surety bond coverage provides protection for the central credit union while the central credit union is performing the duties of an Agent member of Facility;

(5) Management has demonstrated its ability to use such techniques as cash flow analysis, budgeting, and projections of sources and uses of funds to manage the affairs of the central credit union efficiently and in conformity with sound business practices; and

(6) There are no practices, procedures, policies, or other factors that would result in discrimination by the central credit union among natural person credit unions or inhibit its ability to act independently in its role as an Agent member of the Facility.

(c) Each Agent, or in the case of an Agent group, each central credit union in the group, must:

(1) Maintain records related to Facility activity in conformity with requirements prescribed by the NCUA Board from time to time; and

(2) Submit such reports as may be required by the Facility to determine financial soundness, quality and level of service, and conformity with established guidelines and procedures.

(d) Each Agent, or in the case of an Agent group, each central credit union in the group, must have on an annual basis a third party independent audit of its books and records and provide the Facility with copies of the report of such audit. The auditor selected must be recognized by a State or territorial licensing authority as possessing the requisite knowledge and experience to perform audits.

(e) Within 30 days after a natural person credit union becomes a member of a central credit union which is an Agent or a member of an Agent group,

[2] A natural person credit union which is a member of more than one Agent member of the Facility must designate through which Agent it will deal with the Facility, and the designated Agent will be responsible for including the capital and surplus of such credit union in the calculation of its stock subscription.

[3] If the application is approved prior to October 1, 1979, these funds are not required to be forwarded to the Facility until October 1, 1979.

the agent, or in the case of an Agent group, the Agent group representative, shall subscribe to additional capital stock of the Facility in an amount equal to one-half of 1 percent of such credit union's paid-in and unimpaired capital and surplus, and shall forward funds equal to one-half of this stock subscription to the Facility. This subsection shall not apply if the natural person credit union is a Regular member of the Facility or has access to the Facility through, and is included in the stock subscription of, another Agent.

(f) A central credit union or group of central credit unions which becomes an Agent member of the Facility after February 23, 1980, may not receive a Facility advance without approval of the NCUA Board for a period of six months after becoming a member. This subsection shall not apply to any credit union which becomes an Agent member or a member of an Agent group within six months after such credit union is chartered within six months after such credit union has been an Agent or a member of another Agent group.

(g) Agent members will be compensated for the services they perform for the Facility in a manner to be specified by the NCUA Board.

§725.5 Capital stock.

(a) The capital stock of the Facility is divided into nonvoting shares having a par value of $50 each. The Facility issues whole and fractional shares. Shares are issued in book entry form upon receipt of payment for such shares, and cannot be transferred or hypothecated except to the Facility.

(b) The capital stock subscriptions provided for in §§725.3 and 725.4 shall be:

(1) Based on an arithmetic average of paid-in and unimpaired capital and surplus over the six months preceding application for membership, and

(2) Adjusted at the close of each calendar year in accordance with an arithmetic average of paid-in and unimpaired capital and surplus over the twelve months in such calendar year. Payments for adjustments to the capital stock subscription must be received by the Facility no later than March 31 of the following year.

(c) That part of a member's stock subscription which is not paid-in shall be held by the member on call of the NCUA Board and shall be invested in liquid assets.

(d) Any member may at any time purchase additional shares of capital stock in the Facility. Any shares in excess of the member's required paid-in portion of its stock subscription can be redeemed by the member as long as the member maintains investments in other assets sufficient to meet the requirement of paragraph (c) of this section. The member's required paid-in portion of its stock subscription includes one-half of its stock subscription plus any ''calls'' that may have been issued by the NCUA Board against the ''on-call'' portion of such stock subscription.

(e) Dividends will be paid on capital stock at such times and rates as are determined by the NCUA Board. The NCUA Board shall declare such dividends no less frequently than annually. All issued (paid for) capital stock shall share in dividend distributions without preference. Payment of dividends will be made by the issuance of capital stock to the member in the amount of the dividend.

[44 FR 49437, Aug. 23, 1979, as amended at 45 FR 47122, July 14, 1980; 47 FR 1371, Jan. 13, 1982; 53 FR 22472, June 16, 1988]

§725.6 Termination of membership.

(a) A member of the Facility whose stock subscription constitutes less than 5 percent of total subscribed Facility stock may withdraw from membership in the Facility six months after notifying the NCUA Board in writing of its intention to do so.

(b) A member of the Facility whose stock subscription constitutes 5 percent or more of total subscribed Facility stock may withdraw from membership in the Facility twenty-four months after notifying the NCUA Board in writing of its intention to do so.

(c) The NCUA Board may terminate membership in the Facility if, after the opportunity for a hearing, the NCUA Board determines the member has failed to comply with any provision of the National Credit Union Central Liquidity Facility Act or any regulation

issued pursuant thereto. If membership is terminated under this subsection, the credit union will be required to obtain the approval of the NCUA Board before becoming a member of the Facility again. Such approval will be granted only if the NCUA Board is satisfied that the credit union will comply with such Act and regulations.

(d) (1) If membership is terminated under any provision of this section, the terminated member's stock shall be redeemed upon termination. In such event, the Facility may retain any amount owed to the Facility by the member.

(2) When a member natural person credit union withdraws from membership in a central credit union which is an Agent or a member of an Agent group, the stock subscription of the Agent, or in the case of an Agent group, the stock subscription of the Agent group representative, will be adjusted after the waiting period which would apply under paragraph (a) or (b) of this section if the withdrawing credit union were a member of the Facility.

§ 725.7 Special share accounts in federally chartered agent members.

(a) A federally chartered Agent member of the Facility may require its member natural person credit unions to establish and maintain special share accounts in the Agent member to reimburse it for the portion of the Agent's Facility stock subscription which is attributable to the paid-in and unimpaired capital and surplus of each such natural person credit union.

(b) The amount which the Agent member requires each member natural person credit union to maintain in such special share accounts shall be based on a uniform percentage of the paid-in and unimpaired capital and surplus of such credit unions, and shall not exceed the amount of the Agent's stock subscription which is attributable to the capital and surplus of each such credit union. An Agent shall not permit a member to maintain in a special share account any amounts in excess of the required amount.

(c) A natural person credit union that withdraws from membership in an Agent member or that becomes a Regular member of the Facility, shall be entitled to the return of all amounts in its special share account upon withdrawal from membership in the Agent or upon becoming a Regular member, as applicable.

[45 FR 47122, July 14, 1980]

§§ 725.8—725.16 [Reserved]

§ 725.17 Applications for extensions of credit.

(a) A Regular member may apply for a Facility advance to meet its liquidity needs by filing an application on a Facility-approved form, or by any other method approved by the Facility.

(b)(1) An Agent member may apply for a Facility advance by filing an application on a Facility-approved form, or by any other method approved by the Facility.[4]

(2) The Agent's application shall be based on the following:

(i) Approved applications to the Agent by its member natural person credit unions for pending loans to meet liquidity needs; or

(ii) Outstanding loans previously made by the Agent to meet liquidity needs of its member natural person credit unions; or

(iii) Such other demonstrable liquidity needs as the NCUA Board may specify.

(3) An Agent shall not submit an application to the Facility based on the liquidity needs of any member natural person credit union which has not agreed to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans;

(4) Any loan to meet liquidity needs which have been or will be the basis for an application by the Agent for a Facility advance must be applied for on an application form approved by the Facility.

(5) Unless approved by the Facility, an Agent shall not submit an application to the Facility based on the liquidity needs of any credit union which became a member natural person credit union of the Agent after February 2, 1980, unless such credit union has been

[4] If the Agent is an Agent group, the application must be filed by the Agent group representative, and any Facility advance will be made to the Agent group representative.

a member natural person credit union of the Agent for six months, was chartered within six months before becoming a member natural person credit union of the Agent, or had access to the Facility either as a Regular member or through another Agent within six months before becoming a member natural person credit union of the Agent.

(c) In emergency circumstances, the applications for extensions of credit required under paragraph (a) and paragraphs (b)(1) and (b)(4) of this section may be verbal, but must be confirmed within five working days by an application as required by such subsection or paragraphs.

(d) Applications of Regular and Agent members shall be filed with a Facility lending officer. Each application for credit which is completed and properly filed will be approved or denied within five working days after the day of receipt.

[44 FR 49437, Aug. 23, 1979, as amended at 47 FR 1371, Jan. 13, 1982]

§725.18 Creditworthiness.

(a) Prior to Facility approval of each application of a Regular member for a Facility advance, the Facility shall consider the creditworthiness of such member.

(b) Prior to an Agent's approval of each application of a member natural person credit union for an extension of credit on which an application by the Agent to the Facility will be based, an Agent shall consider the creditworthiness of such member natural person credit union.

(c) Specific characteristics of an uncreditworthy credit union include, but are not limited to, insolvency as defined by §700.1(k) of this chapter, unsatisfactory practices in extending credit, lower than desirable reserve levels, high expense ratio, failure to repay previous Facility advances as agreed, excessive dependence on borrowed funds, inadequate cash management policies and planning, or any other relevant characteristics creating a less than satisfactory condition. The presence of one or more of these characteristics will not necessarily mean that a credit union will be considered uncreditworthy.

(d) A natural person credit union (whether a Regular member of the Facility or a member natural person credit union) which does not meet the Facility's creditworthiness standards may be limited in or denied the use of advances for its liquidity needs.

§725.19 Collateral requirements.

(a) Each Facility advance to a Regular member shall be secured by a security interest in all the assets of the Regular member.

(b) Each Agent loan shall be secured by a security interest in all the assets of the member natural person credit union which receives the loan.

(c) Each Facility advance to an Agent member shall be secured, directly or indirectly, by all the Agent loans made by the Agent member, and by the collateral securing such loans.

§725.20 Repayment, security and credit reporting agreements; other terms and conditions.

(a) Regular and Agent members, or in the case of an Agent group, the Agent group representative, shall sign the repayment, security and credit reporting agreements prescribed by the Facility, and all Facility advances to Regular and Agent members shall be governed by the terms and conditions of such agreements.

(b) All Agent loans shall be made subject to the repayment, security and credit reporting terms prescribed by the Facility for Agent loans.

(c) Other terms and conditions applicable to Facility advances and Agent loans will be specified in confirmations of credit provided in connection with such advances and loans, and/or in operating circulars of the Facility.

§725.21 Modification of agreements.

The repayment, security, and credit reporting terms under which Facility advances and Agent loans will be made, as provided in §725.20 of this part, shall be subject to modification from time to time as the NCUA Board may determine. Any change in such terms shall be published in the FEDERAL REGISTER and shall apply to all advances disbursed by the Facility after the effective date of the change.

§ 725.22 Advances to insurance organizations.

(a) In accordance with policies established by the NCUA Board, the Facility may advance funds to a State credit union share or deposit insurance corporation, guaranty credit union, guaranty association, or similar organization. Requests for such advances shall be supported by an application which sets forth and supports the need for the advance.

(b) Advances under paragraph (a) shall be subject to the approval of the NCUA Board and shall be made subject to the following terms:

(1) The advance shall be fully secured,

(2) The maturity of the advance shall not exceed 12 months,

(3) The advance shall not be renewable at maturity, and

(4) The funds advanced shall not be relent at an interest rate exceeding that imposed by the Facility.

§ 725.23 Other advances.

(a) The NCUA Board may authorize extensions of credit to members of the Facility for purposes other than liquidity needs if the NCUA Board, the Board of Governors of the Federal Reserve System, and the Secretary of the Treasury concur in a determination that such extensions of credit are in the national economic interest.

(b) Extensions of credit approved under the conditions of paragraph (a) of this section shall be subject to such terms and conditions as shall be established by the NCUA Board.

PART 740—ADVERTISING

Sec.

740.0 Scope.
740.1 Definitions.
740.2 Accuracy of advertising.
740.3 Mandatory requirements with regard to the official sign and its display.
740.4 Mandatory requirements with regard to the official advertising statement and manner of use.

AUTHORITY: 12 U.S.C. 1766, 1781, 1789 and 4311.

SOURCE: 51 FR 37556, Oct. 23, 1986, unless otherwise noted.

§ 740.0 Scope.

This part applies to all federally-insured credit unions. It prescribes the requirements with regard to the official sign insured credit unions must display and the requirements with regard to the official advertising statement insured credit unions must include in their advertisements. It also prescribes a general requirement that all other kinds of advertisements must be accurate.

§ 740.1 Definitions.

(a) *Account* or *accounts* as used in this part means share, share certificate or share draft accounts (or their equivalent under state law, as determined by the Board in the case of insured state credit unions) of a member (which includes other credit unions, public units, and nonmembers where permitted under the Act) in a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member.

(b) *Insured credit union* as used in this part means a credit union insured by the National Credit Union Administration (NCUA).

§ 740.2 Accuracy of advertising.

No insured credit union shall use any advertising (which includes print or broadcast media, displays and signs, stationery, and all other promotional material) or make any representation which is inaccurate or deceptive in any particular, or which in any way misrepresents its services, contracts, or financial condition, or which violates the requirements of § 707.8 of this subchapter, if applicable. Any advertising that mentions share or savings account insurance provided by a party other than the NCUA must clearly explain the type and amount of such insurance and the identity of the carrier, and must avoid any statement or implication that the carrier is affiliated with the NCUA or the Federal government.

[51 FR 37556, Oct. 23, 1986, as amended at 58 FR 50461, Sept. 27, 1993]

§740.3 Mandatory requirements with regard to the official sign and its display.

(a) Each insured credit union shall continuously display the official sign described in paragraph (b) of this section at each station or window where insured account funds or deposits are usually and normally received in its principal place of business and in all its branches 30 days after its first day of operation as an insured credit union.

(b) The official sign shall be as depicted below, having a blue background with white lettering:

Your savings federally insured to $100,000

NCUA

National Credit Union Administration, a U.S. Government Agency

(1) All insured credit unions will automatically be furnished an initial supply of official signs, at no cost, from the Administration for compliance with paragraph (a) of this section. If the initial supply is not adequate, an immediate request for additional signs must be made. Any credit union that does not have an adequate supply but requests additional signs from NCUA shall not be deemed to have violated paragraph (a) of this section unless the credit union shall omit to display the signs after receipt thereof.

(2) Additional signs reflecting variations in color, materials and size, for use other than as prescribed in paragraph (a) of this section may be procured by insured credit unions from commercial suppliers.

(c) An insured credit union shall not receive account funds at any teller's station or window where any non-insured credit union or institution receives deposits. Excepted from this prohibition are credit union centers, service centers, or branches servicing more than one credit union where only some of the credit unions are insured by the NCUA. In such instances there must be placed immediately above or beside each official sign another sign stating ''Only the following credit unions serviced by this facility are federally insured by the NCUA _____'' (the full name of each credit union insured will follow the word NCUA). The lettering will be of such size and print to be clearly legible to all members conducting share or share deposit transactions.

(d) The Board may require any insured credit union, upon at least 30 days' written notice, to change the wording of its official signs in a manner deemed necessary for the protection of shareholders or others.

(e) For purposes of this section, the terms ''branch,'' ''station,'' ''teller station,'' and ''window'' do not include automated teller machines or point of sale terminals.

§740.4 Mandatory requirements with regard to the official advertising statement and manner of use.

(a) Each insured credit union shall include the official advertising statement, prescribed in paragraph (b) of this section, in all of its advertisements except as provided in paragraph (c) of this section.

(1) An insured credit union must include the official advertising statement in its advertisements thirty (30) days after its first day of operations as

an insured credit union unless it has been granted an extension by the Regional Director.

(2) In cases where advertising copy not including the official advertising statement is on hand on the date the requirements of this section become operative, the insured credit union may cause the official advertising statement to be included by use of an overstamp or by other means until the supplies are exhausted.

(b) The official advertising statement shall be in substance as follows:

This credit union is federally insured by the National Credit Union Administration.

The short title ''Federally insured by NCUA'' and a reproduction of the official sign may be used by insured credit unions at their option as the official advertising statement. The official advertising statement shall be of such size and print to be clearly legible.

(c) The following advertisements need not include the official advertising statement:

(1) Statements of condition and reports of condition of an insured credit union which are required to be published by State and Federal law or regulation;

(2) Credit union supplies such as stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, account passbooks, and noninsurable certificates, etc;

(3) Signs or plates in the credit union office or attached to the building or buildings in which the offices are located;

(4) Listings in directories;

(5) Advertisements not setting forth the name of the insured credit union;

(6) Display advertisements in credit union directories, provided the name of the credit union is listed on any page in the directory with a symbol or other descriptive matter indicating it is insured;

(7) Joint or group advertisements of credit union services where the names of insured credit unions and noninsured credit unions are listed and form a part of such advertisement;

(8) Advertisements by radio which do not exceed thirty (30) seconds in time;

(9) Advertisements by television, other than display advertisement, which do not exceed thirty (30) seconds in time;

(10) Advertisements which are of the type or character making it impractical to include thereon the official advertising statement, including but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains;

(11) Advertisements which contain a statement to the effect that the credit union is insured by the National Credit Union Administration, or that its accounts and shares or members are insured by the Administration to the maximum of $100,000 for each member or shareholder;

(12) Advertisements which do not relate to member accounts, including but not limited to:

(i) Advertisements relating specifically and only to the making of loans by the credit union or loan services;

(ii) Advertisements relating specifically and only to safekeeping box business or services;

(iii) Advertisements relating specifically and only to traveler's checks on which the credit union issuing or causing to be issued the advertisement is not primarily liable; and

(iv) Advertisements relating specifically and only to loan life insurance.

(d) The non-English equivalent of the official advertising statement may be used in any advertisement: *Provided*, That the translation has had the prior written approval of the Regional Director.

PART 741—REQUIREMENTS FOR INSURANCE

Sec.
741.0 Scope.

Subpart A—Regulations That Apply to Both Federal Credit Unions and Federally Insured State-Chartered Credit Unions and That Are Not Codified Elsewhere in NCUA's Regulations

741.1 Examination.
741.2 Maximum borrowing authority.
741.3 Criteria.
741.4 Insurance premium and one percent deposit.

741.5 Notice of termination of excess insurance coverage.
741.6 Financial and statistical and other reports.
741.7 Conversion to a state-chartered credit union.
741.8 Purchase of assets and assumption of liabilities.
741.9 Uninsured membership shares.
741.10 Disclosure of share insurance.

Subpart B—Regulations Codified Elsewhere in NCUA's Regulations as Applying to Federal Credit Unions That Also Apply to Federally Insured State-Chartered Credit Unions

741.201 Minimum fidelity bond requirements.
741.202 Audit and verification requirements.
741.203 Minimum loan policy requirements.
741.204 Maximum public unit and nonmember accounts, and low-income designation.
741.205 Reporting requirements for credit unions that are newly chartered or in troubled condition.
741.206 Corporate credit unions.
741.207 Community development revolving loan program for credit unions.
741.208 Mergers of federally insured credit unions: voluntary termination or conversion of insured status.
741.209 Management official interlocks.
741.210 Central liquidity facility.
741.211 Advertising.
741.212 Share insurance.
741.213 Administrative actions, adjudicative hearings, rules of practice and procedure.
741.214 Report of crime or catastrophic act and Bank Secrecy Act compliance.
741.215 Records preservation program.
741.216 Flood insurance.
741.217 Truth in savings.
741.218 Involuntary liquidation and creditor claims.

AUTHORITY: 12 U.S.C. 1757, 1766, and 1781–1790.

Section 741.4 is also authorized by 31 U.S.C. 3717.

SOURCE: 60 FR 58504, Nov. 28, 1995, unless otherwise noted.

§741.0 Scope.

The provisions of this part apply to federal credit unions, federally insured state-chartered credit unions, and credit unions making application for insurance of accounts pursuant to Title II of the Act, unless the context of a provision indicates its application is otherwise limited. This part prescribes various requirements for obtaining and maintaining federal insurance and the payment of insurance premiums and capitalization deposit. Subpart A of this part contains substantive requirements that are not codified elsewhere in this chapter. Subpart B of this part lists additional regulations, set forth elsewhere in this chapter as applying to federal credit unions, that also apply to federally insured state-chartered credit unions. As used in this part, ''insured credit union'' means a credit union whose accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

Subpart A—Regulations That Apply to Both Federal Credit Unions and Federally Insured State-Chartered Credit Unions and That Are Not Codified Elsewhere in NCUA's Regulations

§741.1 Examination.

As provided in Sections 201 and 204 of the Act (12 U.S.C. 1781 and 1784), the NCUA Board is authorized to examine any insured credit union or any credit union making application for insurance of its accounts. Such examination may require access to all records, reports, contracts to which the credit union is a party, and information concerning the affairs of the credit union. Upon request, such documentation must be provided to the NCUA Board or its representative. Any credit union which makes application for insurance will be required to pay the cost of such examination and processing. To the maximum extent feasible, the NCUA Board will utilize examinations conducted by state regulatory agencies.

§741.2 Maximum borrowing authority.

Any credit union which makes application for insurance of its accounts pursuant to Title II of the Act, or any insured credit union, must not borrow, from any source, an aggregate amount in excess of 50 per centum of its paid-in and unimpaired capital and surplus (shares and undivided earnings, plus net income or minus net loss).

§ 741.3 Criteria.

In determining the insurability of a credit union which makes application for insurance and in continuing the insurability of its accounts pursuant to Title II of the Act, the following criteria shall be applied:

(a) *Adequacy of reserves*—(1) *General rule.* State-chartered credit unions must meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on federal credit unions by Section 116 of the Act and part 702 of this chapter.

(2) *Charges against reserves.* State-chartered credit unions may charge losses, including losses other than loan losses, against the statutory reserve in accordance with either state law or procedures established by the state supervisory authority. However, charges for losses other than loan losses shall be made only after notification to the Re- gional Director, unless the credit union's ratio of capital to assets is greater than 6 percent and the charge reduces the ratio by no more than ½ percent. For purposes of this section, capital is defined as the total of the Regular Reserve, the Allowance for Loan Losses, the Allowance for Investment Losses, Undivided Earnings, and other reserves.

(3) *Special reserve for nonconforming investments.* State-chartered credit unions (except state-chartered corporate credit unions) are required to establish an additional special reserve for investments if those credit unions are permitted by their respective state laws to make investments beyond those authorized in the Act or the NCUA Rules and Regulations. For any investment other than loans to members and obligations or securities expressly authorized in Title I of the Act and part 703 of this chapter, as amended, state-chartered credit unions (except state-chartered corporate credit unions) are required to establish and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When at the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

(b) *Financial condition and policies.* The following factors are to be considered in determining whether the credit union's financial condition and policies are both safe and sound:

(1) The existence of unfavorable trends which may include excessive losses on loans (i.e., losses which exceed the regular reserve or its equivalent [in the case of state-chartered credit unions] plus other irrevocable reserves established as a contingency against losses on loans), the presence of special reserve accounts used specifically for charging off loan balances of deceased borrowers, and an expense ratio so high that the required transfers to reserves create a net operating loss for the period or that the net gain after these transfers is not sufficient to permit the payment of a nominal dividend;

(2) The existence of written lending policies, including adequate documentation of secured loans and the protection of security interests by recording, bond, insurance, or other adequate means, adequate determination of the financial capacity of borrowers and co-makers for repayment of the loan, and adequate determination of value of security on loans to ascertain that said security is adequate to repay the loan in the event of default;

(3) Investment policies which are within the provisions of applicable law and regulations, i.e., the Act and part 703 of this chapter for federal credit unions and the laws of the state in which the credit union operates for state-chartered credit unions, except state-chartered corporate credit unions. State-chartered corporate credit unions are permitted to make only those investments that are in conformance with part 704 of this chapter and applicable state laws and regulations;

(4) The presence of any account or security, the form of which has not been approved by the Board, except for accounts authorized by state law for state-chartered credit unions.

(c) *Fitness of management.* The officers, directors, and committee members of the credit union must have conducted its operations in accordance with provisions of applicable law, regulations, its charter and bylaws. No person shall serve as a director, officer, committee member, or employee of an insured credit union who has been convicted of any criminal offense involving dishonesty or breach of trust, except with the written consent of the Board.

(d) *Insurance of member accounts would not otherwise involve undue risk to the NCUSIF.* The credit union must maintain adequate fidelity bond coverage as specified in §741.201. Any circumstances which may be unique to the particular credit union concerned shall also be considered in arriving at the determination of whether or not an undue risk to the NCUSIF is or may be present. For purposes of this section, the term ''undue risk to the NCUSIF'' is defined as a condition which creates a probability of loss in excess of that normally found in a credit union and which indicates a reasonably foreseeable probability of the credit union becoming insolvent because of such condition, with a resultant claim against the NCUSIF.

(e) *Powers and purposes.* The credit union must not perform services other than those which are consistent with the promotion of thrift and the creation of a source of credit for its members, except as otherwise permitted by law or regulation.

(f) *Letter of disapproval.* A credit union whose application for share insurance is disapproved shall receive a letter indicating the reasons for such disapproval, a citation of the authority for such disapproval, and suggested methods by which the applying credit union may correct its deficiencies and thereby qualify for share insurance.

(g) Nothing in this section shall preclude the NCUA Board from imposing additional terms or conditions pursuant to the insurance agreement.

§741.4 Insurance premium and one percent deposit.

(a) *Scope.* This section implements the requirements of Section 202 of the Act (12 U.S.C. 1782) providing for capitalization of the NCUSIF through the maintenance of a deposit by each insured credit union in an amount equaling one percent of its insured shares and payment of an annual insurance premium.

(b) *Definitions.* For purposes of this section:

(1) *Insurance year* means the period from January 1 through December 31;

(2) *Insured shares* means the total amount of a credit union's share, share draft and share certificate accounts, or their equivalent under state law (which may include deposit accounts), authorized to be issued to members, other credit unions, public units, or nonmembers (where permitted under the Act or equivalent state law). ''Insured shares'' does not include amounts in excess of insurance coverage as provided in part 745 of this chapter; and

(3) *Normal operating level* means a total value of the NCUSIF equity equaling 1.3 percent of the aggregate of all insured shares in insured credit unions as of the end of the preceding insurance year, or such lower value as established by action of the NCUA Board.

(c) *One percent deposit.* Each insured credit union shall maintain with the NCUSIF during each insurance year a deposit in an amount equaling one percent of the total of the credit union's insured shares as of the close of the preceding insurance year. The deposit amount shall be adjusted annually on a date to be determined by the NCUA Board.

(d) *Premium.* Unless waived by the NCUA Board, each insured credit union shall pay to the NCUSIF, on a date to be determined by the NCUA Board, an insurance premium for that insurance year in an amount equaling one-twelfth of one percent of the credit union's total insured shares as of the close of the preceding insurance year.

(e) *Redistribution of NCUSIF equity.* When the NCUSIF exceeds its normal operating level, the NCUA Board will, at least annually, make a proportionate adjustment for insured credit unions of the amount necessary to reduce the NCUSIF to its normal operating level. Such adjustment will be in the form determined by the NCUA

Board and may include a waiver of insurance premiums, premium rebates, and/or distributions from NCUSIF equity.

(f) *Forms 1304 and 1305.* A certified copy of Form 1304 will be provided to all federally insured state-chartered credit unions and Form 1305 to all federally chartered credit unions in connection with the computation and funding of their annual premium payment and any change in their one percent deposit. Form 1305 also includes the annual operating fee. Forms 1304 and 1305 are invoices and are precalculated based on the credit union's previous year's insured shares. The forms provide for any adjustments declared by the NCUA Board, resulting in a single net transfer of funds between the credit union and the NCUA. Additional copies of each credit union's Form 1304 and 1305 may be obtained from the appropriate NCUA Regional Office.

(g) *New charters.* A newly-chartered credit union that obtains share insurance coverage from the NCUSIF during the insurance year in which it has obtained its charter shall not be required to pay an insurance premium for that insurance year. The credit union shall fund its one percent deposit on a date to be determined by the NCUA Board in the following insurance year, but shall not participate in any distribution from NCUSIF equity related to the period prior to the credit union's funding of its deposit.

(h) *Conversion to Federal insurance.* An existing credit union that converts to insurance coverage with the NCUSIF during an insurance year shall immediately fund its one percent deposit based on the total of its shares as of the close of the month prior to conversion and shall pay a premium (unless waived in whole or in part for all insured credit unions during that year) in an amount that is prorated to reflect the remaining number of months in the insurance year. The credit union will be entitled to a prorated share of any distribution from NCUSIF equity declared subsequent to the credit union's conversion.

(i) *Mergers of nonfederally insured credit unions.* Where a nonfederally insured credit union merges into a federally insured credit union, the continuing federally insured credit union shall immediately pay to the NCUSIF a prorated insurance premium (unless waived in whole or in part for all federally insured credit unions), and an additional one percent deposit based upon the increase in insured shares resulting from the merger.

(j) *Return of deposit.* Any insolvent credit union that is closed for involuntary liquidation will not be entitled to a return of its deposit. Any solvent credit union that is closed due to involuntary liquidation shall be entitled to a return of its deposit prior to final distribution of member shares. Any other credit union whose insurance coverage with the NCUSIF terminates will be entitled to a return of the full amount of its deposit immediately after the final date on which any shares of the credit union are insured, except that the NCUA Board reserves the right to delay payment by up to one year if it determines that immediate payment would jeopardize the financial condition of the NCUSIF. This includes termination of insurance due to mergers and consolidations. A credit union that receives a return of its deposit during an insurance year shall have the option of leaving a nominal sum on deposit with the NCUSIF until the next distribution from NCUSIF equity and will thus qualify for a prorated share of the distribution.

(k) *Assessment of administrative fee and interest for delinquent payment.* Each federally insured credit union shall pay to the NCUA an administrative fee, the costs of collection, and interest on any delinquent payment of its capitalization deposit or insurance premium. A payment will be considered delinquent if it is postmarked later than the date stated in the invoice provided to the credit union. The NCUA may waive or abate charges or collection of interest, if circumstances warrant.

(1) The administrative fee for a delinquent payment shall be an amount as fixed from time to time by the NCUA Board based upon the administrative costs of such delinquent payments to the NCUA in the preceding year.

(2) The costs of collection shall be calculated as the actual hours expended by NCUA personnel multiplied

by the average hourly cost of the salaries and benefits of such personnel.

(3) The interest rate charged on any delinquent payment shall be the U.S. Department of the Treasury Tax and Loan Rate in effect on the date when the payment is due as provided in 31 U.S.C. 3717.

§741.5 Notice of termination of excess insurance coverage.

In the event of a credit union's termination of share insurance coverage other than that provided by the NCUSIF, the credit union must notify all members in writing of such termination at least thirty days prior to the effective date of termination.

§741.6 Financial and statistical and other reports.

(a) Each operating insured credit union with assets in excess of $50,000,000 shall file with the NCUA a quarterly Financial and Statistical Report on Form NCUA 5300, on or before January 22 (as of the previous December 31), April 22 (as of the previous March 31), July 22 (as of the previous June 30) and October 22 (as of the previous September 30) of each year. All other operating insured credit unions shall file with the NCUA on or before January 31 and on or before July 31 of each year a semiannual Financial and Statistical Report on Form NCUA 5300, as of the previous December 31 (in the case of the January filing) or June 30 (in the case of the July filing).

(b) Insured credit unions shall, upon written notice from the NCUA Board or Regional Director, file such financial or other reports in accordance with instructions contained in such notice.

§741.7 Conversion to a state-chartered credit union.

Any federal credit union that petitions to convert to a state-chartered federally insured credit union is required to apply to the Regional Director for continued insurance of its accounts and meet the requirements as stated in the Act and this part. If the application for continued insurance is not approved, such insurance will terminate subject to the conditions set forth in section 206(d) of the Act.

§741.8 Purchase of assets and assumption of liabilities.

(a) Any credit union insured pursuant to Title II of the Act must apply for and receive approval from the NCUA Board before either purchasing or acquiring loans or assuming or receiving an assignment of deposits, shares, or liabilities from:

(1) Any credit union that is not insured pursuant to Title II of the Act;

(2) Any other financial-type institution (including depository institutions, mortgage banks, consumer finance companies, insurance companies, loan brokers, and other loan sellers or liability traders); or

(3) Any successor in interest to any institution identified in paragraph (a)(1) or (a)(2) of this section.

(b) Approval is not required for:

(1) Purchases of student loans or real estate secured loans to facilitate the packaging of a pool of loans to be sold or pledged on the secondary market under §701.23(b)(1) (iii) or (iv) of this chapter or comparable state law for state-chartered credit unions, or purchases of member loans under §701.23(b)(1)(i) of this chapter or comparable state law for state-chartered credit unions; or

(2) Assumptions or receipt of deposits, shares or liabilities as rollovers or transfers of member retirement accounts or in which an NCUSIF-insured credit union perfects a security interest in connection with an extension of credit to any member.

§741.9 Uninsured membership shares.

Any credit union that is insured pursuant to Title II of the Act may not offer membership shares that, due to the terms and conditions of the account, are not eligible for insurance coverage. This prohibition does not apply to shares that are uninsured solely because the amount is in excess of the maximum insurance coverage provided pursuant to part 745 of this chapter.

§741.10 Disclosure of share insurance.

Any credit union which is insured pursuant to Title II of the Act and is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions

and public units (or, for low-income designated credit unions, any nonmembers), shall identify such nonmember accounts as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union shall advise any present nonmember share and deposit holders by letter that their accounts are not insured by the NCUSIF. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

Subpart B—Regulations Codified Elsewhere in NCUA's Regulations as Applying to Federal Credit Unions That Also Apply to Federally Insured State-Chartered Credit Unions

§ 741.201 Minimum fidelity bond requirements.

(a) Any credit union which makes application for insurance of its accounts pursuant to Title II of the Act must possess the minimum fidelity bond coverage stated in § 701.20 of this chapter in order for its application for such insurance to be approved and for such insurance coverage to continue. A federally insured credit union whose fidelity bond coverage is terminated shall mail notice of such termination to the Regional Director not less than 35 days prior to the effective date of such termination.

(b) Corporate credit unions must comply with § 704.17 of this chapter in lieu of § 701.20 of this chapter.

§ 741.202 Audit and verification requirements.

(a) The supervisory committee of each credit union insured pursuant to Title II of the Act shall make or cause to be made an audit of the credit union at least once every calendar year covering the period elapsed since the last audit. The audit must fully meet the requirements set forth in §§ 701.12 and 701.13 of this chapter.

(b) Each credit union which is insured pursuant to Title II of the Act shall verify or cause to be verified, under controlled conditions, all passbooks and accounts with the records of the financial officer not less frequently than once every 2 years. The verification must fully meet the requirements set forth in §§ 701.12(e) and 701.13 of this chapter.

§ 741.203 Minimum loan policy requirements.

Any credit union which is insured pursuant to Title II of the Act must:

(a) Adhere to the requirements stated in § 701.21(h) of this chapter concerning member business loans, § 701.21(c)(8) of this chapter concerning prohibited fees, and § 701.21(d)(5) of this chapter concerning nonpreferential loans. State-chartered, NCUSIF-insured credit unions in a given state are exempt from these requirements if the state regulatory authority for that state adopts substantially equivalent regulations as determined by the NCUA Board. In nonexempt states, all required NCUA reviews and approvals will be handled in coordination with the state credit union supervisory authority; and

(b) Adhere to the requirements stated in part 722 of this chapter concerning appraisals.

§ 741.204 Maximum public unit and nonmember accounts, and low-income designation.

Any credit union that is insured, or that makes application for insurance, pursuant to Title II of the Act must:

(a) Adhere to the requirements of § 701.32 of this chapter regarding public unit and nonmember accounts, provided it has the authority to accept such accounts. Requests by federally insured state-chartered credit unions for an exemption from the limitation of § 701.32 of this chapter will be made and reviewed on the same basis as that provided in § 701.32 of this chapter for federal credit unions, provided, however that NCUA will not grant an exemption without the concurrence of the appropriate state regulator.

(b) Obtain a low-income designation in order to accept nonmember accounts, other than from public units or other credit unions, provided it has the authority to accept such accounts

under state law. The state regulator shall make the low-income designation with the concurrence of the appropriate regional director. The designation will be made and reviewed by the state regulator on the same basis as that provided in §701.34(a) of this chapter for federal credit unions. Removal of the designation by the state regulator for such credit unions shall be with the concurrence of NCUA.

(c) Receive secondary capital accounts only if the credit has a low-income designation pursuant to paragraph (b) of this section, and then only in accordance with the terms and conditions authorized for Federal credit unions pursuant to §701.34 of this chapter and to the extent not inconsistent with applicable state law and regulation. State chartered federally insured credit unions offering secondary capital accounts must submit the plan required by §701.34 to both the state supervisory authority and the NCUA Regional Director.

[60 FR 58504, Nov. 28, 1995, as amended at 61 FR 3792, Feb. 2, 1996]

§741.205 Reporting requirements for credit unions that are newly chartered or in troubled condition.

Any federally insured credit union chartered for less than 2 years or any credit union defined to be in troubled condition as set forth in §701.14(b)(3) of this chapter must adhere to the requirements stated in §701.14(c) of this chapter concerning the prior notice and NCUA review. Federally insured state-chartered credit unions must submit required information to both the appropriate NCUA Regional Director and their state supervisor. NCUA will consult with the state supervisor before making its determination pursuant to §701.14 (d)(2) and (f) of this chapter. NCUA will notify the state supervisor of its approval/disapproval no later than the time that it notifies the affected individual pursuant to §701.14(d)(1) of this chapter.

§741.206 Corporate credit unions.

Any corporate credit union insured pursuant to Title II of the Act shall adhere to the requirements of part 704 of this chapter.

§741.207 Community development revolving loan program for credit unions.

Any credit union which is insured pursuant to Title II of the Act and is a ''participating credit union,'' as defined in §705.3 of this chapter, shall adhere to the requirements stated in part 705 of this chapter.

§741.208 Mergers of federally insured credit unions: voluntary termination or conversion of insured status.

Any credit union which is insured pursuant to Title II of the Act and which merges with another credit union or non-credit union institution, and any state-chartered credit union which voluntarily terminates its status as a federally-insured credit union, or converts from federal insurance to other insurance from a government or private source authorized to insure member accounts, shall adhere to the applicable requirements stated in section 206 of the Act and parts 708a and 708b of this chapter concerning mergers and voluntary termination or conversion of insured status.

§741.209 Management official interlocks.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 711 of this chapter concerning management official interlocks, issued under the provisions of the Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.).

§741.210 Central liquidity facility.

Any credit union which is insured pursuant to Title II of the Act and is a member of the Central Liquidity Facility, shall adhere to the requirements stated in part 725 of this chapter.

§741.211 Advertising.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements prescribed by part 740 of this chapter.

§741.212 Share insurance.

(a) Member share accounts received by any credit union which is insured pursuant to Title II of the Act in its

usual course of business, including regular shares, share certificates, and share draft accounts, are insured subject to the limitations and rules in subpart A of part 745 of this chapter.

(b) The payment of share insurance and the appeal process applicable to any credit union which is insured pursuant to Title II of the Act are addressed in subpart B of part 745 of this chapter.

§ 741.213 Administrative actions, adjudicative hearings, rules of practice and procedure.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the applicable rules of practice and procedures for administrative actions and adjudicative hearings prescribed by part 747 of this chapter. Subpart E of part 747 of this chapter applies only to federal credit unions.

§ 741.214 Report of crime or catastrophic act and Bank Secrecy Act compliance.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 748 of this chapter.

§ 741.215 Records preservation program.

Any credit union which is insured pursuant to Title II of the Act shall maintain a records preservation program as prescribed by part 749 of this chapter.

§ 741.216 Flood insurance.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 760 of this chapter.

§ 741.217 Truth in savings.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the requirements stated in part 707 of this chapter.

§ 741.218 Involuntary liquidation and creditor claims.

Any credit union which is insured pursuant to Title II of the Act shall adhere to the applicable provisions in part 709 of this chapter. Section 709.3 of this chapter applies only to federal credit unions.

PART 745—SHARE INSURANCE AND APPENDIX

Sec.

Subpart A—Clarification and Definition of Account Insurance Coverage

745.0 Scope.
745.1 Definitions.
745.2 General principles applicable in determining insurance of accounts.
745.3 Single ownership accounts.
745.4 Testamentary accounts.
745.5 Accounts held by executors or administrators.
745.6 Accounts held by a corporation, partnership, or unincorporated association.
745.7 [Reserved]
745.8 Joint accounts.
745.9–1 Trust accounts.
745.9–2 IRA/Keogh accounts.
745.9–3 Deferred compensation accounts.
745.10 Public unit accounts.
745.11 Accounts evidenced by negotiable instruments.
745.12 Account obligations for payment of items forwarded for collection by depository institution acting as agent.
745.13 Notification to members/shareholders.

Subpart B—Payment of Share Insurance and Appeals

745.200 General.
745.201 Processing of insurance claims.
745.202 Appeal.
745.203 Judicial review.
APPENDIX TO PART 745—EXAMPLES OF INSURANCE COVERAGE AFFORDED ACCOUNTS IN CREDIT UNIONS INSURED BY THE NATIONAL CREDIT UNION SHARE INSURANCE FUND

AUTHORITY: 12 U.S.C 1766, 1781, 1789.

SOURCE: 51 FR 37560, Oct. 23, 1986, unless otherwise noted.

Subpart A—Clarification and Definition of Account Insurance Coverage

§ 745.0 Scope.

The regulation and appendix contained in this part describe the insurance coverage of various types of member accounts. In general, all types of member share accounts received by the credit union in its usual course of business, including regular shares, share

certificates, and share draft accounts, represent equity and are insured. For the purposes of applying the rules in this part, it is presumed that the owner of funds in an account is an insured credit union member or otherwise eligible to maintain an insured account in a credit union. These rules do not extend insurance coverage to persons not entitled to maintain an insured account or to account relationships that have not been approved by the Board as an insured account. Where there are multiple owners of a single account, generally only that part which is allocable to the member(s) is insured.

§745.1 Definitions.

(a) The terms *account* or *accounts* as used in this part mean share, share certificate or share draft accounts (or their equivalent under state law, as determined by the Board in the case of insured state credit unions) of a member (which includes other credit unions, public units and nonmembers where permitted under the Act) in a credit union of a type approved by the Board which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member.

(b) The terms *member* or *members* as used in this part mean those persons enumerated in the credit union's field of membership who have been elected to membership in accordance with the Act or state law in the case of state credit unions. It also includes those nonmembers permitted under the Act to maintain accounts in an insured credit union, including nonmember credit unions and nonmember public units and political subdivisions.

(c) The term *public unit* means the United States, any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, any territory or possession of the United States, any county, municipality, or political subdivision thereof, or any Indian tribe as defined in section 3(c) of the Indian Financing Act of 1974.

(d) The term *political subdivision* includes any subdivision of a public unit, as defined in paragraph (c) of this section, or any principal department of such public unit, (1) the creation of which subdivision or department has been expressly authorized by state statute, (2) to which some functions of government have been delegated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation improvement, levee, sanitary, school or power districts and bridge or port authorities, and other special districts created by state statute or compacts between the states. Excluded from the term are subordinate or nonautonomous divisions, agencies, or boards within principal departments.

§745.2 General principles applicable in determining insurance of accounts.

(a) *General.* This part provides for determination by the Board of the amount of members' insured accounts. The rules for determining the insurance coverage of accounts maintained by members in the same or different rights and capacities in the same insured credit union are set forth in the following provisions of this part. The appendix provides examples of the application of these rules to various factual situations. Insofar as rules of local law enter into such determinations, the law of the jurisdiction in which the insured credit union's principal office is located shall govern.

(b) The regulations in this part in no way are to be interpreted to authorize any type of account that is not authorized by Federal law or regulation or State law or regulation or by the bylaws of a particular credit union. The purpose is to be as inclusive as possible of all situations.

(c) *Records.* (1) The account records of the insured credit union shall be conclusive as to the existence of any relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded. Examples would be trustee, agent, custodian, or executor. No claim for insurance based on such a relationship will be recognized in the absence of such disclosure.

(2) If the account records of an insured credit union disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interest of other parties in the account must be ascertainable either from the records of the credit union or the records of the member maintained in good faith and in the regular course of business.

(3) The account records of an insured credit union in connection with a trust account shall disclose the name of both the settlor (grantor) and the trustee of the trust and shall contain an account signature card executed by the trustee.

(4) The interests of the co-owners of a joint account shall be deemed equal, unless otherwise stated on the insured credit union's records in the case of a tenancy in common.

(d) *Valuation of trust interests.* (1) Trust interests in the same trust deposited in the same account will be separately insured if the value of the trust interest is capable of determination, without evaluation of contingencies, except for those covered by the present worth tables and rules of calculation for their use set forth in § 20.2031–7 of the Federal Estate Tax Regulations (26 CFR 20.2031–7).

(2) In connection with any trust in which certain trust interests are not capable of evaluation in accordance with the foregoing rule, payment by the Board to the trustee with respect to all such trust interests shall not exceed the basic insured amount of $100,000.

(3) Each trust interest in any trust established by two or more settlors shall be deemed to be derived from each settlor pro rata to his contribution to the trust.

(4) The term ''trust interest'' means the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, but does not include any interest retained by the settlor.

§ 745.3 Single ownership accounts.

(a) Funds owned by an individual and deposited in the manner set forth below shall be added together and insured up to $100,000 in the aggregate.

(1) *Individual accounts.* Funds owned by an individual (or by the husband-wife community of which the individual is a member) and deposited in one or more accounts in the individual's own name shall be insured up to $100,000 in the aggregate.

(2) *Accounts held by agents or nominees.* Funds owned by a principal and deposited in one or more accounts in the name or names of agents or nominees shall be added to any individual account of the principal and insured up to $100,000 in the aggregate.

(3) *Custodial loan accounts.* Loan payments received by a Federal credit union prior to remittance to other parties to whom the loan was sold pursuant to section 107(13) of the Federal Credit Union Act and § 701.23 of NCUA's Regulations shall be considered to be funds owned by the borrower and shall be added to any individual accounts of the borrower and insured up to $100,000 in the aggregate.

(b) Funds held by a guardian, custodian, or conservator for the benefit of his ward or for the benefit of a minor under a Uniform Gifts to Minors Act and deposited in one or more accounts in the name of the guardian, custodian, or conservator are insured up to $100,000 in the aggregate, separately from any other accounts of the guardian, custodian, conservator, ward, or minor.

§ 745.4 Testamentary accounts.

(a) The term ''testamentary account'' refers to a revocable trust account, tentative or ''Totten'' trust account, ''payable-on-death'' account, or any similar account which evidences an intention that the funds shall pass on the death of the owner of the funds to a named beneficiary.

(b) If the named beneficiary of a testamentary account is a spouse, child, or grandchild of the owner, the account shall be insured up to $100,000 in the aggregate as to each such beneficiary, separately from any other accounts of the owner or beneficiary, regardless of the membership status of the beneficiary.

(c) If the named beneficiary of a testamentary account is other than the owner's spouse, child, or grandchild, the funds in such account shall be

added to any individual accounts of such owner and insured up to $100,000 in the aggregate.

§745.5 Accounts held by executors or administrators.

Funds of a decedent held in the name of the decedent or in the name of the executor or administrator of the decedent's estate and deposited in one or more accounts shall be insured up to $100,000 in the aggregate for all such accounts, separately from the individual accounts of the beneficiaries of the estate or of the executor or administrator.

§745.6 Accounts held by a corporation, partnership, or unincorporated association.

Accounts of a corporation, partnership, or unincorporated association engaged in any independent activity shall be insured up to $100,000 in the aggregate. The account of a corporation, partnership, or unincorporated association not engaged in an independent activity shall be deemed to be owned by the person or persons owning such corporation or comprising such partnership or unincorporated association and, for account insurance purposes, the interest of each person in such an account shall be added to any other account individually owned by such person and insured up to $100,000 in the aggregate. For purposes of this section, ''independent activity'' means an activity other than one directed solely at increasing insurance coverage.

§745.7 [Reserved]

§745.8 Joint accounts.

(a) *Separate insurance coverage.* Accounts owned jointly, whether as joint tenants with right of survivorship, as tenants by the entireties, as tenants in common, or by husband and wife as community property, shall be insured separately from accounts individually owned by any of the co-owners.

(b) *Qualifying joint accounts.* Joint accounts are insured separately from individual accounts up to a maximum of $100,000 provided that each of the co-owners has personally signed an account signature card and has a right of withdrawal on the same basis as the other co-owners.

(c) *Failure to qualify.* An account owned jointly which does not qualify as a joint account for purposes of insurance of accounts shall be treated as owned by the named persons as individuals and the actual ownership interest of each such person in such account shall be added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate. An account will not fail to qualify as a joint account if a joint owner is a minor and applicable state law limits or restricts a minor's withdrawal rights.

(d) *Same combination of individuals.* All joint accounts owned by the same combination of individuals shall be added together and insured up to $100,000 in the aggregate.

(e) *Different combination of individuals.* A person holding an interest in more than one joint account owned by different combinations of individuals may receive a maximum of $100,000 insurance coverage on the total of his interest in those joint accounts.

(f) *Nonmember joint owners.* A nonmember may become a joint owner with a member on a joint account with right of survivorship. The nonmember's interest in such accounts will be insured in the same manner as the member joint-owner's interest.

§745.9–1 Trust accounts.

(a) For purposes of this section, ''trust'' refers to an irrevocable trust.

(b) All trust interests (as defined in §745.2(d)(4)), for the same beneficiary, deposited in an account and established pursuant to valid trust agreements created by the same settlor (grantor) shall be added together and insured up to $100,000 in the aggregate, separately from other accounts of the trustee of such trust funds or the settlor or beneficiary of such trust arrangements.

§745.9–2 IRA/Keogh accounts.

(a) The present vested ascertainable interest of a participant or designated beneficiary in a trust or custodial account maintained pursuant to a pension or profit-sharing plan described under section 401(d) (Keogh account) or section 408(a) (IRA) of the Internal

Revenue Code shall each be insured up to $100,000 separately from other accounts of the participant or designated beneficiary. An IRA account shall be separately insured from a Keogh account.

(b) Upon liquidation of the credit union, any share insurance payment shall be made by the NCUA Board to the trustee or custodian, or the successor trustee or custodian, unless otherwise directed in writing by the plan participant or beneficiary.

§ 745.9–3 Deferred compensation accounts.

Funds deposited by an employer pursuant to a deferred compensation plan (including section 401(K) of the Internal Revenue Code) shall be insured up to $100,000 as to the interest of each plan participant who is a member, separately from other accounts of the participant or employer.

§ 745.10 Public unit accounts.

(a) Public funds invested in Federal credit unions and federally-insured state credit unions authorized to accept such investments shall be insured as follows:

(1) Each official custodian of funds of the United States lawfully investing the same in a federally-insured credit union shall be separately insured up to $100,000;

(2) Each official custodian of funds of any state of the United States or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in the same state shall be separately insured up to $100,000;

(3) Each official custodian of funds of the District of Columbia lawfully investing the same in a federally-insured credit union in the District of Columbia shall be separately insured up to $100,000;

(4) Each official custodian of funds of the Commonwealth of Puerto Rico, the Panama Canal Zone, or any territory or possession of the United States, or any county, municipality, or political subdivision thereof lawfully investing the same in a federally-insured credit union in Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively, shall be separately insured up to $100,000;

(5) Each official custodian of tribal funds of any Indian tribe (as defined in section 3(c) of the Indian Financing Act of 1974) or agency thereof lawfully investing the same in a federally-insured credit union shall be separately insured up to $100,000.

(b) Each official custodian referred to in paragraphs (a) (2), (3), and (4) of this section lawfully investing such funds in a federally-insured credit union outside their respective jurisdictions shall be separately insured up to $100,000; and

(c) For purposes of this section, if the same person is an official custodian of more than one public unit, he shall be separately insured with respect to the public funds held by him for each such unit, but he shall not be separately insured with respect to all public funds of the same public unit by virtue of holding different offices in such unit or by holding such funds for different purposes.

(d) For purposes of this section, ''lawfully investing'' means pursuant to the statutory or regulatory authority of the custodian or public unit.

§ 745.11 Accounts evidenced by negotiable instruments.

If any insured account obligation of a credit union is evidenced by a negotiable certificate account, negotiable draft, negotiable cashier's or officer's check, negotiable certified check, or negotiable traveler's check or letter of credit, the owner of such account obligation will be recognized for all purposes of a claim for insured accounts to the same extent as if his name and interest were disclosed on the records of the credit union provided the instrument was in fact negotiated to such owner prior to the date of the closing of the credit union. Affirmative proof of such negotiation must be offered in all cases to substantiate the claim.

§ 745.12 Account obligations for payment of items forwarded for collection by depository institution acting as agent.

Where a closed credit union has become obligated for the payment of

items forwarded for collection by a depository institution acting solely as agent, the owner of such items will be recognized for all purposes of a claim for insured accounts to the same extent as if his name and interest were disclosed on the records of the credit union when such claim for insured accounts, if otherwise payable, has been established by the execution and delivery of prescribed forms. Such depository institution forwarding such items for the owners thereof will be recognized as agent for such owners for the purpose of making an assignment of the rights of such owners against the closed insured credit union to the Board and for the purpose of receiving payment on behalf of such owners.

§ 745.13 Notification to members/shareholders.

Each insured credit union shall provide notice to its members concerning NCUA insurance coverage of member accounts. This may be accomplished by placing either a copy of part 745 of these rules, the appendix, or one or more copies of the NCUA brochure ''Your Insured Funds'' in each branch office and main office of the credit union. Copies of these materials shall also be made available to members upon request. For purposes of this section, an automated teller machine or point of sale terminal is not a branch office.

Subpart B—Payment of Share Insurance and Appeals

SOURCE: 55 FR 5586, Feb. 16, 1990, unless otherwise noted.

§ 745.200 General.

(a) *Payment.* In the event of the liquidation of an insured credit union, the Board will promptly determine the insured accountholders thereof and the amount of the insured account or accounts of each such accountholder. Payment may be in cash, or its equivalent, or may be made by making available to each accountholder a transferred account in a new federally-insured credit union in the same community or in another federally-insured credit union or institution in an amount equal to the accountholder's insured account. Notwithstanding the foregoing, the Board may withhold payment of such portion of the insured account of any member as may be required to provide for payment of any direct or indirect liability to the closed credit union or the liquidating agent, which is not offset against a claim due from such credit union, pending the determination and payment of such liability by the member of or any person liable therefor.

(b) *Amount of insurance.* The amount of insurance on an insured account shall be determined in accordance with the provisions of Subpart A of this part and the Federal Credit Union Act. For the purpose of determining insurance coverage, dividends earned in the ordinary course of business and posted to share accounts for any prior accounting or dividend period shall be deemed to be principal under this part. Dividends earned or accrued in the ordinary course of business, but not posted to share accounts, may be paid at the discretion of the liquidating agent. In making such determination, the liquidating agent will take into consideration whether the failure to post dividends earned or accrued was due to the fraud, embezzlement or accounting errors of credit union personnel. The liquidating agent may require an accountholder to submit documentation supporting any claim for unposted dividends not otherwise evidenced in the credit union records. However, in no event will dividend amounts be considered as principal for insurance purposes pursuant to this section if not consistent with the amounts paid on similar classes of shares.

(c) *Multiple accounts.* In the event an insured member holds more than one insured account in the same capacity, and the aggregate amount of such accounts (including share draft accounts held in such capacity) exceeds the amount of insurance afforded thereon, the insurance coverage will be prorated among the member's interest in all accounts held in the same capacity. In the case of individual accounts, the insurance proceeds shall be paid to the holder of the account, whether or not the holder is the beneficial owner. In the case of accounts which are owned jointly, the insurance proceeds shall be

paid to the owners jointly. In the case of trust estates, the insurance proceeds shall be paid to the indicated trustee unless otherwise provided for in the trust instrument or under state law. In the case of corporations, partnerships and unincorporated associations engaged in an independent activity, the insurance proceeds shall be paid to the indicated holder of the account. Where insurance payment is in the form of a transferred account to another insured institution, the same rules shall be applied.

(d) *Computing time.* In computing any period of time prescribed by this subpart, the provisions of § 747.12(a) shall apply.

[55 FR 5586, Feb. 16, 1990, as amended at 61 FR 60186, Nov. 27, 1996]

§ 745.201 Processing of insurance claims.

(a) *Delegations of authority.* The Agent for the Liquidating Agent (''Liquidating Agent'') or his or her designee is authorized to make initial determinations with respect to insurance claims pursuant to the principles set forth in this part, and to act on requests for reconsideration of the initial determination.

(b) *Initial determination.* In the event the Liquidating Agent determines that all or a portion of an accountholder's account is uninsured, the Liquidating Agent shall so notify the accountholder in writing, stating the reason(s) for such initial determination, and shall provide the accountholder with a certificate of claim in liquidation in the amount of the uninsured account from the Board in its capacity as Liquidating Agent for the insured credit union to enable the accountholder to share in the proceeds of the liquidation of the credit union, if any, up to the amount of the uninsured account.

(c) *Request for reconsideration.* An accountholder may, at his or her option, request reconsideration from the Liquidating Agent of the initial determination within 30 days of the date of the initial determination, or directly appeal the initial determination to the Board pursuant to § 745.202 of this subpart. The Liquidating Agent shall act on the request for reconsideration within 30 days from its receipt.

§ 745.202 Appeal.

(a) *Time for filing.* Within 60 days after issuance of an initial determination, or of the determination on a request for reconsideration by the liquidating agent, the accountholder may appeal by filing with the Board a written request for appeal. The appeal may be filed with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

(b) *Content of request.* Any appeal must include:

(1) A statement of the facts on which the claim for insurance is based;

(2) A statement of the basis for the initial determination or determination on the request for reconsideration to which the accountholder objects and the alleged error in such determination, including citations to applicable statutes and regulations;

(3) Any other evidence relied upon by the accountholder which was not previously provided to the Liquidating Agent.

(c) *Procedures for review of request.* (1) Within 60 days of the date of the Board's receipt of an appeal, the Board may request in writing that the accountholder submit additional facts and records in support of its request. The accountholder shall have 45 days from the date of issuance of such written request to provide such additional information. Failure by the accountholder to provide additional information may, as determined solely by the Board, result in denial of the accountholder's appeal.

(2) Within 60 days from the date of the Board's receipt of an appeal, the accountholder may amend or supplement the request in writing. In the event that the accountholder does amend or supplement the request, the provisons of paragraph (c)(1) of this section with respect to requests for additional information and responses to such requests shall apply with equal force to any such amendment or supplement to a request.

(d) *Determination on appeal.* (1) Within 180 days from the date of the receipt of an appeal by the Board, the Board shall

issue a decision determining the extent of the accountholder's insurance pursuant to the rules of this part.

(2) The determination by the Board on appeal shall be provided to the accountholder in writing, stating the reason(s) for the determination, and shall constitute a final Agency order regarding the accountholder's claim for insurance.

(3) If the Board determines that the accountholder is entitled to the amount of insurance claimed or a portion thereof, upon payment of such insurance the accountholder shall promptly surrender to the Board the certificate of claim in liquidation provided in connection with the initial determination. In the event that the Board determines that the accountholder is only entitled to a portion of the amount of insurance claimed, upon the accountholder's surrender of such certificate a new certificate of claim in liquidation will be provided which reflects the revised amount of the uninsured account.

(4) Failure by the Board to issue a determination on appeal of the accountholder's claim for insurance within the 180-day period provided for under paragraph (d)(1) of this section, shall be deemed to be a denial of such claim for purposes of §745.203 of this subpart.

[55 FR 5586, Feb. 16, 1990, as amended at 59 FR 36041, July 15, 1994]

§745.203 Judicial review.

(a) For purposes of seeking judicial review of actions taken pursuant to this subpart, only a determination on appeal issued by the Board pursuant to §745.202 of this subpart shall constitute a final determination regarding an accountholder's claim for insurance.

(b) Failure to file an appeal with regard to an initial determination, or a decision rendered on a request for reconsideration with the applicable time periods shall constitute a failure by the accountholder to exhaust available administrative remedies and, due to such failure, any objections to the initial determination or request for reconsideration shall be deemed to be waived and such determination shall be deemed to have been accepted by, and binding upon, the accountholder.

(c) Final determination by the Board is reviewable in accordance with the provisions of chapter 7, title 5, United States Code, by the United States Court of Appeals for the District of Columbia or the court of appeals for the Federal judicial circuit where the credit union's principal place of business is located. Such action must be filed not later than 60 days after such final determination is ordered.

APPENDIX TO PART 745—EXAMPLES OF INSURANCE COVERAGE AFFORDED ACCOUNTS IN CREDIT UNIONS INSURED BY THE NATIONAL CREDIT UNION SHARE INSURANCE FUND

The following examples illustrate insurance coverage on accounts maintained in the same federally-insured credit union. They are intended to cover various types of ownership interests and combinations of accounts which may occur in connection with funds invested in insured credit unions. These examples interpret the rules for insurance of accounts contained in 12 CFR part 745.

The examples, as well as the rules which they interpret, are predicated upon the assumption that: (1) Invested funds are actually owned in the manner indicated on the credit union's records and (2) the owner of funds in an account is a credit union member or otherwise eligible to maintain an insured account in a credit union. If available evidence shows that ownership is different from that on the institution's records, the National Credit Union Share Insurance Fund may pay claims for insured accounts on the basis of actual rather than ostensible ownership. Further, the examples and the rules which they interpret do not extend insurance coverage to persons otherwise not entitled to maintain an insured account or to account relationships that have not been approved by the Board as an insured account.

A. Single Ownership Accounts

All funds owned by an individual member (or, in a community property state, by the husband-wife community of which the individual is a member) and invested in one or more individual accounts are added together and insured to the $100,000 maximum. This is true whether the accounts are maintained in the name of the individual member owning the funds, in the name of the member's agent or nominee, or in a custodial loan account on behalf of the member as a borrower. (§745.3(a) (1), (2) and (3).) All such accounts are added together and insured as one individual account. Funds held in one or more accounts in the name of a guardian, custodian, or conservator for the benefit of a ward or minor are added together and insured up

to $100,000. However, such an account or accounts will not be added to any other individual accounts of the guardian, custodian, conservator, ward, or minor for purposes of determining insurance coverage. (§ 745.3(b).)

Example 1

Question: Members A and B, husband and wife, each maintain an individual account containing $100,000. In addition, they hold a joint account containing $100,000. What is the insurance coverage?

Answer: Each account is separately insured up to $100,000, for a total coverage of $300,000. The coverage would be the same whether the individual accounts contain funds owned as community property or as individual property of the spouses (§ 745.3(a)(1) and § 745.8(a)).

Example 2

Question: Members H and W, husband and wife, reside in a community property state. H maintains a $100,000 account consisting of his separately-owned funds and invests $100,000 of community property funds in another account, both of which are in his name alone. What is the insurance coverage?

Answer: The two accounts are added together and insured to a total of $100,000. $100,000 is uninsured (§ 745.3(a)(1)).

Example 3

Question: Member A has $92,500 invested in an individual account, and his agent, Member B, invests $25,000 of A's funds in a properly designated agency account. B also holds a $100,000 individual account. What is the insurance coverage?

Answer: A's individual account and the agency account are added together and insured to the $100,000 maximum, leaving $17,500 uninsured. The investment of funds through an agent does not result in additional insurance coverage for the principal (§ 745.3(a)(2)). B's individual account is insured separately from the agency account (§ 745.3(a)(1)). However, if the account records of the credit union do not show the agency relationship under which the funds in the $25,000 account are held, the $25,000 in B's name could, at the option of the NCUSIF, be added to his individual account and insured to $100,000 in the aggregate, leaving $25,000 uninsured (§ 745.2(c)).

Example 4

Question: Member A holds a $100,000 individual account. Member B holds two accounts in his own name, the first containing $25,000 and the second containing $92,500. In processing the claims for payment of insurance on these accounts, the NCUSIF discovers that the funds in the $25,000 account actually belong to A and that B had invested these funds as agent for A, his undisclosed principal. What is the insurance coverage?

Answer: Since the available evidence shows that A is the actual owner of the funds in the $25,000 account, those funds would be added to the $100,000 individual account held by A (rather than to B's $92,500 account) and insured to the $100,000 maximum, leaving $25,000 uninsured. (§ 745.3(a)(2).) B's $92,500 individual account would be separately insured.

Example 5

Question: Member C, a minor, maintains an individual account of $750. C's grandfather makes a gift to him of $100,000, which is invested in another account by C's father, designated on the credit union's records as custodian under a Uniform Gift to Minors Act. C's father, also a member, maintains an individual account of $100,000. What is the insurance coverage?

Answer: C's individual account and the custodian account held for him by his father are each separately insured: The $100,000 maximum on the custodian account, and $750 on his individual account. The individual account held by C's father is also separately insured to the $100,000 maximum. (§ 745.3 (a)(1) and (b).)

Example 6

Question: Member G, a court-appointed guardian, invests in a properly designated account $100,000 of funds in his custody which belong to member W, his ward. W and G each maintain $25,000 individual accounts. What is the insurance coverage?

Answer: W's individual account and the guardianship account in G's name are each insured to $100,000 providing W with $125,000 in insured funds. G's individual account is also separately insured. (§ 745.3 (a)(1) and (b).)

Example 7

Question: X Credit Union acts as a servicer of FHA, VA, and conventional mortgage loans made to its members but sold to other parties. Each month X receives loan payments, for remittance to the other parties, from approximately 2,000 member mortgagors. The monies received each month total $1,000,000 and are maintained in a custodial loan account. What is the insurance coverage?

Answer: X Credit Union acts as custodian for the 2,000 individual mortgagors. The interest of each mortgagor is separately insured as his individual account (but added to any other individual accounts which the mortgagor holds in the Credit Union) (§ 745.3(a)(3)).

B. Testamentary Accounts

The term ''testamentary account'' refers to a revocable trust account, tentative or ''Totten'' trust account, ''payable-on-death'' account, or any similar account which evidences an intention that the funds shall pass on the death of the owner of the funds to a named beneficiary. If the beneficiary is a spouse, child, or grandchild of the owner, the funds in all such accounts are insured for the owner up to $100,000 in the aggregate as to each such beneficiary, separately from any other individual accounts of the owner. If the beneficiary of such an account is other than a spouse, child, or grandchild of the owner, the funds in the account are, for insurance purposes, added to any other individual accounts of the owner and insured up to $100,000 in the aggregate. In the case of a revocable trust account, the person who holds the power of revocation is deemed to be the owner of the funds in the account. If a revocable trust account is held in the name of a fiduciary other than the owner of the funds, any other accounts held by the fiduciary are insured separately from such revocable trust account.

Example 1

Question: Member H invests $200,000 in a revocable trust account with his son, S, and his daughter, D, as named beneficiaries. What is the insurance coverage?

Answer: Since S and D are children of H, the owner of the account, the funds are insured up to $100,000 as to each beneficiary (§ 745.4(b)). Assuming that S and D have equal beneficial interests ($100,000 each), H is fully insured for this account.

Example 2

Question: Member H invests $100,000 in each of four ''payable-on-death'' accounts. Under the terms of each account contract, H has the right to withdraw any or all of the funds in the account at any time. Any funds remaining in the account at the time of H's death are to be paid to a named beneficiary. The respective beneficiaries of the four accounts are H's wife, his mother, his brother, and his son. H also holds an individual account containing $100,000. What is the insurance coverage?

Answer: The accounts payable on death to H's wife and son are each separately insured to the $100,000 maximum (§ 745.4(b)). The accounts payable to H's mother and brother are added to H's individual account and insured to $100,000 in the aggregate, leaving $200,000 uninsured (§ 745.4(c)).

Example 3

Question: Member H and W jointly invest in a ''payable-on-death'' account for the benefit of their son, S, and daughter, D. The account is held by H and W with right of survivorship. What is the maximum insurance coverage available on the account?

Answer: Since S and D are the children of H and W, the account will be insured up to $100,000 as to each beneficiary separately from any accounts of the owner, H and W (§ 745.4(b)). H would be entitled to $100,000 insurance for S and $100,000 for D. W would be entitled to the same coverage for a total of $400,000 on the account. However, upon the death of either H or W, insurance coverage would be reduced to $200,000.

C. Accounts Held by Executors or Administrators

All funds belonging to a decedent and invested in one or more accounts, whether held in the name of the decedent or in the name of his executor or administrator, are added together and insured to the $100,000 maximum. Such funds are insured separately from the individual accounts of any of the beneficiaries of the estate or of the executor or administrator.

Example 1

Question: Member A, administrator of Member D's estate, sells D's automobile and invests the proceeds of $12,500 in an account entitled ''A Administrator of the estate of D.'' A has an individual account in that same credit union containing $100,000. Prior to his death, D had opened an individual account of $100,000. What is the insurance coverage?

Answer: The $12,500 is added to D's individual account and insured to $100,000, leaving $12,500 uninsured. A's individual account is separately insured for $100,000 (§ 745.5).

D. Accounts Held by a Corporation, Partnership or Unincorporated Association

All funds invested in an account or accounts by a corporation, a partnership or an unincorporated association engaged in any independent activity are added together and insured to the $100,000 maximum. The term ''independent activity'' means any activity other than the one directed solely at increasing coverage. If the corporation, partnership or unincorporated association is not engaged in an independent activity, any account held by the entity is insured as if owned by the persons owning or comprising the entity, and the imputed interest of each such person is added for insurance purposes to any individual account which he maintains.

Example 1

Question: Member X Corporation maintains a $100,000 account. The stock of the corporation is owned by members A, B, C, and D in equal shares. Each of these stockholders also maintains an individual account of $100,000 with the same credit union. What is the insurance coverage?

Answer: Each of the five accounts would be separately insured to $100,000 if the corporation is engaged in an independent activity and has not been established merely for the purpose of increasing insurance coverage. The same would be true if the business were operated as a bona fide partnership instead of as a corporation (§745.6). However, if X corporation was not engaged in an independent activity, then $25,000 (¼ interest) would be added to each account of A, B, C, and D. The accounts of A, B, C, and D would then each be insured to $100,000, leaving $25,000 in each account uninsured.

Example 2

Question: Member C College maintains three separate accounts with the same credit union under the titles: ''General Operating Fund,'' ''Teachers Salaries,'' and ''Building Fund.'' What is the insurance coverage?

Answer: Since all of the funds are the property of the college, the three accounts are added together and insured only to the $100,000 maximum (§745.6).

Example 3

Question: The men's club of X Church carries on various social activities in addition to holding several fund-raising campaigns for the church each year. The club is supported by membership dues. Both the club and X Church maintain member accounts in the same credit union. What is the insurance coverage?

Answer: The men's club is an unincorporated association engaged in an independent activity. If the club funds are, in fact, legally owned by the club itself and not the church, each account is separately insured to the $100,000 maximum (§745.6).

Example 4

Question: The PQR Union, a member of the ABC Federal Credit Union, has three locals in a certain city. Each of the locals maintains an account containing funds belonging to the parent organization. All three accounts are in the same insured credit union. What is the insurance coverage?

Answer: The three accounts are added together and insured up to the $100,000 maximum (§745.6).

E. Public Unit Accounts

For insurance purposes, the official custodian of funds belonging to a public unit, rather than the public unit itself, is insured as the accountholder. All funds belonging to a public unit and invested by the same custodian in an insured credit union are added together and insured to the $100,000 maximum, regardless of the number of accounts involved and regardless of whether the funds are invested in accounts located in or outside the state. If there is more than one official custodian for the same public unit, the funds invested by each custodian are separately insured up to $100,000. If the same person is custodian of funds for more than one public unit, he is separately insured to $100,000 with respect to the funds of each unit held by him in properly designated accounts. The maximum coverage for an official custodian of funds of the United States would be $100,000.

For insurance purposes, a ''political subdivision'' is entitled to the same insurance coverage as any other public unit. ''Political subdivision'' includes any subdivision of a public unit or any principal department of such unit: (1) The creation of which has been expressly authorized by state statute, (2) to which some functions of government have been allocated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control.

Example 1

Question: As Comptroller of Y Consolidated School District, A maintains a $125,000 account in the credit union containing school district funds. He also maintains his own $100,000 member account in the same credit union. What is the insurance coverage?

Answer: The two accounts will be separately insured, assuming the credit union's records indicate that the account containing the school district funds is held by A in a fiduciary capacity. Thus, $100,000 of the school's funds and the entire $100,000 in A's personal account will be insured (§745.10(a)(2) and §745.3).

Example 2

Question: A, as city treasurer, and B, as chief of the city police department, each have $100,000 in city funds invested in custodial accounts. What is the insurance coverage?

Answer: Assuming that both A and B have offical custody of the city funds, each account is separately insured to the $100,000 maximum (§745.10(a)(2)).

Example 3

Question: A is Treasurer of X County and collects certain tax assessments, a portion of which must be paid to the state under statutory requirement. A maintains an account for general funds of the county and establishes a separate account for the funds which belong to the State Treasurer. The credit union's records indicate that the separate account contains funds held for the State. What is the insurance coverage?

Answer: Since two public units own the funds held by A, the accounts would each be separately insured to the $100,000 maximum (§745.10(a)(2)).

Example 4

Question: A city treasurer invests city funds in each of the following accounts: ''General Operating Account,'' ''School Transportation Fund,'' ''Local Maintenance Fund,'' and ''Payroll Fund.'' By administrative direction the city treasurer has allocated the funds for the use of and control by separate departments of the city. What is the insurance coverage?

Answer: All of the accounts are added together and insured in the aggregate to $100,000. Because the allocation of the city's funds is not by statute or ordinance for the specific use of and control by separate departments of the city, separate insurance coverage to the maximum of $100,000 is not afforded to each account (§§745.1(d) and 745.10(a)(2)).

Example 5

Question: A, the custodian of retirement funds of a military exchange, invests $1,000,000 in an insured credit union. The military exchange, a nonappropriated fund instrumentality of the United States, is deemed to be a public unit. The employees of the exchange are the beneficiaries of the retirement funds but are not members of the credit union. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for $100,000 share insurance even though A and the public unit are not within the credit union's field of membership. Since the beneficiaries are neither public units nor members of the credit union they are not entitled to separate share insurance. Therefore, $900,000 is uninsured (§745.10(a)(1)).

Example 6

Question: A is the custodian of the County's employee retirement funds. He deposits $1,000,000 in retirement funds with the credit union. The ''beneficiaries'' of the retirement fund are not themselves public units nor are they within the credit union's field of membership. What is the insurance coverage?

Answer: Because A invested the funds on behalf of a public unit, in his capacity as custodian, those funds qualify for $100,000 share insurance even though A and the public unit are not within the credit union's field of membership. Since the beneficiaries are neither public units nor members of the credit union they are not entitled to separate share insurance. Therefore, $900,000 is uninsured (§745.10(a)(2)).

Example 7

Question: A county treasurer deposits in an insured credit union $100,000 in each of the following accounts:

''General Operating Fund''
''County Roads Department Fund''
''County Water District Fund''
''County Public Improvement District Fund''
''County Emergency Fund''

What is the insurance coverage?

Answer: The ''County Roads Department,'' ''County Water District'' and ''County Public Improvement District'' accounts would each be separately insured to $100,000 if the funds in each such account have been allocated by law for the exclusive use of a separate county department or subdivision expressly authorized by State statute.

Funds in the ''General Operating'' and ''Emergency Fund'' accounts would be added together and insured in the aggregate to $100,000, if such funds are for countywide use and not for the exclusive use of any subdivision or principal department of the county, expressly authorized by State statute (§§745.1(d) and 745.10(a)(2)).

Example 8

Question: A, the custodian of Indian tribal funds, lawfully invests $1,000,000 in an account in an insured credit union on behalf of 15 different tribes; the records of the credit union show that no tribe's interest exceeds $100,000. A, as official custodian, also invests $1,000,000 in the same credit union on behalf of 100 individual Indians, who are not members; each Indian's interest is $10,000. What is the insurance coverage?

Answer: Because each tribe is considered a separate public unit, the custodian of each tribe, even though the same person, is entitled to separate insurance for each tribe (§745.10(a)(5)). Since the credit union's records indicate no tribe has more than $100,000 in the account, the $1,000,000 would be fully insured as 15 separate tribal accounts. If any one tribe had more than a $100,000 interest in the funds, it would be insured only to $100,000 and any excess would be uninsured.

However, the $1,000,000 invested on behalf of the individual indians would not be insured since the individual indians are neither public units nor, in the example, members of the credit union. If A is the custodian of the funds in his capacity as an official of a governmental body that qualified as a public unit, then the account would be insured for $100,000, leaving $900,000 uninsured.

F. Joint Accounts

Accounts held under any form of joint ownership valid under state law (whether as joint tenants with right of survivorship, tenants by the entireties, tenants in common, or by husband and wife as community property) are insured up to $100,000. This insurance is separate from that afforded individual accounts held by any of the co-owners.

An account is insured as a joint account only if each of the co-owners has personally executed an account signature card and possesses withdrawal rights. An account owned jointly which does not qualify as a joint account for insurance purposes is insured as if owned by the named persons as individuals. In that case, the actual ownership interest in the account of each person is added to any other accounts individually owned by such person and insured up to $100,000 in the aggregate.

Any individual, including a minor, may be a co-owner of a joint account. Although, generally, each co-owner must have signed an account signature card and must have the same rights of withdrawal as other co-owners in order for the account to qualify for separate joint account insurance, there is an exception. If state law limits or restricts a minor's withdrawal rights—for example, a minimum age requirement to make a withdrawal—the account will still be insured as a joint account.

All funds invested in joint accounts owned by the same combination of individuals are first added together and insured to the $100,000 maximum. Where a member has an interest in more than one joint account and different joint owners are involved, his interests in all of such joint accounts are then added together and insured to $100,000 in the aggregate.

For insurance purposes, the co-owners of any joint account are deemed to have equal interests in the account, except in the case of a tenancy in common. With a tenancy in common, equal interests are presumed unless otherwise stated on the records of the credit union.

Example 1

Question: Members A and B maintain an account as joint tenants with right of survivorship and, in addition, each holds an individual account. Is each account separately insured?

Answer: If both A and B have executed the signature card and possess withdrawal rights with respect to the joint funds, each account is separately insured to the $100,000 maximum (§745.8 (a) and (b)).

Example 2

Question: Members H and W, husband and wife, reside in a community property state. Each holds an individual account and, in addition, they hold a qualifying joint account. The funds in all three accounts consist of community property. Is each account separately insured?

Answer: Yes. An account in the individual name of a spouse will be insured up to $100,000 whether the funds consist of community property or separate property of the spouse. A joint account containing community property is also insured up to $100,000. Thus, community property can be used for individual accounts in the name of each spouse and for a joint account in the name of both spouses, each of which accounts is separately insured up to $100,000 (§745.3(a)(1) and 745.8(a)).

Example 3

Question: Two accounts of $100,000 each are held by a member husband and his wife under the following names:

John Doe and Mary Doe, husband and wife, as joint tenants with right of survivorship.

Mrs. John Doe and John Q. Doe (community property).

Are the accounts separately insured?

Answer: No. Both accounts are considered joint accounts owned by the same combination of individuals, regardless of the form of joint ownership. Reversal of names or use of different styles does not change the result, as long as the account owners are in fact the same in both cases. For insurance purposes, the accounts are added together and insured to the maximum of $100,000, leaving $100,000 uninsured (§745.8(d)).

Example 4

Question: The following accounts are held by members A, B and C, each of whom has personally executed signature cards for the accounts in which he has an interest. Each co-owner of a joint account possesses the necessary withdrawals rights.

1. A, as an individual—$100,000
2. B, as an individual—$100,000
3. C, as an individual—$100,000
4. A and B, as joint tenants w/r/o survivorship—$90,000
5. A and C, as joint tenants w/r/o survivorship—$90,000
6. B and C, as joint tenants w/r/o survivorship—$90,000
7. A, B and C, as joint tenants w/r/o survivorship—$90,000.

What is the insurance coverage?

Answer: Accounts numbered 1, 2 and 3 are each separately insured for $100,000 as individual accounts held by A, B and C, respectively (§745.3(a)(1)). With regard to accounts numbered 4, 5, 6 and 7, the respective interests of A, B and C in such accounts are added together for insurance purposes (§745.8(e)). The interest of the co-owners of each joint account are deemed equal for insurance purposes (§745.2(c)(4)). Thus, A has an interest of $45,000 in account No. 4, $45,000 in account No. 5 and $30,000 in account No. 7, for a total joint account interest of $120,000, of which $100,000 is insured. The interest of B and C are similarly insured.

Example 5(a)

Question: A, B and C hold accounts as set forth in Example 4. Members A and B are husband and wife; C, their minor child, has failed to sign the signature card for Account No. 7. In Account No. 5, according to the terms of the account, C cannot make a withdrawal without A's written consent. (This is not a limitation imposed under state law.) In Account No. 6, the signatures of both B and C are required for withdrawal. A has provided all of the funds for Accounts numbered 5 and 7 and under state law has the entire actual ownership interest in these two accounts. What is the insurance coverage?

Answer: If any of the co-owners of a joint account have failed to meet any of the joint account requirements, the account is not insured as a joint account. Instead, the account is insured as if it consisted of commingled individual accounts of each of the co-owners in accordance with his actual ownership interest in the funds, as determined under applicable state law. (§745.8(c).)

Account No. 5 is not insured as a joint account because C does not have equal withdrawal rights with A. Based on the terms of the account, C can only make a withdrawal if he has A's written consent. Account No. 7 is not insured as a joint account because C did not personally sign the signature card. Therefore, all of the funds in Accounts 5 and 7 are treated as individually owned by A and added to A's individual account, Account No. 1. For insurance purposes then, A has $280,000 in one individual account that is insured for $100,000, leaving $180,000 uninsured.

Account 6 does qualify as a joint account for insurance purposes since each co-owner has the right to withdraw funds on the same basis. Account 4, the remaining joint account, and Account 6 are each insured to the $100,000 limit since they are owned by different combinations of individuals and no co-owner has an aggregate interest in the two accounts in excess of $100,000.

Example 5(b)

Question: Assume the same accounts as Example 5(a) except that, on Account No. 5, C's right to make a withdrawal is limited by state law which precludes a minor from making a withdrawal without the co-owner's written consent. What is the insurance coverage?

Answer: In this situation, Accounts 4, 5, and 6 all qualify as joint accounts and would be fully insured since no co-owner has an aggregate interest in the accounts of more than $100,000. A, B, and C will each have $90,000 of insured funds based on: A's interest in Account 4 ($45,000) and 5 ($45,000), B's interest in Accounts 4 ($45,000) and 6 ($45,000), and C's interest in Accounts 5 ($45,000) and 6 ($45,000). As in Example 5(a), Account No. 7 does not qualify as a joint account and would be added to A's individual account for insurance purposes.

Example 6

Question: The following accounts are owned by members A, B and C, each of whom has personally executed signature cards for the accounts in which he has an interest. Each co-owner possesses withdrawal rights.

1. A, as an individual—$100,000
2. B, as an individual—$100,000
3. A, B and C, as joint tenants w/r/o survivorship—$100,000
4. A, B and C, as joint tenants w/r/o survivorship—$200,000
5. A, and B, as joint tenants w/r/o survivorship—$100,000

What is the insurance coverage?

Answer: Accounts numbered 1 and 2 are each separately insured for $100,000 as individual accounts held by A and B, respectively (§745.3(a)(1)). With respect to the joint accounts, accounts numbered 3 and 4 are owned by the same combination of individuals and are added together and insured to a maximum of $100,000 leaving $200,000 uninsured (§745.8(d)). A, B and C each have a $33,334 insured interest in accounts 3 and 4. A and B also maintain a joint account, account number 5. Because C has no interest in this account, it is owned by a combination of individuals different from accounts 3 and 4. The interests of A and B in account number 5 are deemed to be equal (§745.2(c)(4)). A's $50,000 interest in account 5 is added to his insured interest in accounts 3 and 4, giving him a total of $83,334 insurance coverage for his interests in the various joint accounts, in addition to the insurance in the amount of $100,000 provided for his individual account. B's interests in accounts 3, 4 and 5 are identical to A's and her interests are insured in a like manner.

G. Trust Accounts and Retirement Accounts

A trust estate is the interest of a beneficiary in an irrevocable express trust, whether created by trust instrument or statute, that is valid under state law. Thus, funds invested in an account by a trustee under an irrevocable express trust are insured on the basis of the beneficial interests under such trust. The interest of each beneficiary in an account (or accounts) established under such a trust arrangement is insured to $100,000 separately from other accounts held by the trustee, the settlor (grantor), or the beneficiary. However, in cases where a beneficiary has an interest in more than one trust arrangement created by the same settlor, the interests of the beneficiary in all accounts established under such trusts are added together for insurance purposes, and the beneficiary's aggregate interest derived from the same settlor is separately insured to the $100,000 maximum.

A beneficiary's interest in an account established pursuant to an irrevocable express trust arrangement is insured separately from other beneficial interests (trust estates) invested in the same account if the value of the beneficiary's interest (trust estate) can be determined (as of the date of a credit union's insolvency) without evaluation of contingencies except for those covered by the present worth tables and rules of calculation for their use set forth in §20.2031–10 of the Federal Estate Tax Regulations (26 CFR 20.2031–10). If any trust estates in such an account cannot be so determined, the insurance with respect to all such trust estates together shall not exceed the basic insured amount of $100,000.

In order for insurance coverage of trust accounts to be effective in accordance with the foregoing rules, certain recordkeeping requirements must be met. In connection with each trust account, the credit union's records must indicate the name of both the settlor and the trustee of the trust and must contain an account signature card executed by the trustee indicating the fiduciary capacity of the trustee. In addition, the interests of the beneficiaries under the trust must be ascertainable from the records of either the credit union or the trustee, and the settlor or beneficiary must be a member of the credit union. If there are two or more settlors or beneficiaries, then either all the settlors or all the beneficiaries must be members of the credit union.

Although each ascertainable trust estate is separately insured, it should be noted that in short-term trusts the insurable interest or interests may be very small, since the interests are computed only for the duration of the trust. Thus, if a trust is made irrevocable for a specified period of time, the beneficial interest will be calculated in terms of the length of time stated. A reversionary interest retained by the settlor is treated in the same manner as an individual account of the settlor.

As stated, the trust must be valid under local law. A trust which does not meet local requirements, such as one imposing no duties on the trustee or conveying no interest to the beneficiary, is of no effect for insurance purposes. An account in which such funds are invested is considered to be an individual account.

An account established pursuant to a revocable trust arrangement is insured as a form of individual account and is treated under section B, supra, dealing with Testamentary Accounts.

IRA and Keogh accounts are separately insured, each up to $100,000. Although credit unions may serve as trustees or custodians for self-directed IRA and Keogh accounts, once the funds are taken out of the credit union, they are no longer insured.

In the case of an employee retirement fund where only a portion of the fund is placed in a credit union account, the amount of insurance available to an individual member/beneficiary on his interest in the account will be in proportion to his interest in the entire employee retirement fund. If, for example, the member's interest represents 10% of the entire plan funds, then he is presumed to have only a 10% interest in the plan account. Said another way, if a member has a vested interest of $10,000 in a municipal employees retirement plan and the trustee invests 25% of the total plan funds in a credit union, the member would be insured for only $2,500 on that credit union account. There is an exception, however. The member would be insured for $10,000 if the trustee can document, through records maintained in the ordinary course of business, that individual beneficiary's interests are segregated and the total vested interest of the member was, in fact, invested in that account.

Example 1

Question: Member S invests $45,000 in trust for B, the beneficiary. S also has an individual account containing $90,000 in the same credit union. What is the insurance coverage?

Answer: Both accounts are fully insured. The trust account is separately insured from the individual account of S (§§745.3(a)(1) and 745.9–1).

Example 2

Question: S invests funds in trust for A, B, C, D, and E. A, B, and C are members of the credit union, D, E and S are not. What is the insurance coverage?

Answer: This is an uninsurable account. Where there is more than one settlor or more than one beneficiary, all the settlors or all the beneficiaries must be members to establish this type of account. Since D, E and S are not members, this account cannot legally be established or insured.

Example 3(a)

Question: Member S invests $500,000 in trust for ABC Employees Retirement Fund. Some of the beneficiaries are members and some are not. What is the insurance coverage?

Answer: The account is insured as to the determinable interests of each member beneficiary to a maximum of $100,000 per member. Member interests not capable of evaluation and nonmember interests shall be added together and insured to a maximum of $100,000 in the aggregate (§745.9–1).

Example 3(b)

Question: Member S is trustee for the ABC Employees Retirement Fund containing

$1,000,000. Member A has a determinable interest of $90,000 in the Fund (9% of the total). S invests $500,000 of the Fund in trust in an insured credit union and the remaining $500,000 elsewhere. Some of the beneficiaries of the Fund are members of the credit union and some are not. S does not segregate each employee's interest in the Fund. What is the insurance coverage?

Answer: The account is insured as to determinable interest of each member beneficiary, adjusted in proportion to the Fund's investment in the credit union. A's insured interest in the account is $45,000, or 9% of $500,000. This reflects the fact that only 50% of the Fund is in the account and A's interest in the account is in the same proportion as his interest in the overall plan. Each beneficiary who is a member would be similarly insured. Members' interests not capable of evaluation and nonmembers' interests are added together and insured to a maximum of $100,000 in the aggregate. (§ 745.9–1.)

Example 4

Question: Member A has an individual account of $100,000 and establishes an IRA and accumulates $50,000 in that account. Subsequently A becomes self employed and establishes a Keogh account in the same credit union and accumulates $100,000 in that account. What is the insurance coverage?

Answer: Each of A's accounts would be separately insured for up to $100,000. In the example, A would be fully insured for $250,000 (§ 745.3(a)(1) and § 745.9–2).

Example 5

Question: Member A has a self-directed IRA account with $70,000 in it. The FCU is the trustee of the account. Member transfers $40,000 into a blue chip stock; $30,000 remains in the FCU. What is the insurance coverage?

Answer: Originally, the full $70,000 in A's IRA account is insured. The $40,000 is no longer insured once it is moved out of the FCU. The $30,000 remaining in the FCU is insured (§ 745.9–2).

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PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

Sec.

747.0 Scope of part 747.

Subpart A—Uniform Rules of Practice and Procedure

747.1 Scope.
747.2 Rules of construction.
747.3 Definitions.
747.4 Authority of NCUA Board.
747.5 Authority of the administrative law judge.
747.6 Appearance and practice in adjudicatory proceedings.
747.7 Good faith certification.
747.8 Conflicts of interest.
747.9 Ex parte communications.
747.10 Filing of papers.
747.11 Service of papers.
747.12 Construction of time limits.
747.13 Change of time limits.
747.14 Witness fees and expenses.
747.15 Opportunity for informal settlement.
747.16 NCUA's right to conduct examination.
747.17 Collateral attacks on adjudicatory proceeding.
747.18 Commencement of proceeding and contents of notice.
747.19 Answer.
747.20 Amended pleadings.
747.21 Failure to appear.
747.22 Consolidation and severance of actions.
747.23 Motions.
747.24 Scope of document discovery.
747.25 Request for document discovery from parties.
747.26 Document subpoenas to nonparties.
747.27 Deposition of witness unavailable for hearing.
747.28 Interlocutory review.
747.29 Summary disposition.
747.30 Partial summary disposition.
747.31 Scheduling and prehearing conferences.
747.32 Prehearing submissions.
747.33 Public hearings.
747.34 Hearing subpoenas.
747.35 Conduct of hearings.
747.36 Evidence.
747.37 Post-hearing filings.
747.38 Recommended decision and filing of record.
747.39 Exceptions to recommended decision.
747.40 Review by the NCUA Board.
747.41 Stays pending judicial review.

Subpart B—Local Rules of Practice and Procedure

747.100 Discovery limitations.

Subpart C—Local Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

747.201 Scope.
747.202 Grounds for termination of insurance.

747.203 Notice of charges.
747.204 Notice of intention to terminate insured status.
747.205 Order terminating insured status.
747.206 Consent to termination of insured status.
747.207 Notice of termination of insured status.
747.208 Duties after termination.

Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

747.301 Scope.
747.302 Rules of practice; remainder of board of directors.
747.303 Notice of suspension or prohibition.
747.304 Removal or permanent prohibition.
747.305 Effectiveness of suspension or removal until completion of hearing.
747.306 Notice of opportunity for hearing.
747.307 Hearing.
747.308 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.
747.309 Decision of the NCUA Board.
747.310 Reconsideration by the NCUA Board.
747.311 Relevant considerations.

Subpart E—Local Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations Under Title I

747.401 Scope.
747.402 Grounds for suspension or revocation of charter and for involuntary liquidation.
747.403 Notice of intent to suspend or revoke charter; notice of suspension.
747.404 Notice of hearing.
747.405 Issuance of order.
747.406 Cancellation of charter.

Subpart F—Local Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility [Reserved]

Subpart G—Local Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access to Justice Act in NCUA Board Adjudications

747.601 Purpose and scope.
747.602 Eligibility of applicants.
747.603 Prevailing party.
747.604 Standards for award.
747.605 Allowable fees and expenses.
747.606 Contents of application.
747.607 Statement of net worth.
747.608 Documentation of fees and expenses.
747.609 Filing and service of applications.
747.610 Answer to application.
747.611 Comments by other parties.
747.612 Settlement.
747.613 Further proceedings.
747.614 Recommended decision.
747.615 Decision of the NCUA Board.
747.616 Payment of award

Subpart H—Local Rules and Procedures Applicable to Investigations

747.701 Applicability.
747.702 Information obtained in investigations.
747.703 Authority to conduct investigations.

Subpart I—Local Rules Applicable to Formal Investigative Proceedings

747.801 Applicability.
747.802 Non-public formal investigative proceedings.
747.803 Subpoenas.
747.804 Oath; false statements.
747.805 Self-incrimination; immunity.
747.806 Transcripts.
747.807 Rights of witnesses.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors of Committee Members Pursuant to Section 212 of the Act

747.901 Scope.
747.902 Grounds for disapproval of notice.
747.903 Procedures where notice of disapproval issued; reconsideration.
747.904 Appeal.
747.905 Judicial review.

Subpart K—Inflation Adjustment of Civil Monetary Penalties

747.1001 Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Improvement Act of 1996 (Public Law 14–134, 110 Stat. 1321–358 (28 U.S.C. 2461 note)).

AUTHORITY: 12 U.S.C. 1766, 1784, 1786, and 1787; 42 U.S.C. 4012a; Pub. L. 101–410, 104 Stat. 890; Pub. L. 104–134, 110 Stat. 1321–358 (28 U.S.C. 2461 note).

SOURCE: 56 FR 37767, Aug. 8, 1991, unless otherwise noted.

§ 747.0 Scope of part 747.

(a) This part describes the various formal and informal adjudicative actions and non-adjudicative proceedings available to the National Credit Union Administration Board (''NCUA Board''), the grounds for those actions and proceedings, and the procedures

used in formal and informal hearings related to each available action. As mandated by section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA'') (12 U.S.C. 1818 note), this part incorporates uniform rules of practice and procedure governing formal adjudications generally, as well as proceedings involving cease-and-desist actions, assessment of civil money penalties, and removal, prohibition and suspension actions. In addition, the Uniform Rules are incorporated in other subparts of this part which provide for formal adjudications. The administrative actions and proceedings described herein, as well as the grounds and hearing procedures for each, are controlled by sections 120(b) (except where the Federal credit union is closed due to insolvency), 202(a)(3) and 206 of the Federal Credit Union Act (''the Act''), 12 U.S.C. 1766(b), 1782(a)(3), 1786. Should any provision of this part be inconsistent with these or any other provisions of the Act, as amended, the Act shall control. Judicial enforcement of any action or order described in this part, as well as judicial review thereof, shall be as prescribed under the Act (12 U.S.C. 1751 *et seq.*) and the Administrative Procedure Act (5 U.S.C. 500 *et seq.*).

(b) As used in this part, the term insured credit union means any Federal credit union or any state chartered credit union insured under subchapter II of the Act unless the context indicates otherwise.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

Subpart A—Uniform Rules of Practice and Procedure

§747.1 Scope.

This subpart prescribes uniform rules of practice and procedure applicable to adjudicatory proceedings required to be conducted on the record after opportunity for a hearing under the following statutory provisions:

(a) Cease-and-desist proceedings under section 206(e) of the Act (12 U.S.C. 1786(e));

(b) Removal and prohibition proceedings under section 206(g) of the Act (12 U.S.C. 1786(g));

(c) Assessment of civil money penalties by the NCUA Board against institutions and institution-affiliated parties for any violation of:

(1) Section 202 of the Act (12 U.S.C. 1782);

(2) Section 1120 of FIRREA (12 U.S.C. 3349), or any order or regulation issued thereunder;

(3) The terms of any final or temporary order issued under section 206 of the Act or any written agreement executed by the National Credit Union Administration (''NCUA''), any condition imposed in writing by the NCUA in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein, pursuant to 12 U.S.C. 1786(k); and

(4) Any provision of law referenced in section 102(f) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued thereunder;

(d) Remedial action under section 102(g) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(g)); and

(e) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in subparts B through J of this part.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992, as amended at 61 FR 28025, June 4, 1996]

§747.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§747.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to this subpart and leading to the formulation of a final order other than a regulation.

(c) *Decisional employee* means any member of the NCUA's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Agency or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(d) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the NCUA in an adjudicatory proceeding.

(e) *Final order* means an order issued by the NCUA with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(f) *Institution* includes: (1) Any Federal credit union as that term is defined in section 101(1) of the Act (12 U.S.C. 1752(1)); and

(2) Any insured state credit union as that term is defined in section 101(7) of the FCUA (12 U.S.C. 1752(7)).

(g) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 206(r) of the Act (12 U.S.C. 1786(r)).

(h) *Local Rules* means those rules promulgated by the NCUA in the subparts of this part other than subpart A of this part.

(i) *OFIA* means the Office of Financial Institution Adjudication, which is the executive body charged with overseeing the administration of administrative enforcement proceedings for the NCUA, the Office of the Comptroller of the Currency (''OCC''), the Board of Governors of the Federal Reserve System (''Board''), the Federal Deposit Insurance Corporation (''FDIC''), and the Office of Thrift Supervision (''OTS'').

(j) *Party* means the NCUA and any person named as a party in any notice.

(k) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (f) of this section.

(l) *Respondent* means any party other than the NCUA.

(m) *Uniform Rules* means those rules in subpart A of this part that are common to the NCUA, the OCC, the Board, the FDIC and the OTS.

(n) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§ 747.4 Authority of the NCUA Board.

The NCUA Board may, at any time during the pendency of a proceeding perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

§ 747.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling and/or prehearing conferences as set forth in §747.31;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the NCUA Board shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the NCUA Board a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§747.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before the NCUA or an administrative law judge.* (1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the NCUA if such attorney is not currently suspended or debarred from practice before the NCUA.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the NCUA.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the NCUA Board, shall file a notice of appearance with OFIA at or before the time that the individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. The notice of appearance must include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel agrees and represents that he or she is authorized to accept service on behalf of the represented party and that, in the event of withdrawal from representation, he or she will, if required by the administrative law judge, continue to accept service until new counsel has filed a notice of appearance or until the represented party indicates that he or she will proceed on a *pro se* basis.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

[56 FR 37767, Aug. 8, 1991, as amended at 61 FR 28025, June 4, 1996]

§747.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: the counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the administrative law judge shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 747.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or also represents a non-party on a matter relevant to an issue in the proceeding, counsel must certify in writing at the time of filing the notice of appearance required by § 747.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party and non-party; and

(2) That each such party and non-party waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

[56 FR 37767, Aug. 8, 1991, as amended at 61 FR 28025, June 4, 1996]

§ 747.9 Ex parte communications.

(a) *Definition*—(1) *Ex parte communication* means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between—

(i) An interested person outside the NCUA (including such person's counsel); and

(ii) The administrative law judge handling that proceeding, the NCUA Board, or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the NCUA Board until the date that the NCUA Board issues its final decision pursuant to § 747.40(c):

(1) No interested person outside the NCUA shall make or knowingly cause to be made an ex parte communication to any member of the NCUA Board, the administrative law judge, or a decisional employee; and

(2) No member of the NCUA Board, administrative law judge, or decisional employee shall make or knowingly cause to be made to any interested person outside the NCUA any ex parte communication.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, a member of the NCUA Board or any other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication, to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the NCUA Board or the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

(e) *Separation of functions.* Except to the extent required for the disposition of ex parte matters as authorized by law, the administrative law judge may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate. An employee or agent engaged in the performance of investigative or prosecuting functions for the NCUA in a case may not, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review of the recommended decision under section 747.40, except as witness or counsel in public proceedings.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992, as amended at 61 FR 28025, June 4, 1996]

§747.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§747.25 and 747.26, shall be filed with the OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the NCUA Board or the administrative law judge, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the NCUA Board or the administative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section.

(c) *Formal requirements as to papers filed.* (1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ x 11 inch paper, and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in §747.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the NCUA and of the filing party, the title and docket number of the processing, and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the NCUA Board, or the administrative law judge, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§747.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers shall serve a copy upon the counsel of record for all other parties to the proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of §747.10(c).

(c) *By the NCUA Board or the administrative law judge.* (1) All papers required to be served by the NCUA Board or the administrative law judge upon a party who has appeared in the proceeding in accordance with §747.6, shall be served

by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding in accordance with § 747.6, the NCUA Board or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(iii) If the person to be served is a corporation or other association, by delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(iv) By registered or certified mail addressed to the person's last known address; or

(v) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made:

(1) By personal service;

(2) If the person to be served is an individual, by delivery to a person of suitable age and discretion at the physical location where the individual resides or works;

(3) By delivery to an agent, which, in the case of a corporation or other association, is delivery to an officer, managing or general agent, or to any other agent authorized by appointment or by law to receive service and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party;

(4) By registered or certified mail addressed to the person's last known address; or

(5) By any other method reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

[56 FR 37767, Aug. 8, 1991, as amended at 61 FR 28025, June 4, 1996]

§ 747.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event that commences the designated period of time is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time. However, when the time period within which an act is to be performed is ten days or less, not including any additional time allowed for in § 747.12(c), intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the NCUA Board or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed

period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered, or certified mail, add three calendar days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one calendar day to the prescribed period; or

(3) If service is made by electronic media transmission, add one calendar day to the prescribed period, unless otherwise determined by the NCUA Board or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

[56 FR 37767, Aug. 8, 1991, as amended at 61 FR 28026, June 4, 1996]

§747.13 Change of time limits.

Except as otherwise provided by law, the administrative law judge may, for good cause shown, extend the time limits prescribed by the Uniform Rules or by any notice or order issued in the proceedings. After the referral of the case to the NCUA Board pursuant to §747.38, the NCUA Board may grant extensions of the time limits for good cause shown. Extensions may be granted upon the motion of a party after notice and opportunity to respond is afforded all non-moving parties, or upon the NCUA Board's or the administrative law judge's own motion.

§747.14 Witness fees and expenses.

Witnesses subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the NCUA is the party requesting the subpoena. The NCUA shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the NCUA.

§747.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any NCUA representative other than Enforcement Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§747.16 NCUA's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the NCUA to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the NCUA to conduct or continue any form of investigation authorized by law.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§747.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§747.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1) A proceeding governed by this subpart is commenced by issuance of a notice by the NCUA Board.

(2) The notice must be served by the NCUA Board upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(3) The notice must be filed with the OFIA.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the NCUA's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the NCUA is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) That the answer and/or request for a hearing shall be filed with OFIA.

§ 747.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default*—(1) *Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, the administrative law judge, upon motion of the Enforcement Counsel, shall file with the NCUA Board a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the NCUA Board based upon a respondent's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order.

§ 747.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding. The respondent must answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the NCUA Board or administrative law judge orders otherwise for good cause.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may admit the evidence when admission is likely to assist in adjudicating the merits of the action and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

[61 FR 28026, June 4, 1996]

§ 747.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver

of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the NCUA Board a recommended decision containing the findings and the relief sought in the notice.

§747.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the administrative law judge finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§747.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the administrative law judge. Written memorandum, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, except that upon the filing of the recommended decision, motions must be filed with the NCUA Board.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the NCUA Board, any party may file a written response to a motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§747.29 and 747.30.

§747.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Subject to the limitations set out in paragraphs (b), (c), and (d) of this section, a party to a proceeding under this subpart may obtain document discovery by serving a written request to produce documents. For purposes of a request to produce documents, the term ''documents'' may be defined to include drawings, graphs, charts, photographs, recordings, data stored in electronic form, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form, as well as written material of all kinds.

(2) Discovery by use of deposition is governed by subpart I of this part.

(3) Discovery by use of interrogatories is not permitted.

(b) *Relevance.* A party may obtain document discovery regarding any matter, not privileged, that has material relevance to the merits of the pending action. Any request to produce documents that calls for irrelevant material, that is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or that seeks to obtain privileged documents will be denied or modified. A request is unreasonable, oppressive, excessive in scope, or unduly burdensome if, among other things, it fails to include justifiable limitations on the time period covered and the geographic locations to be searched, the time provided to respond in the request is inadequate, or the request calls for copies of documents to be delivered to the requesting party and fails to include the requester's written agreement to pay in advance for the copying, in accordance with § 747.25.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing, except as provided in the Local Rules. No exceptions to this time limit shall be permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

[56 FR 37767, Aug. 8, 1991, as amended at 61 FR 28026, June 4, 1996]

§ 747.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents that are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business or must be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If a party requests 250 pages or more of copying, the requesting party shall pay for the copying and shipping charges. Copying charges are the current per-page copying rate imposed by 12 CFR 792.5(b) implementing the Freedom of Information Act (5 U.S.C. 552). The party to whom the request is addressed may require payment in advance before producing the documents.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 747.23 to strike or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § 747.23 are waived.

(2) The party who served the request that is the subject of a motion to strike or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, the producing party must reasonably identify all documents withheld on the grounds of privilege and must produce a statement of the basis for the assertion of privilege. When similar documents that are protected by deliberative process, attorney work-product, or attorney-client privilege are voluminous, these documents may be identified by category instead of by individual document. The administrative law judge retains discretion to determine when the identification by category is insufficient.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of §747.23 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, calls for irrelevant material, is unreasonable, oppressive, excessive in scope, unduly burdensome, or repetitive of previous requests, or seeks to obtain privileged documents, he or she may deny or modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to strike or limit discovery or to compel production is not a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge. Notwithstanding any other provision in this part, the administrative law judge may not release, or order a party to produce, documents withheld on grounds of privilege if the party has stated to the administrative law judge its intention to file a timely motion for interlocutory review of the administrative law judge's order to produce the documents, and until the motion for interlocutory review has been decided.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the administrative law judge against a party who fails to produce subpoenaed documents.

[56 FR 37767, Aug. 8, 1991, as amended at 61 FR 28026, June 4, 1996; 61 FR 45876, Aug. 30, 1996]

§747.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the administrative law judge for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under §747.24(d). The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does

not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 747.25(d), and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ 747.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party desiring that witness' testimony for the record may apply in accordance with the procedures set forth in paragraph (a)(2) of this section, to the administrative law judge for the issuance of a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a

deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the administrative law judge for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the administrative law judge has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the administrative law judge on a party who fails to comply with, or procures a failure to comply with, a subpoena issued under this section.

§747.28 Interlocutory review.

(a) *General rule.* The NCUA Board may review a ruling of the administrative law judge prior to the certification of the record to the NCUA Board only in accordance with the procedures set forth in this section and §747.23.

(b) *Scope of review.* The NCUA Board may exercise interlocutory review of a ruling of the administrative law judge if the NCUA Board finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review shall be filed by a party with the administrative law judge within ten days of his or her ruling and shall otherwise comply with §747.23. Any party may file a response to a request for interlocutory review in accordance with §747.23(d). Upon the expiration of the time for filing all responses, the administrative law judge shall refer the matter to the NCUA Board for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the NCUA Board under this section suspends or stays the proceeding unless otherwise ordered by the administrative law judge or the NCUA Board.

§747.29 Summary disposition.

(a) *In general.* The administrative law judge shall recommend that the NCUA Board issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other

evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving part is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the NCUA Board. If the administrative law judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

§ 747.30 Partial summary disposition.

If the administrative law judge determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the administrative law judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 747.31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such order time as parties may agree, the administrative law judge shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the recourse and conduct of the proceeding. This meeting or telephone conference is called a ''scheduling conference.'' The identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which official notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at its expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the administrative law judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§747.32 Prehearing submissions.

(a) Within the time set by the administrative law judge, but in no case later than 14 days before the start of the hearing, each party shall serve on every other party, his or her:

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§747.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the NCUA Board, in its discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice, any respondent may file with the NCUA Board a request for a private hearing, and any party may file a reply to such a request. A party must serve on the administrative law judge a copy of any request or reply the party files with the NCUA Board. The form of, and procedure for, these requests and replies are governed by §747.23. A party's failure to file a request or a reply constitutes a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992, as amended at 61 FR 28027, June 4, 1996]

§747.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena *duces tecum* requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at the hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law at any designated place where the hearing is being conducted. The party making the application shall serve a copy of the application and the proposed subpoena on every other party.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, a party may make an application for a subpoena orally on the record before the administrative law judge.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart. Upon issuance by the administrative law judge, the party making the application shall serve the subpoena on the person named in the subpoena and on each party.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed or any party may file a motion to quash or modify the subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant must serve the motion on each party and on the person named in the subpoena. Any party may respond to the motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 747.26(c).

[56 FR 37767, Aug. 8, 1991, as amended at 61 FR 28027, June 4, 1996]

§ 747.35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree the administrative law judge shall fix the order.

(3) Examination of witnesses. Only one counsel for each party may conduct an examination of a witness, except that in the case of extensive direct examination, the administrative law judge may permit more than one counsel for the party presenting the witness to conduct the examination. A party may have one counsel conduct the direct examination and another counsel conduct re-direct examination of a witness, or may have one counsel conduct the cross examination of a witness and another counsel conduct the re-cross examination of a witness.

(4) *Stipulations.* Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The reporter will make the transcript available to any party upon payment by that party to the reporter of the cost of the transcript. The administrative law judge may order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion.

[56 FR 37767, Aug. 8, 1991, as amended at 61 FR 28027, June 4, 1996]

§ 747.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

(2) All matters officially noticed by the administrative law judge or NCUA Board shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by an appropriate Federal financial institution regulatory agency or by a state regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness.

(3) The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the NCUA Board.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing, and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 747.37 Post-hearing filings.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Using the same method of service for each party, the administrative law judge shall serve notice upon each party that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed. Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days following service of this notice by the administrative law judge or within such longer period as may be ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

[56 FR 37767, Aug. 8, 1991, as amended at 61 FR 28027, June 4, 1996]

§ 747.38 Recommended decision and filing of record.

(a) *Filing of recommended decision and record.* Within 45 days after expiration of the time allowed for filing reply briefs under § 747.37(b), the administrative law judge shall file with and certify to the NCUA Board, for decision, the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions, and proposed order.

(b) *Filing of index.* At the same time the administrative law judge files with and certifies to the NCUA Board for final determination the record of the proceeding, the administrative law judge shall furnish to the NCUA Board a certified index of the entire record of the proceeding. The certified index shall include, at a minimum, an entry for each paper, document or motion filed with the administrative law judge in the proceeding, the date of the filing, and the identity of the filer. The certified index shall also include an exhibit index containing, at a minimum, an entry consisting of exhibit number and title or description for: Each exhibit introduced and admitted into evidence at the hearing; each exhibit introduced but not admitted into evidence at the hearing; each exhibit introduced and admitted into evidence after the completion of the hearing; and each exhibit introduced but not admitted into evidence after the completion of the hearing.

[61 FR 28027, June 4, 1996]

§ 747.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 747.38, a party may file with the NCUA Board written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the NCUA Board if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failure to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

§747.40 Review by the NCUA Board.

(a) *Notice of submission to NCUA Board.* When the NCUA Board determines that the record in the proceeding is complete, the NCUA Board shall serve notice upon the parties that the proceedings has been submitted to the NCUA Board for final decision.

(b) *Oral argument before NCUA Board.* Upon the initiative of the NCUA Board or on the written request of any party filed with the NCUA Board within the time for filing exceptions, the NCUA Board may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the NCUA Board's final decision. Oral argument before the NCUA Board must be on the record.

(c) *Final Decision of NCUA Board.* (1) Decisional employees may advise and assist the NCUA Board in the consideration and disposition of the case. The final decision of the NCUA Board will be based upon review of the entire record of the proceeding, except that the NCUA Board may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The NCUA Board shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the NCUA Board orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the NCUA Board shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the NCUA Board or required by statute, upon any appropriate state or Federal supervisory authority.

§747.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the NCUA Board may not, unless specifically ordered by the NCUA Board or a reviewing court, operate as a stay of any order issued by the NCUA Board. The NCUA Board may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of that order.

Subpart B—Local Rules of Practice and Procedure

§747.100 Discovery limitations.

(a) Parties to a proceeding set forth either at §747.1 of subpart A or in subpart C, E or G of this part may obtain discovery only through the production of documents. No other form of discovery shall be allowed.

(b) In the event that a person producing documents pursuant to a document subpoena is permitted to be deposed, all questioning shall be strictly limited to the identification of documents produced by that person and a reasonable examination to determine whether the subpoenaed person made an adequate search for, and has produced, all subpoenaed documents.

Subpart C—Local Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

§747.201 Scope.

Under the authority of section 206(b) of the Act (12 U.S.C. 1786(b)), the NCUA Board may terminate the insured status of an insured credit union upon the grounds set forth therein and enumerated in §747.202. The procedure for terminating the insured status of an insured credit union as therein prescribed will be followed and hearings required thereunder will be conducted

in accordance with the rules and procedures set forth in this subpart and subpart A of this part. To the extent any rule or procedure of subpart A is inconsistent with a rule or procedure prescribed in this subpart C, subpart C shall control.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§ 747.202 Grounds for termination of insurance.

The NCUA Board may institute proceedings to terminate the insured status of an insured credit union whenever it determines that an insured credit union is:

(a) Engaging or has engaged in unsafe or unsound practices in conducting its business;

(b) In unsafe or unsound condition to continue as an insured credit union; or

(c) Violating or has violated any applicable law, rule, regulation, order, written condition imposed by the NCUA Board in response to any application or request of the credit union, or any written agreement entered into with the NCUA Board.

§ 747.203 Notice of charges.

(a) Whenever the NCUA Board determines that grounds for termination of insured status exists, it will, for the purpose of securing correction of errant or illegal conditions, serve a notice of charges upon the concerned credit union. This notice will contain a statement describing the unsafe or unsound practices, condition or the relevant violations.

(b) In the case of an insured State-chartered credit union, the NCUA Board shall send a copy of the Notice of Charges to the appropriate State authority, if any, having supervision over the credit union.

§ 747.204 Notice of intention to terminate insured status.

Unless correction of the practices, condition, or violations set forth in the Notice of Charges is made within 120 days after service of such statement, or within a shorter period of not less than 20 days after such service as the NCUA Board may require in any case where it determines that the insurance risk with respect to such credit union could be unduly jeopardized by further delay or as the appropriate State supervisory authority shall require in the case of an insured State-chartered credit union, the Board, if it determines to proceed further, shall give to the credit union not less than 30 days written notice of its intent to terminate the status of the credit union as an insured credit union. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practices or conditions or violations on which a hearing will be held. Such hearing shall commence not earlier than 30 days nor later than 60 days after the date of service of such notice upon the credit union, unless an earlier or later date is set by the NCUA Board at the request of the credit union.

§ 747.205 Order terminating insured status.

If, upon the record of the hearing held pursuant to § 747.204, the NCUA Board finds that any unsafe or unsound practice or condition or violation specified in the notice has been established and has not been corrected within the time prescribed under § 747.204, the NCUA Board may issue and serve upon the credit union an order terminating its status as an insured credit union on a date subsequent to the date of such finding and subsequent to the expiration of the time specified in the Notice.

§ 747.206 Consent to termination of insured status.

Unless the credit union appears at the hearing designated in the notice of hearing by a duly authorized representative, it will be deemed to have consented to the termination of its status as an insured credit union. In the event the credit union fails to so appear at such hearing, the administrative law judge shall forthwith report the matter to the NCUA Board and the NCUA Board may thereupon issue an order terminating the credit union's insured status.

§ 747.207 Notice of termination of insured status.

Prior to the effective date of the termination of the insured status of an insured credit union under section 206(b) of the Act (12 U.S.C. 1786(b)) and at

such time as the Board shall specify, the credit union shall mail to each member at his or her last address of record on the books of the credit union, and publish in not less than two issues of a local newspaper of general circulation, notices of the termination of its insured status, and the credit union shall furnish the NCUA Board with proof of publication of such notice. The notice shall be as follows:

NOTICE

(Date)

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Union Act, will terminate as of the close of business on the ___ day of ___;

2. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration;

3. Accounts in the credit union on the ___ day of ___, ___ up to a maximum of $100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) years after the close of business on the ___ day of ___, ___: *Provided, however,* That any withdrawals after the close of business on the day of ___, ___; will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)

(Address)

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§747.208 Duties after termination.

(a) After the termination of the insured status of any credit union under section 206(b) of the Act (12 U.S.C. 1786(b)), insurance of its member accounts to the extent they were insured on the effective date of such termination, less any amounts thereafter withdrawn which reduce the accounts below the amount covered by insurance on the effective date of such termination, shall continue for a period of one year, but no shares issued by the credit union or deposits made after the date of such termination shall be insured by the NCUA Board.

(b) The credit union shall continue to pay premiums to the NCUA Board during such period and the Board shall have the right to examine the credit union from time to time during the period. The credit union shall, in all other respects, be subject to the duties and obligations of an insured credit union during the one year period. If the credit union is closed for liquidation within this period, the Board shall have the same powers and rights with respect to such credit union as in the case of an insured credit union.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

§747.301 Scope.

The rules and procedures set forth in this subpart are applicable to informal proceedings conducted by the NCUA Board, or a Presiding Officer designated by the Board, pursuant to section 206(i) of the Act (12 U.S.C. 1786(i)), to suspend, remove and/or prohibit from office or from further participation any institution-affiliated party of an insured credit union who:

(a) Is charged in a state, Federal or territorial information or indictment or complaint with committing or participating in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law; or

(b) Enters a pretrial diversion or other similar program as result of being charged in such information or indictment or complaint with participating or committing such crime; or

(c) Is convicted of such crime.

Subpart A of this part does not apply to proceedings under this subpart.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§747.302 Rules of practice; remainder of board of directors.

Except as otherwise specifically provided in this subpart, the following provisions shall apply to proceedings conducted under this subpart:

(a)(1) *Power of attorney and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia may represent others before the NCUA Board or Presiding

Officer designated by the NCUA Board upon filing with the NCUA Board a written declaration that he or she is currently qualified as provided by this paragraph, and is authorized to represent the particular party or whose behalf he acts. Any other person desiring to appear before or transact business with the NCUA Board in a representative capacity may be required to file with the NCUA Board a power of attorney showing his or her authority to act in such capacity, and he or she may be required to show to the satisfaction of the NCUA Board the he or she has the requisite qualifications. Attorneys and representatives of parties to proceedings shall file a written notice of appearance with the NCUA Board or with the Presiding Officer designated by the NCUA Board.

(2) *Summary suspension.* Contemptuous conduct by any person at an argument before the NCUA Board or at the hearing before a Presiding Officer shall be grounds for exclusion therefrom and suspension for the duration of the argument or hearing.

(b)(1) *Notice of hearing.* Whenever a hearing within the scope of this subpart is ordered by the NCUA Board, a notice of hearing shall be given by the NCUA Board to the party afforded the hearing and to any appropriate state supervisory authority. The notice shall state the time, place, and nature of the hearing and the legal authority and jurisdiction under which the hearing is to be held, and shall contain a statement of the matters of fact or law constituting the grounds for the hearing. It shall be delivered by personal service, by registered or certified mail to the last known address, or by other appropriate means, not later than 30 nor earlier than 60 days before the hearing.

(2) *Party.* The term ''party'' means a person or agency named or admitted as a party, or any person or agency who has filed a written request and is entitled as of right to be admitted as a party; but a person or agency may be admitted for a limited purpose.

(c)(1) *Computation of time.* In computing any period of time prescribed or allowed by this subpart, the date of the act, event or default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday or legal holiday in the District of Columbia, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor such legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the time within which the act is to be performed is ten days or less in which event Saturdays, Sundays, and legal holidays shall not be included.

(2) *Service by mail.* Whenever any party has the right or is required to do some act or take some proceeding, within a period of time prescribed in this subpart, after the service upon him of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period from the date when the matter served is deposited in the U.S. mail.

(d) *Nonpublication of submissions.* Unless and until otherwise ordered by the NCUA Board, the notice of hearing, the transcript, written materials submitted during the hearing, the Presiding Officer's recommendation to the NCUA Board and any other papers filed in connection with a hearing under this subpart, shall not be made public, and shall be for the confidential use only of the NCUA Board, the Presiding Officer, the parties and appropriate authorities.

(e) *Remainder of board of directors.* (1) If at any time, because of the suspension of one or more directors pursuant to this subpart, there shall be on the board of directors of an insured credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum on the board of directors.

(2) In the event all of the directors of an insured credit union are suspended pursuant to this subpart, the NCUA Board shall appoint persons to serve temporarily as directors in their place pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their

respective successors have been elected by the members at an annual or special meeting and have taken office.

(3) Directors appointed temporarily by the NCUA Board pursuant to paragraph (e)(2) of this section, shall, within 30 days following their appointment, call a special meeting for the election of new directors, unless during such 30-day period—

(i) The regular annual meeting is convened; or

(ii) The suspensions giving rise to the appointment of temporary directors are terminated.

§747.303 Notice of suspension or prohibition.

Whenever an institution-affiliated party of an insured credit union is charged in any state, Federal or territorial information or indictment or complaint with the commission of or participation in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law, the NCUA Board may, if continued service or participation by the concerned party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such party, suspend him or her from office, or prohibit him or her from further participation in any manner in the affairs of the credit union, or both. A copy of the notice of suspension or prohibition shall also be served upon the credit union. This suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of, or until such suspension or prohibition is terminated by the NCUA Board.

§747.304 Removal or permanent prohibition.

In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against the institution-affiliated party, and at such time as the judgment, if any, is not subject to further appellate review, the NCUA Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, issue and serve upon the individual an order removing him or her from office or prohibiting him or her from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the NCUA Board. A copy of such order will also be served upon such credit union. A finding of not guilty or other disposition of the charge will not preclude the NCUA Board from thereafter instituting proceedings, pursuant to the provisions of section 206(g) of the Act (12 U.S.C. 1786(g)) and subpart A of this part, to remove such director, committee member, officer, or other person from office or to prohibit his or her further participation in the affairs of the credit union.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§747.305 Effectiveness of suspension or removal until completion of hearing.

Any notice of suspension or prohibition issued under §747.303 and any order of removal or prohibition issued under §747.304 will be effective upon service on the concerned party and will remain effective and outstanding until the completion of any hearing or appeal authorized under section 206(i) of the Act (12 U.S.C. 1786(i)) and this subpart, unless such notice of suspension or order of removal is terminated by the NCUA Board.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§747.306 Notice of opportunity for hearing.

(a) Any notice of suspension or prohibition issued pursuant to §747.303, and any order of removal or prohibition issued pursuant to §747.304, shall be accompanied by a further notice to the concerned individual that he or she may, within 30 says of service of such notice, request in writing an informal hearing at which he or she may present evidence and argument that his or her continued service to or participation in the conduct of the affairs of the credit union does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair

confidence in the credit union. Any notice of the opportunity for such a hearing shall be accompanied by a description of the hearing procedure and the criteria to be considered.

(b) A request for a hearing filed pursuant to paragraph (a) of this section shall state with particularly the relief desired, the grounds thereof, and shall include, when available, supporting evidence. The request and supporting evidence shall be filed in writing with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992, as amended at 59 FR 36041, July 15, 1994]

§ 747.307 Hearing.

(a) Upon receipt of a request for a hearing which complies with § 747.306, the NCUA Board will order an informal hearing to commence within the following 30 days in the Washington, DC metropolitan area or at such other place as the NCUA Board designates before a Presiding Officer designated by the NCUA Board to conduct the hearing. At the request of the concerned party, the NCUA Board may order the hearing to commence at a time more than 30 days after the receipt of the request for such hearing.

(b) The notice of hearing shall be served by the NCUA Board upon the party or parties afforded the hearing and shall set forth the time and place of the hearing and the name and address of the Presiding Officer.

(c) The subject individual may appear at the hearing personally, through counsel, or personally with counsel. The individual shall have the right to introduce relevant and material written materials (or, at the discretion of the NCUA Board, oral testimony), and to present an oral argument before the Presiding Officer. A member of the enforcement staff of the Office of General Counsel of the NCUA may attend the hearing and may participate as a party. Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554–557), nor subpart A of this part shall apply to the hearing. The proceedings shall be recorded and a transcript furnished to the individual upon request and after the payment of the cost thereof. The NCUA Board shall have the discretion to permit the presentation of witnesses, within specified time limits, so long as a list of such witnesses is furnished to the Presiding Officer at least ten days prior to the hearing. Witnesses shall not be sworn, unless specifically requested by either party or directed by the Presiding Officer. The Presiding Officer may examine any witnesses and each party shall have the opportunity to cross-examine any witness presented by an opposing party. Upon the request of either the subject individual or the representative of the Office of General Counsel, the record shall remain open for a period of five business days following the hearing, during which time the parties may make any additional submissions to the record. Thereafter, the record shall be closed.

(d) In the course of or in connection with any proceeding under this subpart, the NCUA Board and the Presiding Officer will have the power to administer oaths and affirmations, to take or cause depositions to be taken, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. If the NCUA Board permits the presentation of witnesses, the NCUA Board or the Presiding Officer may require the attendance of witnesses from any place in any state or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Witnesses subpoenaed shall be paid the same fees and mileage as are paid witnesses in the District Courts of the United States. The NCUA Board or the Presiding Officer may require the production of documents from any place in any such state, territory, or other place.

(e) The Presiding Officer will make his or her recommendations to the Board, where possible, within ten business days following the close of the record.

[56 FR 37767, Aug. 8, 1991, as amended at 59 FR 36042, July 15, 1994]

§747.308 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.

(a) The subject individual may, in writing, waive an oral hearing and instead elect to have the matter determined by the NCUA Board on the basis of written submissions alone.

(b) Should any concerned party fail to request in writing an oral hearing or consideration based on written submissions alone within 30 days of service of the notice described in §747.306, he or she will be deemed to have consented to the NCUA Board's action.

(c) Unless the concerned party appears at the hearing personally or by duly appointed representative, he or she will be deemed to have consented to the NCUA Board's action.

§747.309 Decision of the NCUA Board.

Within 60 days following the hearing, or receipt of the subject individual's written submissions where hearing has been waived pursuant to §747.308, the NCUA Board shall notify the institution-affiliated party whether the suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the decision of the NCUA Board, if that decision is adverse to the respondent party. In the case of a decision favorable to the respondent on the subject of a prior order of removal or prohibition, the NCUA Board shall take prompt action to rescind or otherwise modify the order of removal or prohibition.

§747.310 Reconsideration by the NCUA Board.

(a) The subject individual shall have ten business days following receipt of the decision of the NCUA Board in which to petition the NCUA Board for initial reconsideration.

(b) The subject individual also shall be entitled to petition the NCUA Board for reconsideration of its decision any time after the expiration of a 12-month period from the date of the NCUA Board's decision, but no petition for reconsideration may be made within 12 months of a previous petition.

(c) Any petition shall state with particularity the basis for reconsideration, the relief sought, and any exceptions the individual has to the NCUA Board's findings. An individual's petition may be accompanied by a memorandum of points and authorities in support of his or her petition and any supporting documentation the individual may wish to have considered.

(d) No hearing need be granted on such petition for reconsideration. Promptly following receipt of the petition, the Board shall render its decision.

§747.311 Relevant considerations.

In deciding the question of suspension, prohibition, or removal under this subpart, the NCUA Board will consider the following:

(a) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or Federal law, and which involves dishonesty or breach of trust;

(b) Whether the continued presence of the subject individual in his or her position may pose a threat to the interests of the credit union's members because of the nature and extent of the individual's participation in the affairs of the insured credit union and/or the nature of the offense with the commission of or participation in which the individual has been charged;

(c) Whether there is cause to believe that there may be an erosion of public confidence in the integrity, safety, or soundness of a particular credit union (either generally or in the particular locality in which the credit union is situated) if the subject individual is permitted to remain in his or her position in an insured credit union;

(d) Whether the individual is covered by the credit union's fidelity bond and, if so, whether the bond is likely to be revoked, or whether coverage under the bond will be affected adversely as a result of the information, indictment, complaint, judgment of conviction or entry into a pretrial diversion or other similar program; and

(e) The NCUA Board may consider any other factors which, in the specific case, appear relevant to the decision to continue in effect, rescind, terminate, or modify a suspension, prohibition, or

removal order, except that it shall not consider the ultimate question of the guilt or innocence of the subject individual with regard to the crime with which he or she has been charged.

Subpart E—Local Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations Under Title I

§ 747.401 Scope.

The rules and procedures set forth in this subpart and subpart A of this part are applicable to proceedings by the NCUA Board pursuant to section 120(b)(1) of the Act (12 U.S.C. 1766(b)(1)) to suspend or revoke the charter of a solvent Federal credit union, and to place a solvent Federal credit union into involuntary liquidation. To the extent a rule or procedure set forth in subpart A of this part is inconsistent with a rule or procedure set forth in this subpart E, subpart E shall control.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§ 747.402 Grounds for suspension or revocation of charter and for involuntary liquidation.

(a) *Grounds in general.* The NCUA Board may suspend or revoke the charter of any Federal credit union, and place such credit union into involuntary liquidation and appoint a liquidating agent therefor, upon its finding that the credit union has violated any provision of its charter or bylaws or of the FCUA or regulations issued thereunder.

(b) *Immediate suspension.* In any case where the Board determines that the grounds set forth in paragraph (a) of this section exist and that immediate action is necessary in order to prevent further dissipation or credit union assets or earnings, or further weakening of the credit union's condition, or to otherwise protect the interest of the credit union's insured members or the National Credit Union Share Insurance Fund, it may order without prior notice the immediate suspension of the charter of such credit union, and if the circumstances so warrant, may take possession of all books, records, assets, and property of every description of such credit union.

§ 747.403 Notice of intent to suspend or revoke charter; notice of suspension.

(a) Upon its determination that one or more of the grounds listed in § 747.402(a) exists, or that because of conditions described in § 747.402(b) immediate suspension of charter is necessary, the NCUA Board shall cause to be served upon that credit union a notice of intent to suspend or revoke charter and of intent to place into involuntary liquidation, or a notice of suspension. Such notice shall contain a statement of the facts which constitute the grounds for this action, a recitation of the options available to the credit union under paragraph (b) of this section, and an explanation of the results that will occur if the credit union fails to exercise said options.

(b) Not later than 40 days after the receipt of the notice provided for in paragraph (a) of this section, the Federal credit union may file with the NCUA Board a statement in writing setting forth the grounds and reasons why its charter should not be suspended or revoked and why it should not be placed into involuntary liquidation; or in lieu of a written statement, request an oral hearing which shall be conducted in accordance with the procedures set forth in this subpart. This statement or request shall be accompanied by a certified copy of a resolution of the board of directors of the Federal credit union concerned authorizing such statement or request, such certification to be made by the president and secretary of the board of directors.

(c) If the Federal credit union concerned does not exercise either alternative available in paragraph (b) of this section within the time required, it shall be deemed to have admitted the facts alleged in the notice and may be deemed to have consented to the relief sought.

§ 747.404 Notice of hearing.

(a) Upon receipt of a request for hearing which complies with § 747.403(b), the NCUA Board shall transmit the request

to the Office of Financial Institution Adjudication (''OFIA''). Such hearing shall commence no earlier than 30 days nor later than 60 days after the date the OFIA receives the request for a hearing, unless an earlier or later date is requested by the Federal credit union concerned and is granted by the NCUA Board in its discretion.

(b) Except as provided in § 747.405(b), the procedures of the Administrative Procedure Act (5 U.S.C. 554–557) and subpart A of this part will apply to the hearing.

(c) Unless the Federal credit union shall appear at such hearing by a duly authorized representative it shall be deemed to have consented to the suspension or revocation of its charter and to the placing of said credit union into involuntary liquidation.

§ 747.405 Issuance of order.

(a) In the event of such consent as referred to in § 747.403(c) or § 747.404(c), or if upon the record made at any such hearing as referred to in § 747.403(b), the NCUA Board finds that the charter of the Federal credit union concerned should be suspended or revoked and the credit union closed and placed into involuntary liquidation, it shall cause to be served on such credit union an order directing the suspension or revocation of its charter and directing that it be closed and placed into involuntary liquidation. Such order shall contain a statement of the findings upon which the order is based. Additionally, the NCUA Board shall appoint a liquidating agent or agents.

(b) The NCUA Board shall render its decision and cause such order to be served not later than 45 days after receipt of consent, or written submissions as the case may be, or in the case of a formal hearing after service or the notice of submission referred to in § 747.40(a).

(c) Upon the receipt of a copy of the order which provides that the Federal credit union concerned be placed into involuntary liquidation, the officers and directors of that Federal credit union shall immediately deliver to the agent for the liquidating agent possession and control of all books, records, assets, and property of every description of the Federal credit union, and the agent for the liquidating agent shall proceed to convert said assets to cash, collect all debts due to said Federal credit union and to wind up its affairs in accordance with the provisions of the Act.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§ 747.406 Cancellation of charter.

Upon the completion of the liquidation and certification by the agent for the liquidating agent that the distribution of the assets of the Federal credit union has been completed, the NCUA Board shall cancel the charter of the Federal credit union concerned.

Subpart F—Local Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility [Reserved]

Subpart G—Local Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access To Justice Act in NCUA Board Adjudications

§ 747.601 Purpose and scope.

This subpart contains the regulations of the NCUA implementing the Equal Access to Justice Act (5 U.S.C. 504), as amended (''EAJA''). The EAJA provides for the award of attorneys fees and other expenses to eligible individuals and entities who are parties to proceedings conducted under this part. An eligible party may receive an award when it prevails over NCUA in a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the NCUA was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for fee awards, explain how to apply for awards and the procedures and standards that NCUA will use to make them. To the extent a rule or procedure set forth in subpart A of this part is inconsistent with a rule or procedure set forth in this subpart G, subpart G will control.

§ 747.602 Eligibility of applicants.

(a) To be eligible for an award of attorneys fees and expenses, an applicant must be a prevailing party in the proceeding for which it seeks an award and must be:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests and not more than 500 employees at the time the proceeding was commenced (an applicant who owns an unincorporated business will be considered as an ''individual'' rather than a ''sole owner of an unincorporated business'' if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests);

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; or

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

(b) For the purpose of determining eligibility, the net worth of an applicant and the number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(c) The applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(d) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control; part-time employees shall be included on a proportional basis.

(e) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the NCUA Board determines that such treatment would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities. In addition, the NCUA board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(f) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 747.603 Prevailing party.

An eligible applicant may be a ''prevailing party'' if the applicant wins an action after a full hearing or trial on the merits, if a settlement of the proceeding was effected on terms favorable to it, or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

§ 747.604 Standards for award.

(a) A prevailing party may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, by or against NCUA unless the position of NCUA during the proceeding was substantially justified. The burden of proving that an award should not be made is on counsel for NCUA. To avoid an award, counsel for NCUA must show that its position was reasonable in law and in fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(c) Where an applicant has prevailed on one or more discrete substantive issues in a proceeding, even though all the issues were not resolved in its favor, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under this section if proration were not performed.

(d) Whether separate or prorated treatment under the preceding paragraph, including the applicable proration percentage, is appropriate shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§747.605 Allowable fees and expenses.

(a) Except as provided by §747.604(b), awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate.

(b) No award under this subpart for the fee of an attorney or agent may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which NCUA is permitted to pay expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the NCUA Board shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, report, test, project, or similar matter prepared on behalf of the party may be awarded to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§747.606 Contents of application.

(a) A prevailing eligible party, as defined in §§747.602, 747.603, and 747.604, seeking an award under this section, must file an application for an award of fees and expenses with the Secretary of the NCUA Board. The application shall include the following information:

(1) The identity of the applicant and the proceeding for which an award is sought;

(2) A showing that the applicant has prevailed and an identification of the issues in the proceeding on which the applicant believes that the position of NCUA was not substantially justified;

(3) A statement, with supporting documentation, that the applicant is an eligible party, as defined by §747.602. If the applicant is an individual, he or she must state that his or her net worth does not exceed $2 million. If the applicant is not an individual, it shall state the number of its employees and that its net worth does not exceed $7 million as of the date the proceeding was initiated. However, an applicant may omit a statement of net worth if:

(i) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(ii) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a));

(4) A Statement of the amount of fees and expenses for which an award is sought; and

(5) Any other matters that the applicant believes may assist or wishes the NCUA Board to consider in determining whether and in what amount an award should be made.

(b) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(c) The application and documentation requirements of this subpart are required by law as a prerequisite to obtaining a benefit under the EAJA and this subpart.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§ 747.607 Statement of net worth.

(a) Each applicant (other than a qualified tax exempt organization or cooperative association) must provide a detailed statement showing the net worth of the applicant and any affiliates, as defined in § 747.602(a), when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant is an eligible party. The administrative law judge or the NCUA Board may require additional information from the applicant to determine eligibility. Unless otherwise ordered by the Board or required by law, the statement shall be kept confidential and used by the NCUA Board only in making its determination of an award.

(b) If the applicant or any of its affiliates is a Federal credit union, the portion of the statement of net worth which relates to the Federal credit union shall consist of a copy of the Federal credit union's last Statement of Financial Condition filed before the initiation of the underlying proceeding.

(c) All statements of net worth shall describe any transfers of assets from or obligations incurred by the applicant or any affiliate, occurring in the six-month period prior to the date on which the proceeding was initiated, which reduced the net worth of the applicant and its affiliates below the applicable net-worth ceiling. If there were none, the applicant shall so state.

§ 747.608 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, audit, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge or the NCUA Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 747.609 Filing and service of applications.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Board's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision on which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) As used in this subpart, final disposition means the issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal.

(d) Any application for an award of fees and expenses shall be filed with

the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Any application for an award and any other pleading or document related to an application, shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in §747.607(a) for statements of net worth.

[56 FR 37767, Aug. 8, 1991, as amended at 59 FR 36041, July 15, 1994]

§747.610 Answer to application.

(a) Within 30 days after service of an application, counsel for NCUA may file an answer to the application. Unless counsel for NCUA requests and is granted an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period will be treated as a consent to the award requested.

(b) If counsel for NCUA and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the NCUA Board upon the joint request of counsel for NCUA and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, counsel shall include with the answer a request for further proceedings under §747.613.

(d)(1) The applicant may file a reply if counsel for NCUA has addressed in his or her answer any of the following issues:

(i) That the position of NCUA in the proceeding was substantially justified;

(ii) That the applicant unduly protracted the proceedings; or

(iii) That special circumstances make an award unjust.

(2) The reply shall be filed within 15 days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply a request for further proceedings under §747.613.

§747.611 Comments by other parties.

Any party to a proceeding other than the applicant and counsel for NCUA may file comments on an application within 30 days after service of the application or on an answer within 15 days after service of the answer. A commenting party may not participate further in proceedings on the application unless the administrative law judge or the NCUA Board determines that the public interest requires such participation in order to permit full exploration of matters raised in the comment.

§747.612 Settlement.

The applicant and counsel for NCUA may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with NCUA's standard settlement procedure. If a prevailing party and counsel for NCUA agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§747.613 Further proceedings.

(a) After the expiration of the time allowed for the filing of all documents necessary for the determination of a recommended fee award, the NCUA Board shall transmit the entire record to the administrative law judge who presided at the underlying proceeding. Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for NCUA, or on its own initiative, the administrative law judge or the NCUA Board may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the administrative law judge or the NCUA Board order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 747.614 Recommended decision.

The administrative law judge shall file a recommended decision on the application with the NCUA Board within 60 days after completion of the proceedings on the application. The recommended decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The recommended decision shall also include, if at issue, findings on whether NCUA's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the recommended decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made. The administrative law judge shall file with and certify to the NCUA Board the record of the proceeding on the fee application, the recommended decision and proposed order. Promptly upon such filing, the NCUA Board shall serve upon each party to the proceeding a copy of the administrative law judge's recommended decision, findings, conclusions and proposed order. The provisions of this section and § 747.613 shall not apply, however, in any case where the hearing was held before the NCUA Board.

§ 747.615 Decision of the NCUA Board.

Within 15 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for NCUA may file with the NCUA Board written exceptions thereto. A supporting brief may also be filed. The NCUA Board shall render its decision within 60 days after the matter is submitted to it. The NCUA Board shall furnish copies of its decision and order to the parties. Judicial review of the NCUA Board's final decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 747.616 Payment of award.

An applicant seeking payment of an award granted by the NCUA Board shall submit to the NCUA's Office of the Controller a copy of the NCUA Board's Final Decision and Order granting the award, accompanied by a statement that it will not seek review of the decision and order in the United States court. All submissions shall be addressed to the Office of the Controller, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. The NCUA will pay the amount awarded within 60 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

[56 FR 37767, Aug. 8, 1991, as amended at 59 FR 36041, July 15, 1994]

Subpart H—Local Rules and Procedures Applicable to Investigations

§ 747.701 Applicability.

The rules in this subpart apply only to informal and formal investigations conducted by the NCUA Board itself or its delegates. They do not apply to adjudicative or rulemaking proceedings or to routine, periodic or special examinations conducted by the NCUA Board's staff.

§ 747.702 Information obtained in investigations.

Information and documents obtained by the Board in the course of any investigation, unless made a matter of public record by the NCUA Board, shall be deemed non-public, but the NCUA Board approves the practice whereby the General Counsel may engage in, and may authorize any person acting on his or her behalf or at his or her direction to engage in, discussions with representatives of domestic or foreign

governmental authorities, self-regulatory organizations, and with receivers, trustees, masters and special counsels or special agents appointed by and subject to the supervision of the courts of the United States, concerning information obtained in individual investigations, including investigations conducted pursuant to any order entered by the NCUA Board or its General Counsel pursuant to delegated authority.

§ 747.703 Authority to conduct investigations.

(a) The General Counsel and persons acting on his or her behalf and at his or her direction may conduct such investigations into the affairs of any insured credit union or institution-affiliated parties as deemed appropriate to determine whether such credit union or party has violated, is violating or is about to violate any provision of the Act, the NCUA Board's regulations or other relevant statutes or regulations that may bear on a party's fitness to participate in the affairs of a credit union. The General Counsel and persons acting on his or her behalf may investigate whether any party is unfit to participate in the affairs of a credit union, whether formal enforcement proceedings are warranted, or such other matters as the General Counsel or his or her designee, in his or her discretion, shall deem appropriate. Such investigations may be conducted either informally or formally.

(b) Formal investigations involve the exercise of the NCUA Board's subpoena power and are referred to here as formal investigative proceedings. In formal investigative proceedings, the General Counsel and those to whom he or she delegates authority to act on his or her behalf and at his or her direction have augmented investigatory powers and need not rely on the powers available to them in informal investigations, and they may gather evidence through the issuance of subpoenas compelling the production of documents or testimony as well. In informal investigations evidence may be gathered ordinarily through the use of investigatory procedures or credit union examinations and through voluntary statements and submissions.

(c) The NCUA Board has delegated authority to the General Counsel, or designee thereof, to institute formal investigative proceedings by the entry of an order indicating the purpose of the investigation and the designation of persons to conduct that investigation on his or her behalf and at his or her direction. This delegation also extends to the NCUA Board's role as liquidator and conservator of insured credit unions. The power to issue a subpoena may not be delegated outside the agency. The General Counsel may amend such order as he deems appropriate.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

Subpart I—Local Rules Applicable to Formal Investigative Proceedings

§ 747.801 Applicability.

The rules in this subpart are applicable to a witness who is sworn in a formal investigative proceeding. Formal investigative proceedings may be held before the NCUA Board, before one or more of its members, or before any officer designated by the NCUA Board or its General Counsel, as described in subpart H of this part, and with or without the assistance of such other counsel as the NCUA Board deems appropriate, for the purpose of taking testimony of witnesses, conducting an investigation and receiving other evidence. The term ''officer conducting the investigation'' shall mean any of the foregoing.

§ 747.802 Non-public formal investigative proceedings.

Unless otherwise ordered by the NCUA Board, all formal investigative proceedings shall be non-public.

§ 747.803 Subpoenas.

(a) *Issuance.* In the course of a formal investigative proceeding the officer conducting the investigation may issue a subpoena directing the party named therein to appear before the officer conducting the investigation at a specified time and place to testify or to produce documentary evidence, or

both, relating to any matter under investigation.

(b) *Service.* Service of subpoenas shall be effected in the following manner:

(1) *Service upon a natural party.* Delivery of a copy of a subpoena to a natural person may be effected by—

(i) Handling it to the person;

(ii) Leaving it at his or her office with the person in charge thereof or, if there is no one in charge, by leaving it at a conspicuous place there;

(iii) Leaving it at his or her dwelling place or usual place of abode with some person of suitable age and discretion who is found there; or

(iv) Mailing it be registered or certified mail to him or her at his or her last known address. In the event that personal service as described in this paragraph is impracticable, any other method whereby actual notice is given to the respondent may be employed.

(2) *Service upon other persons.* When the person to be served is not a natural person, delivery of a copy of the subpoena may be effected by—

(i) Handing it to a registered agent for service, or to any officer, director, or agent in charge of any office of such person;

(ii) Mailing it by registered or certified mail to any such representative at his or her last known address; or

(iii) Any other method whereby actual notice is given to any such representative.

(c) *Witness fees and mileage.* Witnesses appearing pursuant to subpoena shall be paid the same fees and mileage that are paid to witnesses in the United States district courts. Any such fees and mileage payments need be paid only upon submission of a properly completed application for reimbursement and in no event need they be paid sooner than 30 days after the appearance of the witness pursuant to subpoena.

(d) *Enforcement.* Whenever it appears to the General Counsel that any person upon whom a subpoena was properly served pursuant to these Rules is refusing to fully comply with the terms of that subpoena, then the General Counsel, in his or her discretion, may apply to the courts of the United States for enforcement of such subpoena.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§ 747.804 Oath; false statements.

At the discretion of the officer conducting the investigation, testimony of a witness may be taken under oath and administered by the officer. Any person making false statements under oath during the course of a formal investigative proceeding is subject to the criminal penalties for perjury in 18 U.S.C. 1621. Any person who knowingly and willfully makes false and fraudulent statements, whether under oath or otherwise, or who falsifies, conceals or covers up any material fact, or submits any false, fictitious or fraudulent information in connection with such a proceeding, is subject to the criminal penalties set forth in 18 U.S.C. 1001.

§ 747.805 Self-incrimination; immunity.

(a) *Self-incrimination.* Except as provided in paragraph (b) of this section, a witness testifying or otherwise giving information in a formal investigative proceeding may refuse to answer questions on the basis of his or her right against self-incrimination granted by the Fifth Amendment of the Constitution of the United States.

(b) *Immunity.* (1) No officer conducting any formal investigative proceeding (or any other informal investigation or examination) shall have the power to grant or promise any party any immunity from criminal prosecution under the laws of the United States or of any other jurisdiction.

(2) If the NCUA Board believes that the testimony or other information sought to be obtained from any party may be necessary to the public interest and that party has refused or is likely to refuse to testify or provide other information on the basis of his or her privilege against self-incrimination, the NCUA Board, with the approval of the Attorney General, may issue an order requiring the party to give testimony or provide other information that he or she has previously refused to provide on the basis of self-incrimination.

(3) Whenever a witness refuses, on the basis of his privilege against self-

incrimination, to testify or provide other information in a formal investigative proceeding, and the officer conducting the investigation communicates to that person an order of the NCUA Board requiring him or her to testify or provide other information, the witness may not refuse to comply with the order on the basis of his or her privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

§ 747.806 Transcripts.

Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the officer conducting the investigation. A party who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his or her documentary evidence or a transcript of his or her testimony on payment of the appropriate fees; provided, however, that in a non-public formal investigative proceeding the NCUA Board may for good cause deny such request or the NCUA Board may place reasonable limitations upon the use of the documentary evidence and transcript. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness's own testimony.

§ 747.807 Rights of witnesses.

(a) In the event that a formal investigative proceeding is conducted pursuant to a specific order entered by the NCUA Board or by its General Counsel, then any party who is compelled or requested to provide documentary evidence or testimony as part of such proceeding shall, upon request, be shown a copy of the NCUA Board's or its delegate's order. Copies of such orders shall not be provided for their retention to such persons requesting same except in the sole discretion of the General Counsel or his designee.

(b) Any party compelled to appear, or who appears by request or permission of the officer conducting the investigation, in person at a formal investigative proceeding may be accompanied, represented and advised by counsel who is a member of the bar of the highest court of any state; provided however, that all witnesses in such proceeding shall be sequestered, and unless permitted in the discretion of the officer conducting the investigation, no witness or the counsel accompanying any such witness shall be permitted to be present during the examination of any other witness called in such proceeding.

(c)(1) The right of a witness to be accompanied, represented and advised by counsel shall mean the right to have an attorney present during any formal investigative proceeding and to have the attorney—

(i) Advise such person before, during and after such testimony;

(ii) Question such person briefly at the conclusion of his testimony to clarify any answers such person has given; and

(iii) Make summary notes during such testimony solely for the use of such person.

(2) From time to time, in the discretion of the officer, it shall be necessary for persons other than the witness and his or her counsel to attend non-public investigative proceedings. For example, the officer may deem it appropriate that outside counsel to the NCUA Board attend and advise him or her concerning the proceeding including the examination of a particular witness. In these circumstances, outside counsel would not be an officer as that term is used. In other circumstances, it may be appropriate that a technical expert (such as an accountant) accompany the witness and his or her counsel in order to assist counsel in understanding technical issues. These latter circumstances should be rare, are left to the discretion of the officer conducting the investigation, and shall not in any event be allowed to serve as a ruse to coordinate testimony between witnesses, to oversee or supervise the testimony of any witnesses, or

otherwise defeat the beneficial effects of the witness sequestration rule.

(d) The officer conducting the investigation may report to the NCUA Board any instances where any witness or counsel has been guilty of dilatory, obstructionist or contumacious conduct during the course of a formal investigative proceeding or any other instance of violations of these rules. The NCUA Board will thereupon take such further action as the circumstance may warrant including barring the offending person from further participation in the particular formal investigative proceeding or even from further practice before the Board.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors of Committee Members Pursuant to Section 212 of the Act

§ 747.901 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a credit union pursuant to section 212 of the Act (12 U.S.C. 1790a) and § 701.14 of this chapter, for the consent of the NCUA to add to or replace an individual on the board of directors or supervisory or credit committee, or to employ any individual as a senior executive officer or change the responsibilities of any individual to a position of senior executive officer where the credit union either has been chartered less than 2 years; or is in ''troubled condition,'' as defined in § 701.14 of this chapter. Subpart A of this part shall not apply to any proceeding under this subpart.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992, as amended at 60 FR 31911, June 19, 1995]

§ 747.902 Grounds for disapproval of notice.

The NCUA Board or its designee may issue a notice of disapproval with respect to a notice submitted by a credit union pursuant to section 212 of the Act (12 U.S.C. 1790a) and § 701.14 of this chapter, where the competence, experience character or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interest of the members of the credit union or the public to permit the individual to be employed by or associated with, such credit union.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992, as amended at 60 FR 31911, June 19, 1995]

§ 747.903 Procedures where notice of disapproval issued; reconsideration.

(a) The notice of disapproval shall be served upon the federally insured credit union and the candidate for director, committee member or senior executive officer. The notice of disapproval shall:

(1) Summarize or cite the relevant consideration specified in § 747.902;

(2) Inform the individual and the credit union that, within 15 days of receipt of the notice of disapproval, they can request reconsideration by the Regional Director of the initial determination, or can appeal the determination directly to the NCUA Board;

(3) Specify what additional information, if any, must be considered in the reconsideration.

(b) The request for reconsideration by the Regional Director must be filed at the appropriate Regional Office.

(c) The Regional Director shall act on a request for reconsideration within 30 days of its receipt.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992]

§ 747.904 Appeal.

(a) *Time for filing.* Within 15 days after issuance of a Notice of Disapproval or a determination on a request for reconsideration by the Regional Director, the individual or credit union (henceforth petitioner) may appeal by filing with the NCUA Board a written request for appeal.

(b) *Contents of request.* Any appeal must be in writing and include:

(1) The reasons why the NCUA Board should review the disapproval; and

(2) Relevant, substantive and material facts that for good cause were not previously set forth in the notice required to be filed pursuant to section 212 of the Act (12 U.S.C. 1790a) and § 701.14 of this chapter.

(c) *Procedures for review of request.* Within 30 days of the NCUA Board's receipt of an appeal, the NCUA Board

may request in writing that the petitioner submit additional facts and records to support the appeal. The petitioner shall have 15 days from the date of issuance of such written request to provide such additional information. Failure by the petitioner to provide additional information may, as determined solely by the NCUA Board or its designee, result in denial of the petitioner's appeal.

(d) *Determination on appeal by NCUA Board or its designee.* (1) Within 90 days from the date of the receipt of an appeal by the NCUA Board or its designee or of its receipt of additional information requested under paragraph (c) of this section, the NCUA Board or its designee shall notify the petitioner whether the disapproval will be continued, terminated, or otherwise modified. The NCUA Board or its designee shall promptly rescind or modify the notice of disapproval where the decision is favorable to the petitioner.

(2) The determination by the NCUA Board on the appeal shall be provided to the petitioner in writing, stating the basis for any decision of the NCUA Board or its designee that is adverse to the petitioner, and shall constitute a final order of the NCUA Board.

(3) Failure by the NCUA Board to issue a determination on the petitioner's appeal within the 90-day period prescribed under paragraph (d)(1) of this section shall be deemed a denial of the appeal for purpose of §747.905.

[56 FR 37767, Aug. 8, 1991; 57 FR 523, Jan. 7, 1992, as amended at 60 FR 31911, June 19, 1995]

§747.905 Judicial review.

(a) Failure to file an appeal within the applicable time periods, either to the initial determination or to the decision on a request for reconsideration, shall constitute a failure by the petitioner to exhaust available administrative remedies and, due to such failure, any objections to the initial determination or request for reconsideration shall be deemed to be waived and such determination shall be deemed to have been accepted by, and shall be binding upon, the petitioner.

(b) For purposes of seeking judicial review of actions taken pursuant to this section, suit may be filed in the United States District Court for the district where the requester resides, for the district where the credit union's principal place of business is located, or for the District of Columbia.

[56 FR 37767, Aug. 8, 1991; 57 FR 524, Jan. 7, 1992]

Subpart K—Inflation Adjustment of Civil Monetary Penalties

§747.1001 Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Improvement Act of 1996 (Public Law 104–134, 110 Stat. 1321–358 (28 U.S.C. 2461 note)).

(a) A first tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(A), for a violation occurring after October 23, 1996, shall not exceed $5,500 per day for each day the violation continues.

(b) A second tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(B), for a violation, practice or breach occurring after October 23, 1996, shall not exceed $27,500 per day for each day the violation, practice or breach continues.

(c) A third tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(C) upon any person other than an insured credit union, for a violation, practice or breach occurring after October 23, 1996, shall not exceed $1,100,000 per day for each day the violation, practice or breach continues.

(d) A third tier civil money penalty imposed pursuant to 12 U.S.C. 1786(k)(2)(C) upon an insured credit union, for a violation, practice or breach occurring after October 23, 1996, shall not exceed the lesser of—

(1) $1,100,000 per day for each day the violation, practice or breach continues; or

(2) 1 percent of the total assets of such credit union for each day the violation, practice or breach continues.

[61 FR 57291, Nov. 6, 1996]

PART 748—SUSPICIOUS ACTIVITY REPORT; REPORT OF CATASTROPHIC ACT AND BANK SECRECY ACT COMPLIANCE

Sec.

748.0 Security program.

748.1 Filing of reports.
748.2 Bank Secrecy Act compliance programs and procedures.

AUTHORITY: 12 U.S.C. 1766(a), 1786(q); 31 U.S.C. 5311.

§ 748.0 Security program.

(a) Each federally insured credit union will develop a written security program within 90 days of the effective date of insurance.

(b) The security program will be designed to protect each credit union office from robberies, burglaries, larcenies and embezzlement; to prevent destruction of vital records as defined in the *Accounting Manual for Federal Credit Unions;* and to assist in the identification of persons who commit or attempt such crimes.

[50 FR 53295, Dec. 31, 1985, as amended at 53 FR 4845, Feb. 18, 1988]

§ 748.1 Filing of reports.

(a) *Compliance report.* Each federally insured credit union shall file with the regional director an annual statement certifying its compliance with the requirements of this part. The statement shall be dated and signed by the president or other managing officer of the credit union. The statement is contained on the Report of Officials which is submitted annually by federally insured credit unions after the election of officials. In the case of federally insured state-chartered credit unions, this statement can be mailed to the regional director via the state supervisory authority, if desired. In any event, a copy of the statement shall always be sent to the appropriate state supervisory authority.

(b) *Catastrophic act report.* Each federally insured credit union will notify the regional director within 5 business days of any catastrophic act that occurs at its office(s). A catastrophic act is any natural disaster such as a flood, tornado, earthquake, etc., or major fire or other disaster resulting in some physical destruction or damage to the credit union. Within a reasonable time after a catastrophic act occurs, the credit union shall ensure that a record of the incident is prepared and filed at its main office. In the preparation of such record, the credit union should include information sufficient to indicate the office where the catastrophic act occurred; when it took place; the amount of the loss, if any; whether any operational or mechanical deficiency(ies) might have contributed to the catastrophic act; and what has been done or is planned to be done to correct the deficiency(ies).

(c) *Suspicious Activity Report.* (1) Each federally-insured credit union will report any crime or suspected crime that occurs at its office(s), utilizing NCUA Form 2362, Suspicious Activity Report (SAR), within thirty calendar days after discovery. Each federally-insured credit union must follow the instructions and reporting requirements accompanying the SAR. Copies of the SAR may be obtained from the appropriate NCUA Regional Office.

(2) Each federally-insured credit union shall maintain a copy of any SAR that it files and the original of all attachments to the report for a period of five years from the date of the report, unless the credit union is informed in writing by the National Credit Union Administration that the materials may be discarded sooner.

(3) Failure to file a SAR in accordance with the instructions accompanying the report may subject the federally-insured credit union, its officers, directors, agents or other institution-affiliated parties to the assessment of civil money penalties or other administrative actions.

(4) Filing of Suspicious Activity Reports will ensure that law enforcement agencies and NCUA are promptly notified of actual or suspected crimes. Information contained on SARs' will be entered into an interagency database and will assist the federal government in taking appropriate action.

[50 FR 53295, Dec. 31, 1985, as amended at 53 FR 26232, July 12, 1988; 58 FR 17492, Apr. 5, 1993; 61 FR 11527, Mar. 21, 1996]

§ 748.2 Bank Secrecy Act compliance programs and procedures.

(a) *Purpose.* This section is issued to ensure that all federally-insured credit unions establish and maintain procedures reasonably designed to assure and monitor compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code, the

Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act, and the implementing regulations promulgated thereunder by the Department of Treasury, 31 CFR part 103.

(b) *Compliance Procedures.* On or before August 1, 1987, each federally-insured credit union shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, the Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act and the implementing regulations promulgated thereunder by the Department of Treasury, 31 CFR part 103. This program shall be reduced to writing, approved by the board of directors of the institution, and noted in the minutes.

(c) *Contents of compliance program.* Such compliance program shall at a minimum—

(1) Provide for a system of internal controls to assure ongoing compliance;

(2) Provide for independent testing for compliance to be conducted by credit union personnel or outside parties;

(3) Designate an individual responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide training for appropriate personnel.

(Approved by the Office of Management and Budget under control number 3133–0094)

[52 FR 2861, Jan. 27, 1987, as amended at 52 FR 8062, Mar. 16, 1987]

PART 749—RECORDS PRESERVATION PROGRAM

Sec.
749.0 Records preservation.
749.1 Implementation.
749.2 Vital records to be stored.

AUTHORITY: 12 U.S.C. 1766, 1783 and 1789.

SOURCE: 55 FR 30212, July 25, 1990, unless otherwise noted.

§749.0 Records preservation.

All federally insured credit unions must maintain a records preservation program to identify, store and reconstruct vital records in the event that the credit union's records are destroyed.

§749.1 Implementation.

The financial officer of the credit union is responsible for storing duplicate vital records at a vital records center. This responsibility may be delegated.

(a) The Records Preservation Program must be operational within 6 months after the credit union's insurance certificate is issued.

(b) The vital records center is defined as any location far enough from the credit union's offices to avoid the simultaneous loss of both sets of records in the event of disaster.

(c) Records must be stored every 3 months, within 30 days after the end of the 3-month period. Previously stored records may be destroyed when the current records are stored.

(d) A records preservation log will be maintained showing what records were stored, where the records were stored, when the records were stored, and who sent the records for storage.

(e) Stored records may be in any format which can be used to reconstruct the credit union's records. Formats include paper originals, machine copies, micro film or fiche, magnetic tape, etc.

(f) Credit unions which have some or all of their records maintained by an off-site data processor are considered to be in compliance for the storage of those records.

§749.2 Vital records to be stored.

At least the following records, as of the most recent month-end, must be stored:

(a) A list of share and/or deposit and loan balances for each member's account.

(1) The list of balances will be individually identified by a name or number.

(2) Multiple loans of one account will be listed separately.

(3) Information sufficient to enable the credit union to locate each member, such as address and telephone number, shall also be included, unless the board of directors determines that such information is readily available from another source.

(b) A financial report which lists all of the credit union's asset and liability accounts.

(c) A list of the credit union's banks, insurance policies, and investments. This information may be marked ''permanent''and be updated only when changes are made.

PART 760—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.
760.1 Authority, purpose, and scope.
760.2 Definitions.
760.3 Requirement to purchase flood insurance where available.
760.4 Exemptions.
760.5 Escrow requirement.
760.6 Required use of standard flood hazard determination form.
760.7 Forced placement of flood insurance.
760.8 Determination fees.
760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.
760.10 Notice of servicer's identity.
APPENDIX TO PART 760—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE

AUTHORITY: 12 U.S.C. 1757, 1789; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

SOURCE: 61 FR 45713, Aug. 29, 1996, unless otherwise noted.

§ 760.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 1757, 1789 and 42 U.S.C. 4012a, 4104a, 4104b, 4106, 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129).

(c) *Scope.* This part, except for §§ 760.6 and 760.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 760.6 and 760.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 760.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001–4129).

(b) *Credit union* means a Federal or State-chartered credit union that is insured by the National Credit Union Share Insurance Fund.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term *mobile home* does not include a recreational vehicle. For purposes of this part, the term *mobile home* means a mobile home on a permanent foundation. The term *mobile home* means a manufactured home as that term is used in the NFIP.

(h) *NFIP* means the National Flood Insurance Program authorized under the Act.

(i) *Residential improved real estate* means real estate upon which a home or other residential building is located or to be located.

(j) *Servicer* means the person responsible for:

(1) Receiving any scheduled, periodic payments from a borrower under the terms of a loan, including amounts for taxes, insurance premiums, and other charges with respect to the property securing the loan; and

(2) Making payments of principal and interest and any other payments from the amounts received from the borrower as may be required under the terms of the loan.

(k) *Special flood hazard area* means the land in the flood plain within a

community having at least a one percent chance of flooding in any given year, as designated by the Director of FEMA.

(l) *Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds.

§760.3 Requirement to purchase flood insurance where available.

(a) *In general.* A credit union shall not make, increase, extend, or renew any designated loan unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of insurance must be at least equal to the lesser of the outstanding principal balance of the designated loan or the maximum limit of coverage available for the particular type of property under the Act. Flood insurance coverage under the Act is limited to the overall value of the property securing the designated loan minus the value of the land on which the property is located.

(b) *Table funded loan.* A credit union that acquires a loan from a mortgage broker or other entity through table funding shall be considered to be making a loan for the purposes of this part.

§760.4 Exemptions.

The flood insurance requirement prescribed by §760.3 does not apply with respect to:

(a) Any State-owned property covered under a policy of self-insurance satisfactory to the Director of FEMA, who publishes and periodically revises the list of States falling within this exemption; or

(b) Property securing any loan with an original principal balance of $5,000 or less and a repayment term of one year or less.

§760.5 Escrow requirement.

If a credit union requires the escrow of taxes, insurance premiums, fees, or any other charges for a loan secured by *residential* improved real estate or a mobile home that is made, increased, extended, or renewed on or after November 1, 1996, the credit union shall also require the escrow of all premiums and fees for any flood insurance required under §760.3. The credit union, or a servicer acting on behalf of the credit union, shall deposit the flood insurance premiums on behalf of the borrower in an escrow account. This escrow account will be subject to escrow requirements adopted pursuant to section 10 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609) (RESPA), which generally limits the amount that may be maintained in escrow accounts for certain types of loans and requires escrow account statements for those accounts, only if the loan is otherwise subject to RESPA. Following receipt of a notice from the Director of FEMA or other provider of flood insurance that premiums are due, the credit union, or a servicer acting on behalf of the credit union, shall pay the amount owed to the insurance provider from the escrow account by the date when such premiums are due.

§760.6 Required use of standard flood hazard determination form.

(a) *Use of form.* A credit union shall use the standard flood hazard determination form developed by the Director (as set forth in Appendix A of 44 CFR part 65) when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act. The standard flood hazard determination form may be used in a printed, computerized, or electronic manner.

(b) *Retention of form.* A credit union shall retain a copy of the completed standard flood hazard determination form, in either hard copy or electronic form, for the period of time the credit union owns the loan.

§760.7 Forced placement of flood insurance.

If a credit union, or a servicer acting on behalf of the credit union, determines, at any time during the term of a designated loan that the building or mobile home and any personal property securing the designated loan is not covered by flood insurance or is covered by flood insurance in an amount less than the amount required under §760.3, then

the credit union or its servicer shall notify the borrower that the borrower should obtain flood insurance, at the borrower's expense, in an amount at least equal to the amount required under § 760.3, for the remaining term of the loan. If the borrower fails to obtain flood insurance within 45 days after notification, then the credit union or its servicer shall purchase insurance on the borrower's behalf. The credit union or its servicer may charge the borrower for the cost of premiums and fees incurred in purchasing the insurance.

§ 760.8 Determination fees.

(a) *General.* Notwithstanding any Federal or State law other than the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4129), any credit union, or a servicer acting on behalf of the credit union, may charge a reasonable fee for determining whether the building or mobile home securing the loan is located or will be located in a special flood hazard area. A determination fee may also include, but is not limited to, a fee for life-of-loan monitoring.

(b) *Borrower fee.* The determination fee authorized by paragraph (a) of this section may be charged to the borrower if the determination:

(1) Is made in connection with a making, increasing, extending, or renewing of the loan that is initiated by the borrower;

(2) Reflects the Director of FEMA's revision or updating of floodplain areas or flood-risk zones;

(3) Reflects the Director of FEMA's publication of a notice or compendium that:

(i) Affects the area in which the building or mobile home securing the loan is located; or

(ii) By determination of the Director of FEMA, may reasonably require a determination whether the building or mobile home securing the loan is located in a special flood hazard area; or

(4) Results in the purchase of flood insurance coverage by the credit union or its servicer on behalf of the borrower under § 760.7.

(c) *Purchaser or transferee fee.* The determination fee authorized by paragraph (a) of this section may be charged to the purchaser or transferee of a loan in the case of the sale or transfer of the loan.

§ 760.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

(a) *Notice requirement.* When a credit union makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, the credit union shall mail or deliver a written notice to the borrower and to the servicer in all cases whether or not flood insurance is available under the Act for the collateral securing the loan.

(b) *Contents of notice.* The written notice must include the following information:

(1) A warning, in a form approved by the Director of FEMA, that the building or the mobile home is or will be located in a special flood hazard area;

(2) A description of the flood insurance purchase requirements set forth in section 102(b) of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4012a(b));

(3) A statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and

(4) A statement whether Federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a Federally-declared disaster.

(c) *Timing of notice.* The credit union shall provide the notice required by paragraph (a) of this section to the borrower within a reasonable time before the completion of the transaction and to the servicer as promptly as practicable after the credit union provides notice to the borrower and in any event no later than the time the credit union provides other similar notices to the servicer concerning hazard insurance and taxes. Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

(d) *Record of receipt.* The credit union shall retain a record of the receipt of the notices by the borrower and the servicer for the period of time the credit union owns the loan.

(e) *Alternate method of notice.* Instead of providing the notice to the borrower required by paragraph (a) of this section, a credit union may obtain satisfactory written assurance from a seller or lessor that, within a reasonable time before the completion of the sale or lease transaction, the seller or lessor has provided such notice to the purchaser or lessee. The credit union shall retain a record of the written assurance from the seller or lessor for the period of time the credit union owns the loan.

(f) *Use of prescribed form of notice.* A credit union will be considered to be in compliance with the requirement for notice to the borrower of this section providing written notice to the borrower containing the language presented in the appendix to this part within a reasonable time before the completion of the transaction. The notice presented in the appendix to this part satisfies the borrower notice requirements of the Act.

§ 760.10 Notice of servicer's identity.

(a) *Notice requirement.* When a credit union makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, the credit union shall notify the Director of FEMA (or the Director's designee) in writing of the identity of the servicer of the loan. The Director of FEMA has designated the insurance provider to receive the credit union's notice of the servicer's identity. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee.

(b) *Transfer of servicing rights.* The credit union shall notify the Director of FEMA (or the Director's designee) of any change in the servicer of a loan described in paragraph (a) of this section within 60 days after the effective date of the change. This notice may be provided electronically if electronic transmission is satisfactory to the Director of FEMA's designee. Upon any change in the servicing of a loan described in paragraph (a) of this section, the duty to provide notice under this paragraph (b) shall transfer to the transferee servicer.

APPENDIX TO PART 760—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE

We are giving you this notice to inform you that:

The building or mobile home securing the loan for which you have applied is or will be located in an area with special flood hazards.

The area has been identified by the Director of the Federal Emergency Management Agency (FEMA) as a special flood hazard area using FEMA's *Flood Insurance Rate Map* or the *Flood Hazard Boundary Map* for the following community: _____. This area has at least a one percent (1%) chance of a flood equal to or exceeding the base flood elevation (a 100-year flood) in any given year. During the life of a 30-year mortgage loan, the risk of a 100-year flood in a special flood hazard area is 26 percent (26%).

Federal law allows a lender and borrower jointly to request the Director of FEMA to review the determination of whether the property securing the loan is located in a special flood hazard area. If you would like to make such a request, please contact us for further information.

_____ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

• Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

• At a minimum, flood insurance purchased must cover *the lesser of*:

(1) the outstanding principal balance of the loan; *or*

(2) the maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

• Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's

participation in the NFIP is in accordance with NFIP requirements.

_____ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

SUBCHAPTER B—REGULATIONS AFFECTING THE OPERATIONS OF THE NATIONAL CREDIT UNION ADMINISTRATION

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

Sec.
790.1 Scope.
790.2 Central and regional office organization.
790.3 Requests for action.

AUTHORITY: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f.

SOURCE: 58 FR 45431, Aug. 30, 1993, unless otherwise noted.

§790.1 Scope.

This part contains a description of NCUA's organization and the procedures for public requests for action by the Board. Part 790 pertains to the practices of the National Credit Union Administration (NCUA) only and does not apply to credit union operations.

§790.2 Central and regional office organization.

(a) *General organization.* NCUA is composed of the Board with a Central Office in Alexandria, Virginia, six Regional Offices, the Asset Liquidation Management Center, the Community Development Revolving Loan Program, and the NCUA Central Liquidity Facility (CLF).

(b) *Central Office.* The Central Office address is NCUA, 1775 Duke St., Alexandria, Virginia 22314–3428.

(1) *The NCUA Board.* NCUA is managed by its Board. The Board consists of three members appointed by the President, with the advice and consent of the Senate, for six-year terms. One Board member is designated by the President to be Chairman of the Board. The Chairman shall be the spokesman for the Board and shall represent the Board and the NCUA in its official relations with other branches of the government. A second member is designated by the Board to be Vice-Chairman. The Board is also responsible for management of the National Credit Union Share Insurance Fund (NCUSIF) and serves as the Board of Directors of the CLF.

(2) *Secretary of the Board.* The Secretary of the Board is responsible for the secretarial functions of the Board. The Secretary's responsibilities include preparing agendas for meetings of the Board, preparing and maintaining the minutes for all official actions taken by the Board, and executing and maintaining all documents adopted by the Board or under its direction. The Secretary also serves as the Secretary of the CLF.

(3) *Office of Administration.* The Director of the Office of Administration is responsible for providing NCUA's executive offices and Regional Directors with administrative services generally, including: Agency security; information resources management; contracting and procurement; contract management; management of equipment and supplies; acquisition; records management; printing and graphics; and warehousing and distribution. The Director is also responsible for carrying out the Board's responsibilities under the Privacy Act, the Paperwork Reduction Act, and in directing NCUA responses to reporting requirements.

(4) *Asset Liquidation Management Center.* The President of the Asset Liquidation Management Center is responsible for all of NCUA's acquired assets, credit union recoveries, and involuntary liquidations; responsible for managing the payout process for all federally insured credit unions placed in involuntary liquidation; manages the orderly processing of payment of share insurance, sale and/or collection of loan portfolios, and liquidation of other assets; responsible for managing the evaluation, disposal and/or management of major assets acquired by the NCUSIF. The address of the ALMC is 4807 Spicewood Springs Road, suite 5100, Austin, Texas 78759–8490.

(5) *Office of Chief Financial Officer.* NCUA's chief financial officer is in charge of budgetary, accounting and financial matters for the NCUA, including responsibility for submitting annual budget and staffing requests for

approval by the Board and, as required, by the Office of Management and Budget; for managing NCUA's budgetary resources; for managing the operations of the National Credit Union Share Insurance Fund (NCUSIF) to include accounting, financial reporting and the collection and payment of capitalization deposits, insurance premiums and insurance dividends; for collecting annual operating fees from federal credit unions, for maintaining NCUA's accounting system and accounting records; for processing payroll, travel, and accounts payable disbursements; and for preparing internal and external financial reports.

(6) *Office of Examination and Insurance.* (i) The Director of the Office of Examination and Insurance: Formulates standards and procedures for examination and supervision of the community of federally insured credit unions, and reports to the Board on the performance of the examination program; manages the risk to the NCUSIF, to include overseeing the NCUSIF Investment Committee, monitoring the adequacy of NCUSIF reserves, analyzing the reasons for NCUSIF losses, formulating policies and procedures regarding the supervision of financially troubled credit unions, and evaluating certain requests for special assistance pursuant to Section 208 of the Federal Credit Union Act and for certain proposed administrative actions regarding federally-insured credit unions; serves as the Board expert on accounting principles and standards and on auditing standards; represents NCUA at meetings with the American Institute of Certified Public Accountants (AICPA), Federal Financial Institutions Examination Council (FFIEC) and General Accounting Office (GAO); and collects data and provides statistical reports. The Director is also responsible for developing and conducting research in support of NCUA programs, and for preparing reports on research activities for the information and use of agency staff, credit union officials, state credit union supervisory authorities, and other governmental and private groups.

(ii) *NCUA Central Liquidity Facility (CLF).* The CLF was created to improve general financial stability by providing funds to meet the liquidity needs of credit unions. It is a mixed-ownership Government corporation under the Government Corporation Control Act (31 U.S.C. 9101, *et seq.*). The CLF is managed by the President of the CLF, under the general supervision of the NCUA Board which serves as the CLF Board of Directors. The Chairman of the NCUA Board serves as the Chairman of the CLF Board of Directors. The Secretary of the NCUA Board serves as the Secretary of the CLF Board. The Director of the Division of Risk Management, Office of Examination and Insurance, serves as the President of the CLF.

(7) *Office of the Executive Director.* The Executive Director translates NCUA Board policy decisions into workable programs, delegates responsibility for these programs to appropriate staff members, and coordinates the activities of the senior executive staff, which includes: The General Counsel; the Regional Directors; and the Office Directors for Administration, Chief Financial Officer, Examination and Insurance, Human Resources, Information Systems, and Public and Congressional Affairs. Because of the nature of the attorney/client relationship between the Board and General Counsel, the General Counsel may be directed by the Board not to disclose discussions and/or assignments with anyone, including the Executive Director. The Executive Director is otherwise to be privy to all matters within senior executive staff's responsibility.

(8) *Office of General Counsel.* The General Counsel has overall responsibility for all legal matters affecting NCUA and for liaison with the Department of Justice. The General Counsel represents NCUA in all litigation and administrative hearings when such direct representation is permitted by law and, in other instances, assists the attorneys responsible for the conduct of such litigation. The General Counsel also provides NCUA with legal advice and opinions on all matters of law, and the public with interpretations of the Federal Credit Union Act, the NCUA Rules and Regulations, and other NCUA Board directives. The Office has responsibility for processing Freedom

of Information Act requests and appeals. The General Counsel has responsibility for the drafting, reviewing, and publication of all items which appear in the FEDERAL REGISTER, including rules, regulations, and notices required by law.

(9) *The Office of Human Resources.* The Office of Human Resources provides a comprehensive program for the management of NCUA's human resources. This is done in support of NCUA's goal to recruit, develop, and retain a quality and representative workforce. The Director is responsible for managing NCUA's compensation program, for facilitating good organization design, for staffing positions through recruitment and merit promotion programs, and for maintaining an automated personnel records system. The Director is also responsible for the Board's performance management, incentive awards, employee assistance, and benefit programs. These programs are geared to foster healthy employee/management relations and to provide employees with good working conditions.

(10) *Office of Technology and Information Services.* The Director of the Office of Technology and Information Services has responsibility for the management and administration of NCUA's information resources. This includes the development, maintenance, operation, and support of information systems which directly support the Agency's mission, maintaining and operating the Agency's information processing infrastructure, responding to requests for releasable Agency information, and insuring all related material security and integrity risks are recognized and controlled as much as possible.

(11) *Office of the Inspector General.* The Inspector General reports directly to the Board and provides semi-annual reports regarding audit and investigation activities to the Board and the Congress. The Inspector General is responsible for: (a) Conducting independent audits and investigations of all NCUA programs and functions to promote efficiency; (b) reviewing policies and procedures to evaluate controls to prevent fraud, waste, and abuse; and (c) reviewing existing and proposed legislation and regulations to evaluate their impact on the economic and efficient administration of the Agency.

(12) *Office of Public and Congressional Affairs.* The Director of the Office of Public Congressional Affairs is responsible for maintaining NCUA's relationship with the public and the media; for liaison with the U.S. Congress, and with other Executive Branch agencies concerning legislative matters; and for the analysis and development of legislative proposals and public affairs programs.

(13) *Office of Community Development Credit Unions.* This Office is responsible for coordinating NCUA policy as it relates to community development credit unions, including those credit unions designated as ''low-income.'' The Office administers the Community Development Revolving Loan Program for Credit Unions (Program). This Program was funded from a congressional appropriation and serves as a loan and technical assistance vehicle for low-income credit unions. The Office Director serves as Program Chairman and authorizes loans and technical assistance to participating credit unions. The Program is governed by part 705 of subchapter A of this chapter.

(14) *Office of Investment Services.* The Office of Investment Services is responsible for providing investment expertise and advice to the Board and agency staff. A working relationship is maintained with the financial marketplace to develop resources available to the NCUA and keep abreast of product initiatives. The NCUA Investment Hotline housed in this Office is a toll-free number that is available to examiners, credit unions, and financial product vendors to ask investment related questions. The Hotline provides NCUA an opportunity to be aware of current investment issues as they arise in credit unions and has permitted NCUA to become proactive, rather than reactive, to such issues. In addition, investment officers advise agency management on the purchase of authorized investments for the NCUSIF and the CLF.

(15) *Office of Training and Development.* This Office provides a comprehensive program for the training and development of NCUA's staff. The

Office is responsible for developing policy, consistent with the Government Employees Training Act, related to its training program; for providing training opportunities equitably so that all employees have the skills necessary to help meet the agency's mission; for evaluating the agency's training and development efforts; and for ensuring that the agency's training monies are spent in a cost efficient manner and in accordance with the law.

(16) *Office of Corporate Credit Unions.* The Director, Office of Corporate Credit Unions, manages NCUA's corporate credit union program in accordance with established policies and the corporate regulation. The Director's duties include directing chartering, examination and supervision programs to promote and assure safety and soundness; managing NCUA's corporate resources to meet program objectives in the most economical and practical manner, and maintaining good public relations with public, private and governmental organizations, corporate credit union officials, credit union organizations, and other groups which have an interest in corporate credit union matters.

(c) *Regional offices.*

(1) NCUA's programs are conducted through six regional offices:

Region No.	Area within region	Office address
I	Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont.	9 Washington Square, Washington Avenue Extension, Albany, NY 12205.
II	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia.	1775 Duke Street, suite 4206, Alexandria, VA 22314–3437.
III	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, Virgin Islands.	7000 Central Parkway, Suite 1600, Atlanta, GA 30328.
IV	Illinois, Indiana, Michigan, Missouri, Ohio, Wisconsin	4225 Naperville Rd., suite 125, Lisle, IL 60532.
V	Arizona, Colorado, Iowa, Kansas, Minnesota, Nebraska, New Mexico, North Dakota, South Dakota, Oklahoma, Texas, Utah, Wyoming.	4807 Spicewood Springs Road, suite 5200, Austin, TX 78759.
VI	Alaska, American Samoa, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.	2300 Clayton Road, suite 1350, Concord, CA 94520.

(2) A Regional Director is in charge of each Regional Office. The Regional Director manages NCUA's programs in the Region assigned in accordance with established policies. This person's duties include: Directing chartering, insurance, examination, and supervision programs to promote and assure safety and soundness; managing regional resources to meet program objectives in the most economical and practical manner; and maintaining good public relations with public, private, and governmental organizations, Federal credit union officials, credit union organizations, and other groups which have an interest in credit union matters in the assigned Region. The Director maintains liaison and cooperation with other regional offices of Federal departments and agencies, state agencies, city and county officials, and other governmental units that affect credit unions. The Regional Director is aided by an Associate Regional Director for Operations and Associate Regional Director for Programs. Staff working in the Regional Office report to the Associate Regional Director for Operations. Each region is divided into examiner districts, each assigned to a Supervisory Credit Union Examiner; groups of examiners are directed by a Supervisory Credit Union Examiner, each of whom in turn reports directly to the Associate Regional Director for Programs. Special Actions staff also report to the Associate Regional Director.

[58 FR 45431, Aug. 30, 1993, as amended at 59 FR 36042, July 15, 1994; 59 FR 47072, Sept. 14, 1994; 60 FR 31911, June 19, 1995; 61 FR 45876, Aug. 30, 1996]

§ 790.3 Requests for action.

Except as otherwise provided by NCUA regulation, all applications, requests, and submittals for action by the NCUA shall be in writing and addressed to the appropriate office described in § 790.2. This will usually be one of the Regional Offices. In instances where the appropriate office

cannot be determined, requests should be sent to the Office of Public and Congressional Affairs.

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

Subpart A—Rules of NCUA Board Procedure

Sec.
791.1 Scope.
791.2 Number of votes required for board action.
791.3 Voting by proxy.
791.4 Methods of acting.
791.5 Scheduling of board meetings.
791.6 Subject matter of a meeting.

Subpart B—Promulgation of NCUA Rules and Regulations

791.7 Scope.
791.8 Promulgation of NCUA rules and regulations.

Subpart C—Public Observation of NCUA Board Meetings Under the Sunshine Act

791.9 Scope.
791.10 Definitions.
791.11 Open meetings.
791.12 Exemptions.
791.13 Public announcement of meetings.
791.14 Regular procedure for closing meeting discussions or limiting the disclosure of information.
791.15 Requests for open meeting.
791.16 General counsel certification.
791.17 Maintenance of meeting records.
791.18 Public availability of meeting records and other documents.

AUTHORITY: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

SOURCE: 53 FR 29647, Aug. 8, 1988, unless otherwise noted.

Subpart A—Rules of NCUA Board Procedure

§791.1 Scope.

The rules contained in this subpart are the rules of procedure governing how the Board conducts its business. These rules concern the Board's exercise of its authority to act on behalf of NCUA; the conduct, scheduling and subject matter of Board meetings; and the recording of Board action.

§791.2 Number of votes required for board action.

The agreement of at least two of the three Board members is required for any action by the Board.

§791.3 Voting by proxy.

Proxy voting shall not be allowed for any action by the Board.

§791.4 Methods of acting.

(a) *Board meetings*—(1) *Applicability of the Sunshine Act.* The Government in the Sunshine Act (5 U.S.C. 552b, ''Sunshine Act'') requires that joint deliberations of the Board be held in accordance with its open meetings provisions (5 U.S.C. 552b (b) through (f)). (Subpart C of this part contains NCUA's regulations implementing the Sunshine Act.)

(2) *Presiding officer.* The Chairman is the presiding officer, and in the Chairman's absence, the designated Vice Chairman shall preside. The presiding officer shall make procedural rulings with the right of the objector to request a board ruling.

(b) *Notation voting.* Notation voting is the circulation of written memoranda and voting sheets to the office of each Board member and the tabulation of responses.

(1) *Matters that may be decided by notation voting.* Notation voting may be used only for routine matters.

(2) *Notation vote sheets.* Notation vote sheets will be used to record the vote tally on a notation vote. The Secretary of the Board has administrative responsibility over notation voting, including the authority to establish deadlines for voting, receive notation vote sheets, count votes, and determine whether further action is required.

(3) *Veto of notation voting.* In view of public policy for openness reflected in the Sunshine Act, each Board member is authorized to veto the use of notation voting for the consideration of any particular matter, and thus require that the matter be placed on the agenda of a Board meeting.

(4) *Disclosure of result.* A record is to be maintained of Board transactions by use of the notation voting procedure. Public disclosure of this record is determined by the provisions of the Freedom of Information Act (5 U.S.C. 552).

§ 791.5 Scheduling of board meetings.

(a) *Meeting calls*—(1) *Regular meetings.* The Board will hold regular meetings each month unless there is no business or a quorum is not available. The Secretary of the Board will coordinate the dates for meetings.

(2) *Special meetings.* The Chairman shall call special meetings either on the Chairman's own initiative or at the request of any Board member.

(b) *Notice of meetings*—(1) *Notifying the public.* The Sunshine Act and subpart C set forth the procedures for notifying the public of Board meetings.

(2) *Notifying board members*—(i) *Special meetings.* Except in cases of emergency as determined by a majority of the Board, each Board member is entitled to receive notice of any special meeting at least twenty-four hours in advance of such meeting. The notice shall set forth the place, day, hour, and nature of business to be transacted at the meeting. In cases of emergency a record of the vote, including a statement explaining the decision that an emergency exists, will be maintained.

(ii) *Regular meetings.* Each Board member is entitled to receive notice of the agenda and/or notice of any changes in the subject matter of such meetings concurrent with the public release of such notices under the Sunshine Act. Each Board member shall be entitled to at least twenty-four hours advance notice of the consideration of a particular subject matter, except in cases of emergency as determined by a majority of the Board. In cases of emergency, a record of the vote, including a statement explaining the decision that an emergency exists, will be maintained.

§ 791.6 Subject matter of a meeting.

(a) *Agenda.* The Chairman is responsible for the final order of each meeting agenda. Items shall be placed on the agenda by determination of the Chairman, or within 60 days of receipt of a written request from two Board members that includes an NCUA B–1 form and a Board Action Memorandum.

(b) *Submission of recommended agenda items.* Recommended agenda items may be submitted to the Secretary of the Board by Board members, the Executive Staff (which includes all Office Directors and President of the Central Liquidity Facility), and Regional Directors.

[61 FR 55208, Oct. 25, 1996]

Subpart B—Promulgation of NCUA Rules and Regulations

§ 791.7 Scope.

The rules contained in this subpart B pertain to the promulgation of NCUA rules and regulations.

§ 791.8 Promulgation of NCUA rules and regulations.

(a) NCUA's procedures for developing regulations are governed by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and NCUA's policies for the promulgation of rules and regulations as set forth in its Interpretive Ruling and Policy Statement 87–2.

(b) *Proposed rulemaking.* Notices of proposed rulemaking are published in the FEDERAL REGISTER except as specified in paragraph (d) of this section or as otherwise provided by law. A notice of proposed rulemaking may also be identified as a ''request for comments'' or as a ''proposed rule.'' The notice will include:

(1) A statement of the nature of the rulemaking proceedings;

(2) Reference to the authority under which the rule is proposed;

(3) Either the terms or substance of the proposed rule or a description of the subjects and issues involved; and

(4) A statement of the effect of the proposed rule on state-chartered federally-insured credit unions.

(c) *Public participation.* After publication of notice of proposed rulemaking, interested persons will be afforded the opportunity to participate in the making of the rule through the submission of written data, views, or arguments, delivered within the time prescribed in the notice of proposed rulemaking, to the Secretary, NCUA Board, 1775 Duke Street, Alexandria, VA 22314–3428. Interested persons may also petition the Board for the issuance, amendment, or

repeal of any rule by mailing such petition to the Secretary of the Board at the address given in this section.

(d) *Exceptions to notice.* The following are not subject to the notice requirement contained in paragraph (b) of this section:

(1) Matters relating to agency management or personnel or to public property, loans, grants, benefits, or contracts;

(2) When persons subject to the proposed rule are named and either personally served or otherwise have actual notice thereof in accordance with law;

(3) Interpretive rules, general statements of policy, or rules of agency organization, procedure or practice, unless notice or hearing is required by statute; and

(4) If the Board, for good cause, finds (and incorporates the finding and a brief statement therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, unless notice or hearing is required by statute.

(e) *Effective dates.* No substantive rule issued by NCUA shall be effective less than 30 days after its publication in the FEDERAL REGISTER, except that this requirement may not apply to:

(1) Rules which grant or recognize an exemption or relieve a restriction;

(2) Interpretive rules and statements of policy; or

(3) Any substantive rule which the Board makes effective at an earlier date upon good cause found and published with such rule.

[53 FR 29647, Aug. 8, 1988, as amended at 59 FR 36041, July 15, 1994]

Subpart C—Public Observation of NCUA Board Meetings Under the Sunshine Act

§ 791.9 Scope.

This subpart contains regulations implementing subsections (b) through (f) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b). The primary purpose of these regulations is to provide the public with the fullest access authorized by law to the deliberations and decisions of the Board, while protecting the rights of individuals and preserving the ability of the agency to carry out its responsibilities.

§ 791.10 Definitions.

For the purpose of this subpart:

(a) *Agency* means the National Credit Union Administration;

(b) *Board* means the National Credit Union Administration Board, whose members were appointed by the President with the advice and consent of the Senate;

(c) *Subdivision of the Board* means a group composed of two Board members authorized by the Board to act on behalf of the agency;

(d) *Meeting* means any deliberations by two or more members of the Board or any subdivision of the Board that determine or result in the joint conduct or disposition of official agency business with the exception of: (1) Deliberations to determine whether a meeting or a portion thereof will be open or closed to public observation and whether information regarding closed meetings will be withheld from public disclosure; (2) deliberations to determine whether or when to schedule a meeting; and (3) infrequent dispositions of official agency business by sequential circulation of written recommendations to individual Board members (''notation voting procedure''), provided the votes of each Board member and the action taken are recorded for each matter and are publicly available, unless exempted from disclosure pursuant to 5 U.S.C. 552 (the Freedom of Information Act);

(e) *Public observation* means that a member or group of the public may listen to and observe any open meeting and may record in an unobtrusive manner any portion of that meeting by use of a camera or any other electronic device, but shall not participate in any meeting unless authorized by the Board;

(f) *Public announcement* or *publicly announce* means making reasonable efforts under the particular circumstances to fully inform the public, especially those individuals who have expressed interest in the subject matters to be discussed or the decisions of the agency;

(g) *Sunshine Act* means the open meeting provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b.)

§ 791.11 Open meetings.

Except as provided in § 791.12(a), any portion of any meeting of the Board shall be open to public observation. The Board, and any subdivision of the Board, shall jointly conduct official agency business only in accordance with this subpart.

§ 791.12 Exemptions.

(a) Under the procedures specified in § 791.14, the Board may close a meeting or any portion of a meeting from public observation or may withhold information pertaining to such meetings provided the Board has properly determined that the public interest does not require otherwise and that the meeting (or any portion thereof) or the disclosure of meeting information is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy, and

(ii) In fact properly classified pursuant to such Executive Order;

(2) Relate solely to internal personnel rules and practices;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of title 5 of the United States Code, the Freedom of Information Act), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings,

(ii) Deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Constitute an unwarranted invasion of personal privacy,

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by a Federal agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source,

(v) Disclose investigative techniques and procedures, or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of Federal agencies responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to (i)(A) lead to significant speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution, or (ii) be likely to significantly frustrate implementation of a proposed action,

except that this paragraph (a)(9) shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena, participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition of a particular case of formal agency adjudication pursuant to the procedures in section 554 of title 5 of the United States Code or otherwise involving a determination on

the record after opportunity for a hearing.

(b) Prior to closing a meeting whose discussions are likely to fall within the exemptions stated in paragraph (a) of this section, the Board will balance the public interest in observing the deliberations of an exemptible matter and the agency need for confidentiality of the exemptible matter. In weighing these interests, the Board is assisted by the General Counsel as provided in §791.16, by expressions of the public interest set forth in requests for open meetings as provided by §791.15(b), and by the brief staff analysis of public interest which will accompany each staff recommendation that an agenda item be considered in a closed meeting.

§791.13 Public announcement of meetings.

(a) Except as otherwise provided in this section, the Board shall, for each meeting, make a public announcement, at least one week in advance of the meeting, of the time, place and subject matter of the meeting, whether it will be open or closed to public observation, and the name and telephone number of the Secretary of the Board or the person designated by the Board to respond to requests for information about the meeting.

(b) Advance notice is required unless a majority of the members of the Board determine by a recorded vote that agency business requires that a meeting be called at an earlier date, in which case, the information to be announced in paragraph (a) of this section shall be publicly announced at the earliest practicable time.

(c) A change, including a postponement or a cancellation, in the time or place of a meeting after a published announcement may be made only if announced at the earliest practicable time.

(d) A change in or deletion of the subject matter of a meeting or any portion of a meeting or a redetermination to open or close a meeting or any portion of a meeting after a published announcement may be made only if:

(1) A majority of the Board determines by recorded vote that agency business so requires and that no earlier announcement of the change was possible and

(2) Public announcement of the change and of the vote of each member on such change shall be made at the earliest practicable time.

(e) Each meeting announcement or amendment thereof shall be posted on the Public Notice Bulletin Board in the reception area of the agency headquarters and may be made available by other means deemed desirable by the Board. Immediately following each public announcement required by this section, the stated information shall be submitted to the FEDERAL REGISTER for publication.

(f) No announcement shall contain information which is determined to be exempt from disclosure under §791.12(a).

(g) The agency shall maintain a mailing list of names and addresses of all persons who wish to receive copies of agency announcements of meetings open to public observation and amendments to such announcements. Requests to be placed on the mailing list should be made by telephoning or by writing to the Secretary of the Board.

§791.14 Regular procedure for closing meeting discussions or limiting the disclosure of information.

(a) A decision to close any portion of a meeting and to withhold information about any portion of a meeting closed pursuant to §791.12(a) will be taken only when a majority of the entire Board votes to take such action. In deciding whether to close a meeting or any portion of a meeting or to withhold information, the Board shall independently consider whether the public interest requires an open meeting. A separate vote of the Board will be taken and recorded for each portion of a meeting to be closed to public observation pursuant to §791.12(a) or to withhold information from the public pursuant to §791.12(a). A single vote may be taken and recorded with respect to a series of meetings, or any portions of meetings which are proposed to be closed to the public, or with respect to any information concerning the series of meetings, so long as each meeting in the series involves the same particular matters and is

scheduled to be held no more than thirty days after the initial meeting in such series. No proxies shall be allowed.

(b) Any person whose interests may be directly affected by any portion of a meeting for any of the reasons stated in § 791.12(a) (5), (6) or (7) may request that the Board close such portion of the meeting. After receiving notice of a person's desire for any specified portion of a meeting to be closed, the Board, upon a request by one member, will decide by recorded vote whether to close the relevant portion or portions of the meeting. This procedure applies to requests received either prior or subsequent to the announcement of a decision to hold an open meeting.

(c) Within one day after any vote is taken pursuant to paragraph (a) or (b) of this section, the Board shall make publicly available a written copy of the vote taken indicating the vote of each Board member. Except to the extent that such information is withheld and exempt from disclosure, for each meeting or any portion of a meeting closed to the public, the Board shall make publicly available within one day after the required vote, a written explanation of its action, together with a list of all persons expected to attend the closed meeting and their affiliation. The list of persons to attend need not include the names of individual staff, but shall state the offices of the agency expected to participate in the meeting discussions.

§ 791.15 Requests for open meeting.

(a) Following any announcement that the Board intends to close a meeting or any portion of any meeting, any person may make a written request to the Secretary of the Board that the meeting or a portion of the meeting be open. The request shall be circulated to the members of the Board, and the Board, upon the request of one member, shall reconsider its action under § 791.14 before the meeting or before discussion of the matter at the meeting. If the Board decides to open a portion of a meeting proposed to be closed, the Board shall publicly announce its decision in accordance with § 791.13(e). If no request is received from a Board member to reconsider the decision to close a meeting or portion thereof prior to the meeting discussion, the Chairman of the Board shall certify that the Board did not receive a request to reconsider its decision to close the discussion of the matter.

(b) The request to open a portion of a meeting shall be submitted to the Secretary of the Board in advance of the meeting in question. The request shall set forth the requestor's interest in the matter to be discussed and the reasons why the requestor believes that the public interest requires that the meeting or portions thereof be open to public observation.

(c) The submission of a request to open a portion of a meeting shall not act to stay the effectiveness of Board action or to postpone or delay the meeting unless the Board decides otherwise.

(d) The Secretary of the Board shall advise the requestor of the Board's consideration of the request to open a portion of the meeting as soon as practicable.

§ 791.16 General counsel certification.

For each meeting or any portion of a meeting closed to public observation under § 791.14, the General Counsel shall publicly certify, whether in his or her opinion, the meeting or portion thereof may be closed to public observation and shall state each relevant exemption provision of law. A copy of the certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, shall be retained as a part of the permanent meeting records. As part of the certification, the General Counsel shall recommend to the Board whether the public interest requires that the meeting or portions thereof proposed to be closed to public observation be held in the open.

§ 791.17 Maintenance of meeting records.

(a) Except in those circumstances which are beyond the control of the agency, the Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or any

portion thereof, closed to public observation. However, for meetings closed under §791.12(a) (8), (9)(i) or (10), the Board shall maintain either a transcript, a recording or a set of minutes. The Board shall maintain a complete electronic recording for each open meeting or any portion thereof. All records shall clearly identify each speaker.

(b) A set of minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons for taking such action. Minutes shall also include a description of each of the views expressed by each person in attendance on any item and the record of any roll call vote, reflecting the vote of each member. All documents considered in connection with any action shall be identified in the minutes.

(c) The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes or a complete electronic recording of each meeting, or any portion of a meeting, closed to public observation, for at least two years after such meeting or for one year after the conclusion of any agency proceeding with respect to which the meeting or any portion was held, whichever occurs later. The agency shall maintain a complete electronic recording of each open meeting for at least three months after the meeting date. A complete set of minutes shall be maintained on a permanent basis for all meetings.

§791.18 Public availability of meeting records and other documents.

(a) The agency shall make promptly available to the public, in the Public Reference Room, the transcript, electronic recording, or minutes of any meeting, deleting any agenda item or any item of the testimony of a witness received at a closed meeting which the Board determined, pursuant to paragraph (c) of this section, was exempt from disclosure under §791.12(a). The exemption or exemptions relied upon for any deleted information shall be reflected on any record or recording.

(b) Copies of any transcript, minutes or transcription of a recording, disclosing the identity of each speaker, shall be furnished to any person requesting such information in the form specified in paragraph (a) of this section. Copies shall be furnished at the actual cost of duplication or transcription unless waived by the Secretary of the Board.

(c) Following each meeting or any portion of a meeting closed pursuant to §791.12(a), the General Counsel or his designee, after consultation with the Secretary of the Board, shall determine which, if any, portions of the meeting transcript, electronic recording or minutes not otherwise available under 5 U.S.C. 552a (the Privacy Act) contain information which should be withheld pursuant to §791.12(a). If, at a later time, the Board determines that there is no further justification for withholding any meeting record or other item of information from the public which has previously been withheld, then such information shall be made available to the public.

(d) Except for information determined by the Board to be exempt from disclosure pursuant to paragraph (c) of this section, meeting records shall be promptly available to the public in the Public Reference Room. Meeting records include but are not limited to: The transcript, electronic recording or minutes of each meeting, as required by §791.17(a); the notice requirements of §§791.13 and 791.14(c); and the General Counsel Certification along with the presiding officer's statement, as required by §791.16.

(e) These provisions do not affect the procedures set forth in part 790, subpart A, governing the inspection and copying of agency records, except that the exemptions set forth in §791.12(a) of this subpart and in 5 U.S.C. 552b(c) shall govern in the case of a request made pursuant to part 790, subpart A, to copy or inspect the meeting records described in this section. Any documents considered or mentioned at Board meetings may be obtained subject to the procedures set forth in part 790, subpart A.

[53 FR 29647, Aug. 8, 1988, as amended at 58 FR 17493, Apr. 5, 1993]

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

Subpart A—The Freedom of Information Act

Sec.
792.1 Scope.
792.2 Information made available to the public and requests for such information.
792.3 Unpublished, confidential and privileged information.
792.4 Release of exempt records.
792.5 Fees for document search, review, and duplication; waiver and reduction of fees.
792.6 Agency determination.
792.7 Confidential commercial information.

Subpart B—The Privacy Act

792.20 Scope.
792.21 Definitions.
792.22 Procedures for requests pertaining to individual records in a system of records.
792.23 Times, places, and requirements for identification of individuals making requests and identification of records requested.
792.24 Notice of existence of records, access decisions and disclosure of requested information; time limits.
792.25 Special procedures: Information furnished by other agencies; medical records.
792.26 Requests for correction or amendment to a record; administrative review of requests.
792.27 Appeal of initial determination.
792.28 Disclosure of record to person other than the individual to whom it pertains.
792.29 Accounting for disclosures.
792.30 Requests for accounting for disclosures.
792.31 Collection of information from individuals; information forms.
792.32 Contracting for the operation of a system of records.
792.33 Fees.
792.34 Exemptions.
792.35 Security of systems of records.
792.36 Use and collection of Social Security numbers.
792.37 Training and employee standards of conduct with regard to privacy.

Subpart C—Subpoenas

792.40 Service.
792.41 Advice to person served.
792.42 Appearance by person served.

Subpart D—Security Procedures for Classified Information

792.50 Program.
792.51 Procedures.

AUTHORITY: 12 U.S.C. 1766(a) and 1789(a)(7); 5 U.S.C. App. 3. Subpart B is also issued under 5 U.S.C. 552a.

SOURCE: 54 FR 18476, May 1, 1989, unless otherwise noted.

Subpart A—The Freedom of Information Act

§ 792.1 Scope.

This subpart sets forth the procedures for processing requests for information under the Freedom of Information Act (''FOIA'') (5 U.S.C. 552).

§ 792.2 Information made available to the public and requests for such information.

(a) Except to the extent that the matters set forth herein relate to or contain information which is exempted from public disclosure under the FOIA as amended (5 U.S.C. 552) or are promptly published and copies are for sale, NCUA shall make available for public inspection and copying, upon request made in accordance with the provisions of § 792.2(g):

(1) The final opinions, including concurring and dissenting opinions, and orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by NCUA and are not published in the FEDERAL REGISTER; and

(3) Administrative staff manuals and instructions to staff affecting a member of the public.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, NCUA may delete identifying details when an opinion, statement of policy, interpretation, or staff manual or instruction is made available or published. In each case, the justification for the deletion shall be fully explained in writing.

(c) NCUA also maintains current indices providing identifying information for the public for any matter referred to in paragraph (a) of this section issued, adopted, or promulgated after

July 4, 1967. Manuals relating to general and technical information and booklets published by NCUA are listed on the ''NCUA Publications List,'' which indicates those items available from the Agency. The Directory of Credit Unions, published by NCUA, is also available. A list of statements of policy, NCUA Instructions, Bulletins, Letters to Credit Unions and certain internal manuals are maintained on a ''Directives Control Index.'' NCUA has determined that publication of the indices is unnecessary and impractical, but copies of indices will be provided on request at their duplication cost and are available for public inspection and copying. The listing of any material in any index is for the convenience of possible users of the materials and does not constitute a determination that all of the items listed will be disclosed or are subject to disclosure.

(d) The materials referred to in paragraph (a) of this section may be relied on, used, or cited as precedent by NCUA against a party, provided:

(1) The materials have been indexed and either made available or published; or

(2) The party has actual and timely notice of the materials' contents.

(e) Except with respect to records made available under this section or published in the FEDERAL REGISTER, or to the extend that records relate to or contain information which is exempt from public disclosure under the FOIA, NCUA, upon a request which reasonably describes records and is made in accordance with §792.2(g), will make such records available to any person who agrees to pay the direct costs specified in §792.5. A ''reasonable description'' is one which is sufficient to enable a professional employee of NCUA, who is familiar with the subject area of the request, to locate the record with a reasonable amount of effort.

(f) *Information centers.* The Central Office, Regional Offices and the Asset Management Liquidation Center are designated as Information Centers for the NCUA. The Freedom of Information Officer of the Office of General Counsel is responsible for the operations of the Information Center maintained at the Central Office. The Regional Directors are responsible for the operation of the Information Centers in their Regional Offices.

(g) Methods of request—(1) *Indices.* Requests for indices should be made to NCUA, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314–3428. The indices indicate how to obtain the documents listed therein.

(2) *All other records.* Requests for all other records made under §792.3(e) should be addressed to the appropriate Regional Director. When the location of requested records is not known, or it is known that such records are located in the Central Office, the request should be addressed to the Freedom of Information Officer of the Office of General Counsel at the address noted in paragraph (g)(1) of this section.

(3) *Improper address.* Failure to properly address a request may defer the effective date of receipt by NCUA for commencement of the time limitation stated in §792.6(a)(i), to take account of the time reasonably required to forward the request to the appropriate office or employee.

[54 FR 18476, May 1, 1989, as amended at 59 FR 36041, 36042, July 15, 1994; 60 FR 31911, June 19, 1995]

§792.3 Unpublished, confidential and privileged information.

(a) All records of NCUA or any officer, employee, or agent thereof, are confidential, privileged and not subject to disclosure, except as otherwise provided in this part, if such records are:

(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to an Executive Order.

(2) Records related solely to NCUA internal personnel rules and practices. This exemption applies to internal rules or instructions which must be kept confidential in order to assure effective performance of the functions and activities for which NCUA is responsible and which do not materially affect members of the public. This exemption also applies to manuals and instructions to the extent that release of the information contained therein would permit circumvention of laws or regulations.

(3) Specifically exempted from disclosure by statute, where the statute either makes nondisclosure mandatory or establishes particular criteria for withholding information.

(4) Records which contain trade secrets and commercial or financial information which relate to the business, personal or financial affairs of any person or organization, are furnished to NCUA, and are confidential or privileged. This exemption includes, but is not limited to, various types of confidential sales and cost statistics, trade secrets, and names of key customers and personnel. Assurances of confidentiality given by staff are not binding on NCUA.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NCUA. This exemption preserves the existing freedom of NCUA officials and employees to engage in full and frank written or taped communications with each other and with officials and employees of other agencies. It includes, but is not limited to, inter-agency and intra-agency reports, memoranda, letters, correspondence, work papers, and minutes of meetings, as well as staff papers prepared for use within NCUA or in concert with other governmental agencies.

(6) Personnel, medical, and similar files (including financial files), the disclosure of which without written permission would constitute a clearly unwarranted invasion of personal privacy. Files exempt from disclosure include, but are not limited to:

(i) The personnel records of the NCUA;

(ii) The personnel records voluntarily submitted by private parties in response to NCUA's requests for proposals; and

(iii) Files containing reports, records or other material pertaining to individual cases in which disciplinary or other administrative action has been or may be taken.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation on or by an agency conducting a lawful national security intelligence investigation, information furnished by the confidential source;

(v) Would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual. This includes, but is not limited to, information relating to enforcement proceedings upon which NCUA has acted or will act in the future.

(8) Contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of NCUA or any agency responsible for the regulation or supervision of financial institutions. This includes all information, whether in formal or informal report form, the disclosure of which would harm the financial security of credit unions or would interfere with the relationship between NCUA and credit unions.

§ 792.4 Release of exempt records.

(a) *Prohibition against disclosure.* Except as provided in § 792.4(b), no officer, employee, or agent of NCUA or of any federally-insured credit union shall disclose or permit the disclosure of any exempt records of the Agency to any

person other than those NCUA or credit union officers, employees, or agents properly entitled to such information for the performance of their official duties.

(b) *Disclosure authorized.* Exempt NCUA records may be disclosed only in accordance with the following conditions and requirements:

(1) *Exempt records—Disclosure to credit unions, financial institutions and state and Federal agencies.* The NCUA Board or any person designated by it in writing, in its sole discretion, may make available to certain governmental agencies and insured financial institutions copies of reports of examination and other documents, papers or information for their use, when necessary, in the performance of their official duties or functions. All reports, documents and papers made available pursuant to this paragraph shall remain the property of NCUA. No person, agency or employee shall disclose the reports or exempt records without NCUA's express written authorization.

(2) *Exempt records—Disclosure to investigatory agencies.* The NCUA Board, or any person designated by it in writing, in its discretion and in appropriate circumstances, may disclose to proper Federal or state authorities copies of exempt records pertaining to irregularities discovered in credit unions which may constitute either unsafe or unsound practices or violations of Federal or state civil or criminal law.

(3) *Exempt records—Disclosure to third parties.* The NCUA Board, or any person designated by it in writing, may disclose copies of exempt records to any third party where requested to do so in writing. The request shall:

(i) Specify the record or records to which access is requested; and (ii) give the reasons for the request. Any NCUA employee authorized to disclose exempt NCUA records to third parties may disclose the records only upon determining that good cause exists for the disclosure. The designated NCUA official shall impose such terms and conditions as are deemed necessary to protect the confidential nature of the record, the financial integrity of any credit union or other organization or person to which the records relate, and the legitimate privacy interests of any individual named in such records.

§792.5 Fees for document search, review, and duplication; waiver and reduction of fees.

(a) *Definitions.* (1) *Direct costs* means those expenditures which NCUA actually incurs in searching for, duplicating and reviewing documents to respond to a FOIA request.

(2) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) *Duplication* means the process of making a copy of a document needed to respond to a FOIA request.

(4) *Review* means:

(i) The process of examining documents located in response to a request that is for a commercial use (*see* §792.5(a)(5)) to determine whether any portion of a document located is permitted to be withheld; and

(ii) The process of preparing such documents for disclosure.

(5) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(6) *Educational institution* means a preschool, an elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education operating a program or programs of scholarly research.

(7) *Noncommercial scientific institution* means an institution:

(i) That is not operated on a ''commercial'' basis as that term is used in §792.5(a)(5); and

(ii) That is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* means any person actively gathering news for an entity that is organized

and operated to publish or broadcast news to the public. Included within the meaning of *public* is the credit union community. The term *news* means information that is about current events or that would be of current interest to the public.

(b) *Fees to be charged.* NCUA will charge fees that recoup the full allowable direct costs it incurs. NCUA may contract with the private sector to locate, reproduce and/or disseminate records. Fees are subject to change as costs increase. In no case will NCUA contract out responsibilities which the FOIA requires it alone to discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(1) Manual searches and review—NCUA will charge fees at the following rates for manual searches for and review of records:

(i) If search/review is done by clerical staff, the hourly rate for CU–5, step 1, plus 16 percent of that rate to cover benefits;

(ii) If search/review is done by professional staff, the hourly rate for CU–13, step 1, plus 16 percent of that rate to cover benefits.

(2) Computer searches—NCUA will charge fees at the hourly rate for CU–13, step 1, plus 16 percent of that rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

(3) Duplication of records—

(i) The per-page fee for paper copy reproduction of a document is $.25;

(ii) The fee for documents generated by computer is the hourly fee for the computer operator, plus the cost of materials (computer paper, tapes, labels, etc.);

(iii) If any other method of duplication is used, NCUA will charge the actual direct cost of duplicating the documents.

(4) Fees to exceed $25—If NCUA estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance willingness to pay fees as high as those anticipated. The requester will then have the opportunity to confer with NCUA personnel to reformulate the request to meet the person's needs at a lower cost.

(5) Other services—Complying with requests for special services is entirely at the discretion of NCUA. NCUA will recover the full costs of providing such services to the extent it elects to provide them.

(6) Restriction on assessing fees—NCUA will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(7) Waiving or reducing fees—NCUA shall waive or reduce fees under this section whenever disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester.

(i) NCUA will make a determination of whether the public interest requirement above is met based on the following factors:

(A) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(B) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(C) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding;

(D) The significance of the contribution to the public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities,

(ii) If the public interest requirement is met, NCUA will make a determination on the commercial interest requirement based upon the following factors:

(A) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(B) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(iii) If the required public interest exists and the requester's commercial interest is not primary in comparison, NCUA will waive or reduce fees.

(c) *Categories of requesters.* (1) Commercial use requesters—NCUA will assess commercial use requesters' fees which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction of documents.

(2) Education institution, noncommercial scientific institution, and requesters who are representatives of the news media—NCUA shall provide documents to requesters in this category for the cost of reproduction alone, excluding fees for the first 100 pages.

(3) All other requesters—NCUA shall charge requesters not included in either of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time will be furnished without a fee.

(d) *Interest on unpaid fees.* NCUA may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C., and will accrue from the date of the billing.

(e) *Fees for unsuccessful search and review.* NCUA may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(f) *Aggregating requests.* A requester may not file multiple requests, each seeking portions of a document or documents, solely in order to avoid payment of fees. If this is done, NCUA may aggregate any such requests and charge accordingly.

(g) *Advance payment of fees.* NCUA will require a requester to give an assurance of payment or an advance payment only when:

(1) NCUA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. NCUA will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requester with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion. NCUA may require the requester to pay the full amount owed, plus any applicable interest as provided in §792.5(d) or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before NCUA begins to process a new request or a pending request from that requester.

(3) When NCUA acts under §792.5(g)(1) or (2), the administrative time limits prescribed in §792.6(a) will begin only after NCUA has received the fee payments described.

[54 FR 18476, May 1, 1989, as amended at 59 FR 36042, July 15, 1994]

§792.6 Agency determination.

(a) Upon any request for records published in the FEDERAL REGISTER, or made available under §792.2, NCUA will:

(1) Determine within 10 working days (excepting Saturdays, Sundays and legal public holidays) after the receipt of any such request whether, or the extent to which, to comply with such request; and will upon such determination notify the person making the request that any adverse determination is not a final agency act, and that such person may appeal any adverse determination to the Office of General Counsel;

(2) Make a determination with respect to any appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of

such appeal. An appeal must be in writing and filed within 30 days from receipt of the initial determination (in cases of denials of an entire request), or from receipt of any records being made available pursuant to the initial determination (in cases of partial denials). If, on appeal, the denial of the request for records is in whole or in part upheld, the Office of General Counsel will notify the person making such request of the provisions for judicial review of that determination under the FOIA. In those cases where a request or appeal is not addressed to the proper official, the time limitations stated above will be computed from the receipt of the request or appeal by the proper official.

(b) In unusual circumstances as specified herein, the time limits prescribed in either paragraph (a) (1) or (2) of this section may be extended by written notice to the person making such request, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice will specify a date that would result in an extension for more than 10 working days. ''unusual circumstances'' means:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the Agency having substantial subject-matter interest therein.

(c)(1) The appropriate Regional Director, the Freedom of Information Officer, or, in their absence, their designee, is responsible for making the initial determination on whether to grant or deny a request for information. This official may refer a request to a professional NCUA employee who is familiar with the subject area of the request. Other members of the NCUA's staff may aid the official by providing information, advice, recommending a decision, or implementing a decision, but no NCUA employee other than an authorized official may make the initial determination. Referral of a request by the official to an employee will not affect the time limitation imposed in paragraph (a)(1) of this section unless the request involves an unusual circumstance as provided in paragraph (b) of this section.

(2) The General Counsel is the official responsible for determining all appeals from initial determinations. In case of this person's absence, the appropriate officer acting in General Counsel's stead shall make the appellate determination, unless such officer was responsible for the initial determination, in which case the Vice-Chairman of the NCUA Board will make the appellate determination.

(3) All appeals should be addressed to the General Counsel in the Central Office and should be clearly identified as such on the envelope and in the letter of appeal by using the indicator ''FOIA–APPEAL.'' Failure to address an appeal properly may delay commencement of the time limitation stated in paragraph (a)(2) of this section, to take account of the time reasonably required to forward the appeal to the Office of General Counsel.

(d) Any person making a request to NCUA for records published in the FEDERAL REGISTER, or made available under § 792.2 shall be deemed to have exhausted administrative remedies with respect to such request if NCUA fails to comply with the applicable time limit provisions of this section. On complaint filed in the appropriate U.S. District Court, if the Government can show exceptional circumstances exist and that NCUA is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the Agency additional time to complete its review of the records. Upon any NCUA determination to comply with a request for records, the records will be made promptly available. Any notification of denial of any request for records under this section will set forth the names and titles or positions of each person responsible for the denial.

(e) In those cases where it is necessary to find and examine records before the legality or appropriateness of their disclosure can be determined, and where, after diligent effort, this has not been achieved within the required period, NCUA may advise the person making the request: that a determination to deny the request has been made because the records have not been found or examined; that this determination will be reconsidered when the search or examination is completed (and the time within which completion is expected); but that the person making the request may immediately file an administrative appeal.

§792.7 Confidential commercial information.

(a) Confidential commercial information provided to NCUA by a submitter shall be disclosed pursuant to a FOIA request in accordance with this section.

(b) *Definitions.* For purposes of this section:

(1) *Confidential commercial information*—means commercial or financial information provided to NCUA by a submitter that arguably is protected from disclosure under §792.3(a)(4) because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter*—means any person or entity who provides business information, directly or indirectly, to NCUA.

(c) Designation of business information—Submitters of business information shall use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions deemed to be protected from disclosure under §792.3(a)(4). Such a designation shall expire ten years after the date of submission.

(d) Notice to submitters—NCUA shall provide a submitter with written notice of a FOIA request or administrative appeal encompassing designated business information when:

(1) The information has been designated in good faith by the submitter as confidential commercial information deemed protected from disclosure under §792.3(a)(4); or

(2) NCUA has reason to believe that the information may be protected from disclosure under §792.3(a)(4).

This notice will afford the submitter an opportunity to object to disclosure pursuant to paragraph (e) of this section. A copy of the notice shall also be provided to the FOIA requester.

(e) Opportunity to object to disclosure—Through the notice described in paragraph (d) of this section, NCUA shall afford a submitter a reasonable period of time within which to provide a detailed written statement of any objection to disclosure. Such statement shall describe why the information is confidential commercial information and should not be disclosed.

(f) Notice of intent to disclose—Whenever NCUA decides to disclose confidential commercial information over the objection of a submitter, it shall forward to the submitter and to the requester, within a reasonable number of days prior to the specified disclosure date, a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objection was not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

(g) *Notice of lawsuit.* If a requester brings suit seeking to compel disclosure of confidential commercial information, NCUA shall promptly notify the submitter.

(h) *Exceptions to notice requirements.* The notice requirements of paragraph (d) of this section do not apply if:

(1) NCUA determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law; or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such case, NCUA shall provide the submitter with written notice of any final administrative decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

Subpart B—The Privacy Act

§ 792.20 Scope.

This subpart governs requests made of NCUA under the Privacy Act (5 U.S.C. 552a). The regulation applies to all records maintained by NCUA which contain personal information about an individual and some means of identifying the individual, and which are contained in a system of records from which information may be retrieved by use of an identifying particular; sets forth procedures whereby individuals may seek and gain access to records concerning themselves and request amendments of those records; and sets forth requirements applicable to NCUA employees' maintaining, collecting, using, or disseminating such records.

§ 792.21 Definitions.

For purposes of this subpart:

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) *Maintain* includes maintain, collect, use, or disseminate.

(c) *Record* means any item, collection, or grouping of information about an individual that is maintained by NCUA, and that contains the name, or an identifying number, symbol, or other identifying particular assigned to the individual.

(d) *System of records* means a group of any records under NCUA's control from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(e) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13 of the United States Code.

§ 792.22 Procedures for requests pertaining to individual records in a system of records.

(a) An individual seeking notification of whether a system of records contains a record pertaining to that individual, or an individual seeking access to information or records pertaining to that individual which are available under the Privacy Act shall present a request to the NCUA official identified in the access procedure section of the ''Notice of Systems of Records'' published in the FEDERAL REGISTER which describes the system of records to which the individual's request relates. An individual who does not have access to the FEDERAL REGISTER and who is unable to determine the appropriate official to whom a request should be submitted may submit a request to the Director of the Administrative Office, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, in which case the request will then be referred to the appropriate NCUA official and the date of receipt of the request will be determined as the date of receipt by the official.

(b) In addition to meeting the identification requirements set forth in § 792.23, an individual seeking notification or access, either in person or by mail, shall describe the nature of the record sought, the approximate dates covered by the record, and the system in which it is thought to be included, as described in the ''Notice of Systems of Records'' published in the FEDERAL REGISTER.

[54 FR 18476, May 1, 1989, as amended at 59 FR 36041, July 15, 1994]

§ 792.23 Times, places, and requirements for identification of individuals making requests and identification of records requested.

(a) The following standards are applicable to an individual submitting requests either in person or by mail under § 792.22:

(1) If not personally known to the NCUA official responding to the request, an individual seeking access to records about that individual in person shall establish identity by the presentation of a single document bearing a photograph (such as a passport or identification badge) or by the presentation

of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license or credit card);

(2) An individual seeking access to records about that individual by mail may establish identity by a signature, address, date of birth, employee identification number if any, and one other identifier such as a photocopy of driver's license or other document. If less than all of this requisite identifying information is provided, the NCUA official responding to the request may require further identifying information prior to any notification or responsive disclosure.

(3) An individual seeking access to records about that individual by mail or in person, who cannot provide the required documentation or identification, may provide a notarized statement affirming identity and recognition of the penalties for false statements pursuant to 18 U.S.C. 1001.

(b) The parent or guardian of a minor or a person judicially determined to be incompetent shall, in addition to establishing identity of the minor or other person as required in paragraph (a) of this section, furnish a copy of a birth certificate showing parentage or a court order establishing guardianship.

(c) An individual may request by telephone notification of the existence of and access to records about that individual and contained in a system of records. In such a case, the NCUA official responding to the request shall require, for the purpose of comparison and verification of identity, at least two items of identifying information (such as date of birth, home address, social security number) already possessed by the NCUA. If the requisite identifying information is not provided, or otherwise at the discretion of the responsible NCUA official, an individual may be required to submit the request by mail or in person in accordance with paragraph (a) of this section.

(d) An individual seeking to review records about that individual may be accompanied by another person of their own choosing. In such cases, the individual seeking access shall be required to furnish a written statement authorizing discussion of that individual's records in the accompanying person's presence.

(e) In addition to the requirements set forth in paragraphs (a), (b) and (c) of this section, the published ''Notice of System of Records'' for individual systems may include further requirements of identification where necessary to retrieve the individual records from the system.

§792.24 Notice of existence of records, access decisions and disclosure of requested information; time limits.

(a) The NCUA official identified in the record access procedure section of the ''Notice of Systems of Records'' and identified in accordance with §792.22(a), by an individual seeking notification of, or access to, a record, shall be responsible:

(1) For determining whether access is available under the Privacy Act; (2) for notifying the requesting individual of that determination; and (3) for providing access to information determined to be available. In the case of an individual access request made in person, information determined to be available shall be provided by allowing a personal review of the record or portion of a record containing the information requested and determined to be available, and the individual shall be allowed to have a copy of all or any portion of available information made in a form comprehensible to him. In the case of an individual access request made by mail, information determined to be available shall be provided by mail, unless the individual has requested otherwise.

(b) The following time limits shall be applicable to the required determinations, notification and provisions of access set forth in paragraph (a) of this section:

(1) A request concerning a single system of records which does not require consultation with or requisition of records from another agency shall be responded to within 10 working days after receipt of the request;

(2) A request requiring requisition of records from or consultation with another agency shall be responded to within 10 working days after such requisition or resolution of the required consultation. Such required requisition

or consultation shall be initiated within 10 working days after receipt of the request;

(3) If a request under paragraph (b)(1) or (2) of this section presents unusual difficulties in determining whether the records involved are exempt from disclosure, the Director of the Office of Administration may, upon written request of the official responsible for action upon the record request, extend the time period established by these regulations for an additional 15 working days.

(c) Nothing in this section shall be construed to allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding, or any information exempted from the access provisions of the Privacy Act.

[54 FR 18476, May 1, 1989, as amended at 59 FR 36042, July 15, 1994]

§ 792.25 Special procedures: Information furnished by other agencies; medical records.

(a) When a request for records or information from NCUA includes information furnished by other Federal agencies, the NCUA official responsible for action on the request shall consult with the appropriate agency prior to making a decision to disclose or refuse access to the record, but the decision whether to disclose the record shall be made in the first instance by the NCUA official.

(b) When an individual requests medical records concerning that individual, the NCUA official responsible for action on the request may advise the individual that the records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation and upon proper verification of identity, the NCUA official shall permit the physician to review the records or to receive copies of the records by mail. The determination of which records should be made available directly to the individual and which records should not be disclosed directly because of possible harm to the individual shall be made by the NCUA official responsible for action on the request.

§ 792.26 Requests for correction or amendment to a record; administrative review of requests.

(a) An individual may request amendment of a record concerning that individual by addressing a request, either in person or by mail, to the NCUA official identified in the ''contesting record procedures'' section of the ''Notice of Systems of Records'' published in the FEDERAL REGISTER and describing the system of records which contains the record sought to be amended. The request must indicate the particular record involved, the nature of the correction sought, and the justification for the correction or amendment. Requests made by mail should be addressed to the responsible NCUA official at the address specified in the ''Notice of Systems of Records'' describing the system of records which contains the contested record. An individual who does not have access to the NCUA's ''Notice of Systems of Records,'' and to whom the appropriate address is otherwise unavailable may submit a request to the Director of the Office of Administration, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, in which case the request will then be referred to the appropriate NCUA official. The date of receipt of the request will be determined as of the date of receipt by that official.

(b) Within 10 working days of receipt of the request, the appropriate NCUA official shall advise the individual that the request has been received. The appropriate NCUA official shall then promptly (under normal circumstances, not later than 30 working days after receipt of the request) advise the individual that the record is to be amended or corrected, or inform the individual of rejection of the request to amend the record, the reason for the rejection, and the procedures established by § 792.27 for the individual to request a review of that rejection.

[54 FR 18476, May 1, 1989, as amended at 59 FR 36041, 36042, July 15, 1994]

§ 792.27 Appeal of initial determination.

(a) A rejection, in whole or in part, of a request to amend or correct a record

may be appealed to the General Counsel within 30 working days of receipt of notice of the rejection. Appeals shall be in writing, and shall set forth the specific item of information sought to be corrected and the documentation justifying the correction. Appeals shall be addressed to the Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Appeals shall be decided within 30 working days of receipt unless the General Counsel, for good cause, extends such period for an additional 30 working days.

(b) Within the time limits set forth in paragraph (a) of this section, the General Counsel shall either advise the individual of a decision to amend or correct the record, or advise the individual of a determination that an amendment or correction is not warranted on the facts, in which case the individual shall be advised of the right to provide for the record a ''Statement of Disagreement'' and of the right to further appeal pursuant to the Privacy Act. For records under the jurisdiction of the Office of Personnel Management, appeals will be made pursuant to that agency's regulations.

(c) A statement of disagreement may be furnished by the individual. The statement must be sent, within 30 days of the date of receipt of the notice of General Counsel refusal to authorize correction, to the General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Upon receipt of a statement of disagreement in accordance with this section, the General Counsel shall take steps to ensure that the statement is included in the system of records containing the disputed item and that the original item is so marked to indicate that there is a statement of dispute and where, within the system of records, that statement may be found.

(d) When a record has been amended or corrected or a statement of disagreement has been furnished, the system manger for the system of records containing the record shall, within 30 days thereof, advise all prior recipients of information to which the amendment or statement of disagreement relates whose identity can be determined by an accounting made as required by the Privacy Act of 1974 or any other accounting previously made, of the amendment or statement of disagreement. When a statement of disagreement has been furnished, the system manager shall also provide any subsequent recipient of a disclosure containing information to which the statement relates with a copy of the statement and note the disputed portion of the information disclosed. A concise statement of the reasons for not making the requested amendment may also be provided if deemed appropriate.

(e) If access is denied because of an exemption, the individual shall be notified of the right to appeal that determination to the General Counsel within 180 days after receipt of the determination. Such an appeal shall be determined within 30 days.

[54 FR 18476, May 1, 1989, as amended at 59 FR 36041, July 15, 1994]

§ 792.28 Disclosure of record to person other than the individual to whom it pertains.

No record or item of information concerning an individual which is contained in a system of records maintained by NCUA shall be disclosed by any means of communication to any person, or to another agency, without the prior written consent of the individual to whom the record or item of information pertains, unless the disclosure would be—

(a) To an employee of the NCUA who has need for the record in the performance of duty;

(b) Required by the Freedom of Information Act;

(c) For a routine use as described in the ''Notice of Systems of Records,'' published in the FEDERAL REGISTER, which describes the system of records in which the record or item of information is contained;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code;

(e) To a recipient who has provided the NCUA with advance adequate written assurance that the record or item will be used soley as a statistical research or reporting record, and the

record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives and Records Administration as a record or item which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to NCUA specifying the particular portion desired and the law enforcement activity for which the record or item is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction; or

(l) To a consumer reporting agency in accordance with section 3711(f) of title 31 of the United States Code (31 U.S.C. 3711(f)).

§ 792.29 Accounting for disclosures.

(a) Each system manager identified in the ''Notice of Systems of Records'' as published in the FEDERAL REGISTER for each system of records maintained by the NCUA, shall establish a system of accounting for all disclosures of information or records concerning individuals and contained in the system of records, made outside NCUA. Accounting procedures may be established in the least expensive and most convenient form that will permit the system manager to advise individuals, promptly upon request, of the persons or agencies to which records concerning them have been disclosed.

(b) Accounting records, at a minimum, shall include the information disclosed, the name and address of the person or agency to whom disclosure was made, and the date of disclosure. When records are transferred to the National Archives and Records Administration for storage in records centers, the accounting pertaining to those records shall be transferred with the records themselves.

(c) Any accounting made under this section shall be retained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

§ 792.30 Requests for accounting for disclosures.

At the time of the request for access or correction or at any other time, an individual may request an accounting of disclosures made of the individual's record outside the NCUA. Request for accounting shall be directed to the system manager. Any available accounting, whether kept in accordance with the requirements of the Privacy Act or under procedures established prior to September 27, 1975, shall be made available to the individual, except that an accounting need not be made available if it relates to:

(a) A disclosure made pursuant to the Freedom of Information Act (5 U.S.C. 552);

(b) A disclosure made within the NCUA;

(c) A disclosure made to a law enforcement agency pursuant to 5 U.S.C. 552a(b)(7);

(d) A disclosure which has been exempted from the provisions of 5 U.S.C. 552a(c)(3) pursuant to 5 U.S.C. 552a (j) or (k).

§ 792.31 Collection of information from individuals; information forms.

(a) The system manager, as identified in the ''Notice of Systems of Records'' published in the FEDERAL REGISTER for each system of records maintained by the Administration, shall be responsible for reviewing all forms developed

and used to collect information from or about individuals for incorporation into the system of records.

(b) The purpose of the review shall be to eliminate any requirement for information that is not relevant and necessary to carry out an NCUA function and to accomplish the following objectives:

(1) To ensure that no information concerning religion, political beliefs or activities, association memberships (other than those required for a professional license), or the exercise of other First Amendment rights is required to be disclosed unless such requirement of disclosure is expressly authorized by statute or is pertinent to and within the scope of any authorized law enforcement activity;

(2) To ensure that the form or accompanying statement makes clear to the individual which information by law must be disclosed and the authority for that requirement, and which information is voluntary;

(3) To ensure that the form or accompanying statement makes clear the principal purpose or purposes for which the information is being collected, and states concisely the routine uses that will be made of the information;

(4) To ensure that the form or accompanying statement clearly indicates to the individual the existing rights, benefits or privileges not to provide all or part of the requested information; and

(5) To ensure that any form requesting disclosure of a social security number, or an accompanying statement, clearly advises the individual of the statute or regulation requiring disclosure of the number, or clearly advises the individual that disclosure is voluntary and that no consequence will flow from a refusal to disclose it, and the uses that will be made of the number whether disclosed mandatorily or voluntarily.

(c) Any form which does not meet the objectives specified in the Privacy Act and this section shall be revised to conform thereto.

§792.32 Contracting for the operation of a system of records.

(a) No NCUA component shall contract for the operation of a system of records by or on behalf of the Agency without the express approval of the NCUA Board.

(b) Any contract which is approved shall continue to ensure compliance with the requirements of the Privacy Act. The contracting component shall have the responsibility for ensuring that the contractor complies with the contract requirements relating to the Privacy Act.

§792.33 Fees.

(a) Fees pursuant to 5 U.S.C. 552a(f)(5) shall be assessed for actual copies of records provided to individuals on the following basis, unless the NCUA official determining access waives the fee because of the inability of the individual to pay or the cost of collecting the fee exceeds the fee:

(1) For actual copies of documents, 25 cents per page; and

(2) For copying information, if any, maintained in nondocument form, the direct cost to NCUA may be assessed.

(b) If it is determined that access fees chargeable under this section will amount to more than $25, and the individual has not indicated in advance willingness to pay fees as high as are anticipated, the individual shall be notified of the amount of the anticipated fees before copies are made, and the individual's access request shall not be considered to have been received until receipt by NCUA of written agreement to pay.

§792.34 Exemptions.

(a) NCUA maintains three systems of records which are exempted from some of the provisions of the Privacy Act. In paragraph (b) of this section, those systems of records are identified by System Name and System Number, as stated in the NCUA's ''Notice of Systems of Records,'' published in the FEDERAL REGISTER. The provisions from which each system is exempted and the reasons therefor are also set forth.

(b)(1) System NCUA–1, entitled ''Employee Security Investigations Containing Adverse Information,'' consists of adverse information about NCUA employees which has been obtained as a result of routine Office of Personnel Management Security Investigations. To the extent that NCUA maintains

records in this system pursuant to Office of Personnel Management guidelines which require or may require retrieval of information by use of individual identifiers, those records are encompassed by and included in the Office of Personnel Management Government-Wide System of Records Number 4, entitled ''Personnel Investigations Records,'' and thus are subject to the applicable specific exemptions promulgated by the Office of Personnel Management. Additionally, in order to ensure the protection of properly confidential sources, particularly as to those records which are not maintained pursuant to such Office of Personnel Management requirements, the records in these systems of records are exempted, pursuant to section k(5) of the Privacy Act (5 U.S.C. 552a(k)(5)), from section (d) of the Act (5 U.S.C. 552a(d)). To the extent that disclosure of a record would reveal the identity of a confidential source, NCUA need not grant access to that record by its subject. Information which would reveal a confidential source shall, however, whenever possible, be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(2) System NCUA–4, entitled ''Investigative Reports Involving Possible Felonies and/or Violations of the Federal Credit Union Act,'' consists of a limited number of records about individuals suspected or involvement in felonies or infractions under the Federal Credit Union Act or criminal statutes. These records are maintained in an overall context of general investigative information concerning crimes against credit unions. To the extent that individually identifiable information is maintained, however, for purposes of protecting the security of any investigations by appropriate law enforcement authorities and promoting the successful prosecution of all actual criminal activity, the records in this system are exempted, pursuant to section k(2) of the Privacy Act (5 U.S.C. 552a(k)(2)), from sections (c)(3), and (d)). NCUA need not make an accounting of previous disclosures of a record in this system of records available to its subject, the NCUA need not grant access to any records in this system of records by their subject. Further, whenever individuals request records about themselves and maintained in this system of records, the NCUA shall, to the extent necessary to realize the above-stated purposes, neither confirm nor deny the existence of the records but shall advise the individuals only that no records available to them pursuant to the Privacy Act of 1974 have been identified. However, should review of the record reveal that the information contained therein has been used or is being used to deny the individuals any right, privilege or benefit for which they are eligible or to which they would otherwise be entitled under Federal law, the individuals shall be advised of the existence of the information and shall be provided the information, except to the extent disclosure would identify a confidential source. Information which would identify a confidential source shall, if possible, be extracted or summarized in a manner which protects the source and the summary or extract shall be provided to the requesting individual.

(3) System NCUA–20, entitled, ''Office of Inspector General (OIG) Investigative Records,'' consists of OIG records of closed and pending investigations of individuals alleged to have been involved in criminal violations. The records in this system are exempted pursuant to Sections (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), from sections (c)(3); (d); (e)(1); (e)(4)(G); (e)(4)(H); (e)(4)(I); and (f). The records in this system are also exempted pursuant to Section (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), from sections (c)(3); (c)(4); (d); (e)(1); (e)(2); (e)(3); and (g).

(c) For purposes of this section, a ''confidential source'' means a source who furnished information to the Government under an express promise that the identity of the source would remain confidential, or, prior to September 27, 1976, under an implied promise that the identity of the source would be held in confidence.

[54 FR 18476, May 1, 1989, as amended at 60 FR 31912, June 19, 1995]

§ 792.35 Security of systems of records.

(a) Each system manager, with the approval of the head of that Office, shall establish administrative and physical controls to insure the protection of a system of records from unauthorized access or disclosure and from physical damage or destruction. The controls instituted shall be proportional to the degree of sensitivity of the records, but at a minimum must insure: that records are enclosed in a manner to protect them from public view; that the area in which the records are stored is supervised during all business hours to prevent unauthorized personnel from entering the area or obtaining access to the records; and that the records are inaccessible during nonbusiness hours.

(b) Each system manager, with the approval of the head of that Office, shall adopt access restriction to insure that only those individuals within the agency who have a need to have access to the records for the performance of duty have access. Procedures shall also be adopted to prevent accidental access to or dissemination of records.

§ 792.36 Use and collection of Social Security numbers.

The head of each NCUA Office shall take such measures as are necessary to ensure that employees authorized to collect information from individuals are advised that individuals may not be required without statutory or regulatory authorization to furnish Social Security numbers, and that individuals who are requested to provide Social Security numbers voluntarily must be advised that furnishing the number is not required and that no penalty or denial of benefits will flow from the refusal to provide it.

§ 792.37 Training and employee standards of conduct with regard to privacy.

(a) The Director of the Office of Administration, with advice from the General Counsel, shall be responsible for training NCUA employees in the obligations imposed by the Privacy Act and this subpart.

(b) The head of each NCUA Office shall be responsible for assuring that employees subject to that person's supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and that such employees are made aware of their responsibilities to protect the security of personal information, to assure its accuracy, relevance, timeliness, and completeness, to avoid unauthorized disclosure either orally or in writing, and to insure that no information system concerning individuals, no matter how small or specialized, is maintained without public notice.

(c) With respect to each system of records maintained by NCUA, Agency employees shall:

(1) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out an NCUA responsibility;

(2) Collect from individuals only that information which is necessary to NCUA functions or responsibilities;

(3) Collect information, wherever possible, directly from the individual to whom it relates;

(4) Inform individuals from whom information is collected of the authority for collection, the purposes thereof, the routine uses that will be made of the information, and the effects, both legal and practical of not furnishing the information;

(5) Not collect, maintain, use, or disseminate information concerning an individual's religious or political beliefs or activities or his membership in associations or organizations, unless:

(i) The individual has volunteered such information for his own benefit;

(ii) The information is expressly authorized by statute to be collected, maintained, used, or disseminated; or

(iii) Activities involved are pertinent to and within the scope of an authorized investigation or adjudication.

(6) Advise their supervisors of the existence or contemplated development of any record system which retrieves information about individuals by individual identifier.

(7) Maintain an accounting, in the prescribed form, of all dissemination of personal information outside NCUA, whether made orally or in writing;

(8) Disseminate no information concerning individuals outside NCUA except when authorized by 5 U.S.C. 552a or pursuant to a routine use as set forth in the ''routine use'' section of the ''Notice of Systems of Records'' published in the FEDERAL REGISTER.

(9) Maintain and process information concerning individuals with care in order to ensure that no inadvertent disclosure of the information is made either within or outside NCUA; and

(10) Call to the attention of the proper NCUA authorities any information in a system maintained by NCUA which is not authorized to be maintained under the provisions of the Privacy Act, including information on First Amendment activities, information that is inaccurate, irrelevant or so incomplete as to risk unfairness to the individuals concerned.

(c) Heads of offices within NCUA shall, at least annually, review the record systems subject to their supervision to ensure compliance with the provisions of the Privacy Act.

[54 FR 18476, May 1, 1989, as amended at 59 FR 36042, July 15, 1994]

Subpart C—Subpoenas

§ 792.40 Service.

Any subpoena or other legal process requesting Agency records shall be served upon the General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or upon the Regional Director of the NCUA Region where the legal action from which the legal process issued is pending.

[54 FR 18476, May 1, 1989, as amended at 59 FR 36041, July 15, 1994]

§ 792.41 Advice to person served.

(a) If any NCUA officer, employee or agent is served with a subpoena, court order or other legal process requiring that person's attendance as a witness concerning written information or the production of documents that may not be disclosed under § 792.3, that person should promptly inform the Office of General Counsel of such service and of all relevant facts, including the nature of the documents and information sought in the subpoena and any facts and circumstances which may be of assistance to the Office of General Counsel in determining whether such documents or information should be produced.

(b) If any third party who is not an NCUA officer, employee or agent is served with a subpoena, court order or other legal process requiring that party to produce such records or to testify with respect to the requested records, such party should notify the Office of General Counsel in accordance with the procedures set forth in § 792.41(a).

§ 792.42 Appearance by person served.

Except by authorization of the Office of General Counsel to disclose the requested information, any NCUA officer, employee or agent (and any third party having custody of exempt records of the Administration) who is required to respond to the subpoena or other legal process shall attend at the time and place specified and shall respectfully decline to produce the documents and records or to disclose the information called for, basing his refusal upon this paragraph.

Subpart D—Security Procedures for Classified Information

§ 792.50 Program.

(a) The Director of the Office of Administration (''Director'') is designated as the person responsible for implementation and oversight of NCUA's program for maintaining the security of confidential information regarding national defense and foreign relations. The Director receives questions, suggestions and complaints regarding all elements of this program. The Director is solely responsible for changes to the program and assures that the program is consistent with legal requirements.

(b) The Director is the Agency's official contact for declassification requests regardless of the point of origin of such requests. The Director is also responsible for assuring that requests submitted under the Freedom of Information Act are handled in accordance with that Act and other applicable law.

[54 FR 18476, May 1, 1989, as amended at 59 FR 36042, July 15, 1994]

§792.51 Procedures.

(a) *Mandatory review.* All declassification requests made by a member of the public, by a government employee or by an agency shall be handled by the Director or the Director's designee. Under no circumstances shall the Director refuse to confirm the existence or nonexistence of a document under the Freedom of Information Act or the mandatory review provisions of other applicable law, unless the fact of its existence or nonexistence would itself be classifiable under applicable law. Although NCUA has no authority to classify or declassify information, it occasionally handles information classified by another agency. The Director shall refer all declassification requests to the agency that originally classified the information. The Director or the Director's designee shall notify the requesting person or agency that the request has been referred to the originating agency and that all further inquiries and appeals must be made directly to the other agency.

(b) *Handling and safeguarding national security information.* All information classified ''Top Secret,'' ''Secret,'' and ''Confidential'' shall be delivered to the Director or the Director's designee immediately upon receipt. The Director shall advise those who may come into possession of such information of the name of the current designee. If the Director is unavailable, the designee shall lock the documents, unopened, in the combination safe located in the Administrative Office. If the Director or the designee is unavailable to receive such documents, the documents shall be delivered to the Director of the Personnel Office who shall lock them, unopened, in the combination safe in the Personnel Office. Under no circumstances shall classified materials that cannot be delivered to the Director be stored other than in the two designated safes.

(c) *Storage.* All classified documents shall be stored in the combination safe located in the Director's Office, except as provided in paragraph (b) of this section. The combination shall be known only to the Director and the Director's designee holding the proper security clearance.

(d) *Employee education.* The Director shall send a memo to every NCUA employee who:

(1) Has a security clearance and

(2) May handle classified materials.

This memo shall describe NCUA procedures for handling, reproducing and storing classified documents. The Director shall require each such employee to review Executive Order 12356.

(e) *Agency terminology.* The National Credit Union Administration's Central Office shall use the terms ''Top Secret,'' ''Secret'' or ''Confidential'' only in relation to materials classified for national security purposes.

PART 793—TORT CLAIMS AGAINST THE GOVERNMENT

Subpart A—General

Sec.
793.1 Scope of regulations.

Subpart B—Procedures

793.2 Administrative claim; when presented; place of filing.
793.3 Administrative claim; who may file.
793.4 Administrative claims; evidence and information to be submitted.
793.5 Investigation, examination, and determination of claims.
793.6 Final denial of claim.
793.7 Payment of approved claims.
793.8 Release.
793.9 Penalties.
793.10 Limitation of National Credit Union Administration's authority.

AUTHORITY: 12 U.S.C. 1766.

SOURCE: 37 FR 5928, Mar. 23, 1972, unless otherwise noted. Redesignated at 49 FR 559, Jan. 5, 1984.

Subpart A—General

§793.1 Scope of regulations.

The regulation in this part shall apply only to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. 2671–2680, accruing on or after January 18, 1967, for money damages against the United States for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the National Credit Union Administration while acting within the scope of his office of employment.

Subpart B—Procedures

§ 793.2 Administrative claim; when presented; place of filing.

(a) For purposes of the regulations in this part, a claim shall be deemed to have been presented when the National Credit Union Administration receives, at a place designated in paragraph (b) of this section, an executed Standard Form 95 or other written notification of an incident accompanied by a claim for money damages in a sum certain for damage to or loss of property, for personal injury, or for death, alleged to have occurred by reason of the incident. A claim which should have been presented to the National Credit Union Administration but which was mistakenly addressed to or filed with another Federal agency, shall be deemed to be presented to the National Credit Union Administration as of the date that the claim is received by the National Credit Union Administration. A claim mistakenly addressed to or filed with the National Credit Union Administration shall forthwith be transferred to the appropriate Federal agency, if ascertainable, or returned to the claimant.

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final action by the Office of General Counsel, National Credit Union Administration or prior to the exercise of the claimant's option to bring suit under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the National Credit Union Administration shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of an amendment.

(c) Forms may be obtained and claims may be filed with the regional office of the National Credit Union Administration having jurisdiction over the employee involved in the accident or incident, or with the Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

[37 FR 5928, Mar. 23, 1972. Redesignated at 49 FR 559, Jan. 5, 1984, and amended at 59 FR 36041, July 15, 1994]

§ 793.3 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject matter of the claim, his duly authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or his legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 793.4 Administrative claims; evidence and information to be submitted.

(a) *Death*. In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing the cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at the time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birthdates, kinship, and marital status of the decedent's survivors, including those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts or payments for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on the responsibility of the United States for the death or the damages claimed.

(b) *Personal injury.* (1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of the treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical and/or mental examination by a physician employed or designated by the National Credit Union Administration. A copy or report of the examining physician shall be made available to the claimant upon the claimant's written request provided that claimant has, upon request, furnished the report referred to in the first sentence of this paragraph and has made or agrees to make available to the National Credit Union Administration any other physician's reports previously or thereafter made of the physical or mental condition which is the subject of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected duration of and expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from his employment, whether he is a full or part time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for damages to or loss of property, real or personal, the claimant may be required to submit the following information or evidence:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, market value of the property as of date of damage, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on the responsibility of the United States for the injury to or loss of property or the damages claimed.

(d) *Time limit.* All evidence required to be submitted by this section shall be furnished by the claimant within a reasonable time. Failure of a claimant to furnish evidence necessary for a determination of his claim within 3 months after a request therefor has been mailed to his last known address may be deemed an abandonment of the claim. The claim may be thereupon disallowed.

§ 793.5 Investigation, examination, and determination of claims.

When a claim is received, the constituent agency out of whose activities the claim arose shall make such investigation as may be necessary or appropriate for a determination of the validity of the claim and thereafter shall forward the claim, together with all pertinent material, and a recommendation based on the merits of the case, with regard to the allowance or disallowance of the claim, to the Office of General Counsel, National Credit Union Administration to whom authority has been delegated to adjust, determine, compromise and settle all claims hereunder.

§ 793.6 Final denial of claim.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the action of the National Credit Union Administration, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period after the date of mailing, by certified or registered mail of notice of final denial of the claim as provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the National Credit Union Administration for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the National Credit Union Administration shall have 6 months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) to bring suit shall not accrue until 6 months after the filing of a request for reconsideration. Final National Credit Union Administration action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a) of this section.

§ 793.7 Payment of approved claims.

(a) Upon allowance of his claim, claimant or his duly authorized agent shall sign the voucher for payment, Standard Form 1145, before payment is made.

(b) When the claimant is represented by an attorney, the voucher for payment (S.F. 1145) shall designate both the claimant and his attorney as ''payees.'' The check shall be delivered to the attorney whose address shall appear on the voucher.

§ 793.8 Release.

Acceptance by the claimant, his agent or legal representative, of any award, compromise or settlement made hereunder, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of any claim against the United States and any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

§ 793.9 Penalties.

A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be liable to a fine of not more than $10,000 or to imprisonment of not more than 5 years, or both (18 U.S.C. 287–1001), and, in addition, to a forfeiture of $2,000 and a penalty of double the loss or damage sustained by the United States (31 U.S.C. 231).

§ 793.10 Limitation on National Credit Union Administration's authority.

(a) An award, compromise or settlement of a claim hereunder in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. For purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised or settled hereunder only after consultation with the Department of Justice when, in the opinion of the National Credit Union Administration:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and the National Credit Union Administration is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised or settled only after consultation with the Department of Justice when it is learned that the United States or any employee, agent or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

PART 794—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL CREDIT UNION ADMINISTRATION

Sec.

794.101 Purpose.
794.102 Application.
794.103 Definitions.
794.104—794.109 [Reserved]
794.110 Self-evaluation.
794.111 Notice.
794.112—794.129 [Reserved]
794.130 General prohibitions against discrimination.
794.131—794.139 [Reserved]
794.140 Employment.
794.141—794.148 [Reserved]
794.149 Program accessibility: Discrimination prohibited.
794.150 Program accessibility: Existing facilities.
794.151 Program accessibility: New construction and alterations.
794.152—794.159 [Reserved]
794.160 Communications.
794.161—794.169 [Reserved]
794.170 Compliance procedures.
794.171—794.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22889, 22896, June 23, 1986, unless otherwise noted.

§ 794.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 794.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 794.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alocoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Qualified handicapped person means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, a handicapped person who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency.

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can acheive the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 794.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 794.104—794.109 [Reserved]

§ 794.110 Self-evaluation.

(a) The agency shall, by August 24, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 794.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 794.112—794.129 [Reserved]

§ 794.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangments, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination

under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 794.131—794.139 [Reserved]

§ 794.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 794.141—794.148 [Reserved]

§ 794.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 794.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 794.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 794.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result

in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 794.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to handicapped persons. In cases where a physical alteration to an historic property is not required because of § 794.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide handicapped persons into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 21, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by August 22, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by February 23, 1987, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 794.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 794.152—794.159 [Reserved]

§ 794.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf person (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and adminstrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 794.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 794.161—794.169 [Reserved]

§ 794.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Administration, shall be responsible for coordinating implementation of this section. Complaints may be sent to NCUA, 1776 G Street NW., Room 7261, Washington, DC 20456.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of

the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §794.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 22889, 22896, June 23, 1986, as amended at 51 FR 22889, June 23, 1986; 59 FR 36042, July 15, 1994]

§§ 794.171—794.999 [Reserved]

PART 795—OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

AUTHORITY: 12 U.S.C. 1766(a) and 5 U.S.C. 3507(f).

§795.1 OMB control numbers.

(a) *Purpose.* This subpart collects and displays the control numbers assigned to information collection requirements of the NCUA by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. The NCUA intends to comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
701.1	3133–0015
701.12	3133–0075
701.13	3133–0053
701.21	3133–0092
	3133–0101
	3133–0110
701.31	3133–0068
701.36	3133–0040
702.2	3133–0072
705	3133–0109
708	3133–0024
708	3133–0107
710	3133–0076
724.1	3133–0035
725	3133–0060
	3133–0061
	3133–0063
	3133–0064
740.2	3133–0098
741	3133–0004
	3133–0009
	3133–0011
	3133–0099
	3133–0106
748	3133–0033
	3133–0094
	3133–0108
749	3133–0032

[53 FR 29652, Aug. 8, 1988]

CHAPTER VIII—FEDERAL FINANCING BANK

Part		*Page*
810	Federal financing bank bills	572
811	Book-entry procedure for Federal financing bank securities	573

PART 810—FEDERAL FINANCING BANK BILLS

Sec.
810.0 Authority for issue and sale.
810.1 Description of Federal Financing Bank bills.
810.2 Public notice of offering.
810.3 Payment at maturity.
810.4 Acceptance of FFB bills for various purposes.
810.5 Taxation.
810.6 Exemption.
810.7 Federal Reserve Banks as fiscal agents.
810.8 Reservations as to terms of circular.

AUTHORITY: Secs. 9–11, 87 Stat. 939, 940; (12 U.S.C. 2288, 2289, 2290).

SOURCE: 39 FR 26397, July 19, 1974, unless otherwise noted.

§ 810.0 Authority for issue and sale.

The Federal Financing Bank is authorized under the Federal Financing Bank Act of 1973, to issue publicly, with the approval of the Secretary of the Treasury, obligations having such maturities and bearing such rate or rates of interest as may be determined by the Bank. Pursuant to this authority, Federal Financing Bank bills, referred to herein as ''FFB bills,'' are offered for sale from time to time and tenders invited therefor, through the Federal Reserve Banks. The FFB bills so offered, the tenders made, and all subsequent transactions therein are subject to the terms and conditions of the public notice offering the bills for sale, this circular, and to the extent not inconsistent with such notice and circular, to Department of the Treasury Circular No. 418, current revision, the regulations governing United States Treasury bills, and all other regulations governing United States securities.

§ 810.1 Description of Federal Financing Bank bills.

(a) *General.* Federal Financing Bank bills are bearer obligations of the Federal Financing Bank, the terms of which provide for payment of a specified amount on a specified date. They are issued only by Federal Reserve Banks and Branches, pursuant to tenders accepted by the Federal Financing Bank, and are available in both definitive and book-entry form. Where issued as a definitive security, it shall not be valid unless the issue date, the maturity date and the CUSIP number are imprinted thereon.

(b) *Denominations.* Federal Financing Bank bills will be issued in denominations of $10,000, $15,000, $50,000, $100,000, $500,000 and $1,000,000 (maturity value).

§ 810.2 Public notice of offering.

On the occasion of an offering of FFB bills, tenders therefor will be invited through public notices issued by the Federal Financing Bank. Each notice will set forth the amount offered, the issue date, the date they will be due and payable, the place and the date of the closing hour for the receipt of tenders and the date on which payment for accepted tenders must be made or completed.

§ 810.3 Payment at maturity.

Each FFB bill will be paid in its face amount at maturity upon presentation and surrender to any Federal Reserve Bank or Branch or to the Department of the Treasury, Bureau of the Public Debt, Securities Transaction Branch, Washington, DC 20226. If a FFB bill is presented and surrendered for redemption after it has become overdue, the Federal Financing Bank may require satisfactory proof of ownership, as provided in § 306.25 of Department of the Treasury Circular No. 300, current revision.

§ 810.4 Acceptance of FFB bills for various purposes.

Federal Financing Bank bills are lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or possession of the United States. They are eligible for purchase by national banks, and will be accepted at maturity value to secure public moneys.

§ 810.5 Taxation.

All FFB bills shall be subject to Federal taxation to the same extent as obligations of private corporations are taxed.

§810.6 Exemption.

Obligations of the Federal Financing Bank are deemed to be exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2), of section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78(a)(12)), and of section 304(a)(4) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(a)(4)).

§810.7 Federal Reserve Banks as fiscal agents.

The Federal Reserve Banks, as fiscal agents of the United States, have been authorized by the Department of the Treasury to perform all such acts as may be necessary to carry out the provisions of this and other circulars of the Department of the Treasury as may be applicable to FFB bills, and of any public notice or notices issued in connection with any offering of these securities.

§810.8 Reservations as to terms of circular.

The Federal Financing Bank reserves the right to amend, supplement, revise or withdraw all or any of the provisions of this circular at any time or from time to time.

PART 811—BOOK-ENTRY PROCEDURE FOR FEDERAL FINANCING BANK SECURITIES

Sec.

811.0 Definition of terms.
811.1 Authority of Reserve Banks.
811.2 Scope and effect of book-entry procedure.
811.3 Transfer or pledge.
811.4 Withdrawal of Federal Financing Bank securities.
811.5 Delivery of Federal Financing Bank securities.
811.6 Registered bonds and notes.
811.7 Servicing book-entry Federal Financing Bank securities; payment of interest; payment at maturity or upon call.

AUTHORITY: The Federal Financing Bank Act of 1973, sections 9–11, 87 Stat. 939, 940; 12 U.S.C. 2288, 2289, 2290.

SOURCE: 40 FR 5532, Feb. 6, 1975, unless otherwise noted.

§811.0 Definition of terms.

In this part, unless the context otherwise requires or indicates:

(a) *Reserve Bank* means the Federal Reserve Bank of New York (and any other Federal Reserve Bank which agrees to issue Federal Financing Bank securities in book-entry form) as fiscal agent of the United States acting on behalf of the Federal Financing Bank and, when indicated, acting in its individual capacity.

(b) *Federal Financing Bank security* means a Federal Financing Bank bond, note, certificate of indebtedness, or bill issued under the Federal Financing Bank Act of 1973, in the form of a definitive Federal Financing Bank security or a book-entry Federal Financing Bank security.

(c) *Definitive Federal Financing Bank security* means a Federal Financing Bank bond, note, certificate of indebtedness, or bill issued under the Federal Financing Bank Act of 1973, in engraved or printed form.

(d) *Book-entry Federal Financing Bank security* means a Federal Financing Bank bond, note, certificate of indebtedness, or bill issued under the Federal Financing Bank Act of 1973, in the form of an entry made as prescribed in this part on the records of a Reserve Bank.

(e) *Pledge* includes a pledge of, or any other security interest in, Federal Financing Bank securities as collateral for loans or advances or to secure deposits of public monies or the performance of an obligation.

(f) *Date of call* is the date fixed in the official notice of call published in the FEDERAL REGISTER on which the Federal Financing Bank will make payment of the security before maturity in accordance with its terms.

(g) *Member bank* means any national bank, State bank or bank or trust company which is a member of a Reserve Bank.

§811.1 Authority of Reserve Banks.

Each Reserve Bank is hereby authorized, in accordance with the provisions of this part, to: (a) Issue book-entry Federal Financing Bank securities by means of entries on its records which shall include the name of the depositor, the amount, the loan title (or series)

and maturity date; (b) effect conversions between book-entry Federal Financing Bank securities and definitive Federal Financing Bank securities; (c) otherwise service and maintain book-entry Federal Financing Bank securities; and (d) issue a confirmation of transaction in the form of a written advice (serially numbered or otherwise) which specifies the amount and description of any securities, that is, loan title (or series) and maturity date, sold or transferred and the date of the transaction.

§ 811.2 Scope and effect of book-entry procedure.

(a) A Reserve Bank, as fiscal agent of the United States acting on behalf of the Federal Financing Bank, may apply the book-entry procedure provided for in this part to any Federal Financing Bank securities which have been or are hereafter deposited for any purpose in accounts with it in its individual capacity under terms and conditions which indicate that the Reserve Bank will continue to maintain such deposit accounts in its individual capacity, notwithstanding application of the book-entry procedure to such securities. This paragraph is applicable, but not limited, to securities deposited:

(1) As collateral pledged to a Reserve Bank (in its individual capacity) for advances by it;

(2) By a member bank for its sole account;

(3) By a member bank held for the account of its customers;

(4) In connection with deposits in a member bank of funds of States, municipalities, or other political subdivisions; or,

(5) In connection with the performance of an obligation or duty under Federal, State, municipal, or local law, or judgments or decrees of courts.

The application of the book-entry procedure under this paragraph shall not derogate from or adversely affect the relationship that would otherwise exist between a Reserve Bank in its individual capacity and its depositors covering any deposits under this paragraph. Whenever the book-entry procedure is applied to such Federal Financing Bank securities, the Reserve Bank is authorized to take all action necessary in respect of the book-entry procedure to enable such Reserve Bank in its individual capacity to perform its obligations as depositary with respect to such Federal Financing Bank securities.

(b) A Reserve Bank, as fiscal agent of the United States acting on behalf of the Federal Financing Bank, shall apply the book-entry procedure to Federal Financing Bank securities deposited as collateral pledged to the United States under current revisions of Department of the Treasury Circulars Nos. 92 and 176 (31 CFR, parts 203 and 202), and may apply the book-entry procedure, with the approval of the Secretary of the Treasury, to any other Federal Financing Bank securities deposited with a Reserve Bank, as fiscal agent of the United States.

(c) Any person having an interest in Federal Financing Bank securities which are deposited with a Reserve Bank (in either its individual capacity or as fiscal agent of the United States) for any purpose shall be deemed to have consented to their conversion to book-entry Federal Financing Bank securities pursuant to the provisions of this part, and in the manner and under the procedures prescribed by the Reserve Bank.

(d) No deposits shall be accepted under this section on or after the date of maturity or call of the securities.

§ 811.3 Transfer or pledge.

(a) A transfer or a pledge of book-entry Federal Financing Bank securities to a Reserve Bank (in its individual capacity or as fiscal agent of the United States), or to the United States, or to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with a Reserve Bank under this part, is effected and perfected, notwithstanding any provision of law to the contrary, by a Reserve Bank making an appropriate entry in its records of the securities transferred or pledged. The making of such an entry in the records of a Reserve Bank shall:

(1) Have the effect of a delivery in bearer form of definitive Federal Financing Bank securities; (2) have the effect of a taking of delivery by the transferee or pledgee; (3) constitute the

transferee or pledgee a holder; and (4) if a pledge, effect a perfected security interest therein in favor of the pledgee. A transfer or pledge of book-entry Federal Financing Bank securities effected under this paragraph shall have priority over any transfer, pledge, or other interest, theretofore or thereafter effected or perfected under paragraph (b) of this section or in any other manner.

(b) A transfer or a pledge of transferable Federal Financing Bank securities, or any interest therein, which is maintained by a Reserve Bank (in its individual capacity or as fiscal agent of the United States) in a book-entry account under this part, including securities in book-entry form under § 811.2(a)(3), is effected, and a pledge is perfected, by any means that would be effective under applicable law to effect a transfer or to effect and perfect a pledge of the Federal Financing Bank securities, or any interest therein, if the securities were maintained by the Reserve Bank in bearer definitive form. For purposes of transfer or pledge hereunder, book-entry Federal Financing Bank securities maintained by a Reserve Bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve Bank maintaining book-entry Federal Financing Bank securities either in its individual capacity or as fiscal agent of the United States is not a bailee for purposes of notification of pledges of those securities under this subsection, or a third person in possession for purposes of acknowledgement of transfers thereof under this subsection. Where transferable Federal Financing Bank securities are recorded on the books of a depositary (a bank, banking institution, financial firm, or a similar party, which regularly accepts in the course of its business Federal Financing Bank securities as a custodial service for customers, and maintains accounts in the names of such customers reflecting ownership of or interest in such securities) for account of the pledgor or transferor thereof and such securities are on deposit with a Reserve Bank in a book-entry account hereunder, such depositary shall, for purposes of perfecting a pledge of such securities or effecting delivery of such securities to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given or the third person in possession from which acknowledgment of the holding of the securities for the purchaser may be obtained. A Reserve Bank will not accept notice or advice of a transfer or pledge effected or perfected under this subsection, and any such notice or advice shall have no effect. A Reserve Bank may continue to deal with its depositor in accordance with the provisions of this part, notwithstanding any transfer or pledge effected or perfected under this subsection.

(c) No filing or recording with a public recording office or officer shall be necessary or effective with respect to any transfer or pledge of book-entry Federal Financing Bank securities or any interest therein.

(d) A Reserve Bank shall, upon receipt of appropriate instructions, convert book-entry Federal Financing Bank securities into definitive Federal Financing Bank securities and deliver them in accordance with such instructions; no such conversion shall affect existing interests in such Federal Financing Bank securities.

(e) A transfer of book-entry Federal Financing Bank securities within a Reserve Bank shall be made in accordance with procedures established by the Bank not inconsistent with this part. The transfer of book-entry Federal Financing Bank securities by a Reserve Bank may be made through a telegraphic transfer procedure.

(f) All requests for transfer or withdrawal must be made prior to the maturity or date of call of the securities.

§ 811.4 Withdrawal of Federal Financing Bank securities.

(a) A depositor of book-entry Federal Financing Bank securities may withdraw them from a Reserve Bank by requesting delivery of like definitive Federal Financing Bank securities to itself or on its order to a transferee.

(b) Federal Financing Bank securities which are actually to be delivered upon withdrawal may be issued either in registered or in bearer form, except that Federal Financing Bank bills will be issued in bearer form only.

§ 811.5 Delivery of Federal Financing Bank securities.

A Reserve Bank which has received Federal Financing Bank securities and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty even though the depositor had no right to dispose of or take other action in respect of the securities. A Reserve Bank shall be fully discharged of its obligations under this part by the delivery of Federal Financing Bank securities in definitive form to its depositor or upon the order of such depositor. Customers of a member bank or other depository (other than a Reserve Bank) may obtain Federal Financing Bank securities in definitive form only by causing the depositor of the Reserve Bank to order the withdrawal thereof from the Reserve Bank.

§ 811.6 Registered bonds and notes.

Registered Federal Financing Bank securities deposited with a Reserve Bank for any purpose specified in § 811.2 shall be assigned for conversion to book-entry Federal Financing Bank securities. The assignment, which shall be executed in accordance with the provisions of subpart F of 31 CFR, part 306, so far as applicable, shall be to—

Federal Reserve Bank of _____, as fiscal agent of the United States acting on behalf of the Federal Financing Bank for conversion to book-entry Federal Financing Bank securities.

§ 811.7 Servicing book-entry Federal Financing Bank securities; payment of interest; payment at maturity or upon call.

Interest becoming due on book-entry Federal Financing Bank securities shall be charged against the special agent account maintained by the Department of the Treasury for the Federal Financing Bank on the interest due date and remitted or credited in accordance with the depositor's instructions. Such securities shall be redeemed and charged against the above said account on the date of maturity or call, and the redemption proceeds, principal and interest, shall be disposed of in accordance with the depositor's instructions.

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

SUBCHAPTER A—GENERAL

Part		*Page*
900	Description of organization and functions	579
902	Operations	585
904	Freedom of Information Act Regulations	589
906	Information regarding meetings of the Board of Directors of the Federal Housing Finance Board	596
908	Information collection requirements under the Paperwork Reduction Act [Reserved]	
909	Privacy Act Procedures	600
910	Consolidated bonds and debentures	606
912	Book-entry procedure for Federal Home Loan Bank Securities	609
914	Hearings [Reserved]	
916	Promulgation of regulations and amendments [Reserved]	
918	Implementation of the Equal Access to Justice Act [Reserved]	
920	Use of penalty mail in the location and recovery of missing children [Reserved]	
922	Board of Directors and employee responsibilities and conduct	613
924	Practice before the Board of Directors [Reserved]	

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

931	Definitions	615
932	Organization of the banks	617
933	Members of the banks	629
934	Operations of the banks	648
935	Advances	652
936	Community support requirements	664
937–940	[Reserved]	
941	Operations of the Office of Finance	671
942	[Reserved]	

Part		Page
943	Collection, settlement, and processing of payment instruments	675
944	[Reserved]	
	SUBCHAPTER C—FINANCING CORPORATION	
950	Operations	678
	SUBCHAPTER D—RESOLUTION FUNDING CORPORATION	
955	Authority for bank assistance	681
	SUBCHAPTER E—AFFORDABLE HOUSING	
960	Affordable Housing Program	682

SUBCHAPTER A—GENERAL

PART 900—DESCRIPTION OF ORGANIZATION AND FUNCTIONS

Subpart A—Functions and Responsibilities of Finance Board

Sec.
900.1 Definitions.
900.2 General statement and statutory authority.
900.3 Location and business hours.
900.4 Federal Home Loan Bank System.
900.5 Financing Corporation.
APPENDIX TO SUBPART A OF PART 900—FEDERAL HOME LOAN BANKS

Subpart B—General Organization

900.10 Board of Directors.
900.11 Chairperson.
900.12 Office of the Managing Director.
900.13 Office of Policy.
900.14 Office of Supervision.
900.15 Office of General Counsel.
900.16 Office of Inspector General.
900.17 Office of Congressional Affairs.
900.18 Office of Public Affairs.
900.19 Office of Resource Management.

Subpart C—Delegations of Authority

900.30 Office of Finance Board of Directors.

Subpart D—Procedures

900.50 General statement on procedures and forms.
900.51 Forms.
900.52 Submittal of requests for information.
900.53 Official Seal.
900.54 Official logo.

AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 1422b(a).

SOURCE: 56 FR 67155, Dec. 30, 1991, unless otherwise noted.

Subpart A—Functions and Responsibilities of Finance Board

§ 900.1 Definitions.

As used in this part:

Bank means a Federal Home Loan Bank.

Bank Act means the Federal Home Loan Bank Act.

Bank System means the Federal Home Loan Bank System, consisting of the Federal Home Loan Banks.

Finance Board means the Federal Housing Finance Board.

§ 900.2 General statement and statutory authority.

(a) The Finance Board is an independent, executive agency in the Federal Government, responsible for regulating the Federal Home Loan Bank System. It is funded through assessments levied upon the Federal Home Loan Banks. These funds are not considered Government Funds or appropriated monies. The Finance Board is governed by a five-member Board of Directors and administered by a full-time staff.

(b) The members of the Board of Directors are individually referred to as Directors. The heads of the various administrative units, called offices or directorates, are also called Directors.

(c) The Finance Board administers chapter 11 of the Bank Act, as amended, and is authorized to issue rules, regulations and orders affecting the Banks. The Finance Board performs all such duties and responsibilities as may be required by statute. Under section 302(b)(2) of the Federal National Mortgage Association Charter Act, it also conducts a monthly survey of all major lenders to calculate a national average for interest rates on mortages for one-family homes, on behalf of the Federal National Mortgage Association. Under section 305(b) of the Federal Home Loan Mortgage Corporation Act, it conducts a similar survey for the Federal Home Loan Mortgage Corporation.

§ 900.3 Location and business hours.

(a) *Location*. All office units of the Finance Board are located at 1777 F Street, NW., Washington, DC 20006.

(b) *Hours of operation*. The regular hours of operation of the Finance Board are from 8:30 a.m. to 5:30 p.m., Monday through Friday.

§ 900.4 Federal Home Loan Bank System.

(a) The Finance Board regulates the Banks, created under the Bank Act. Specifically, its duties are:

(1) To ensure that the Banks operate in a safe and sound manner;

(2) To supervise all lending and related operations of the Banks, which may include:

(i) Prescribing conditions upon which Banks may advance funds to their member lending institutions;

(ii) Prescribing rules and conditions under which a Bank may borrow funds, pay interest on those funds, or issue obligations;

(iii) Requiring examinations of the Banks;

(iv) Appointing the public members of the boards of directors of the Banks, conducting the elections of the members who are elected by the members of the Banks, and designating the Chairman and Vice-Chairman of the boards of directors of the Banks;

(v) Approving dividends paid by the Banks on their capital stock;

(vi) Approving applications for membership in a Bank; and

(vii) Approving the Bank Presidents selected by the Banks' board of directors and approving the salaries of top level Bank officers;

(3) To ensure that the Banks fulfill their mission of channeling funds to the housing finance industry by making long-term loans to financial lending institutions for use in mortgage lending;

(4) To ensure that the Banks remain adequately capitalized; and

(5) To ensure that the Banks are able to raise funds in the capital markets.

(b) The Finance Board issues the Federal Home Loan Bank consolidated bonds or notes that are the joint and several obligations of the Banks. The Finance Board issues these obligations through the Office of Finance, which is a joint office of the Bank System.

§ 900.5 Financing Corporation.

The Finance Board oversees the operations of the Financing Corporation, including its issuance of obligations. The Financing Corporation is a mixed ownership government corporation chartered by the Finance Board under section 302 of the Competitive Equality Banking Act of 1987, 101 Stat. 552, 585 (1987) (12 U.S.C. 1441).

APPENDIX TO SUBPART A OF PART 900—FEDERAL HOME LOAN BANKS

FEDERAL HOME LOAN BANK DISTRICT 1

(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

Federal Home Loan Bank of Boston

One Financial Center, 20th Floor, Boston, MA 02111

FEDERAL HOME LOAN BANK DISTRICT 2

(New Jersey, New York, Puerto Rico, Virgin Islands)

Federal Home Loan Bank of New York

One World Trade Center, 103rd Floor, New York, NY 10048

FEDERAL HOME LOAN BANK DISTRICT 3

(Delaware, Pennsylvania, West Virginia)

Federal Home Loan Bank of Pittsburgh

One Riverfront Center, 20 Stanwix Street, Pittsburgh, PA 15222–4893

FEDERAL HOME LOAN BANK DISTRICT 4

(Alabama, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia)

Federal Home Loan Bank of Atlanta

1475 Peachtree Street, NE., Atlanta, GA 30309

FEDERAL HOME LOAN BANK DISTRICT 5

(Kentucky, Ohio, Tennessee)

Federal Home Loan Bank of Cincinnati

2400 Atrium Two, 221 East Fourth Street, Cincinnati, OH 45202

FEDERAL HOME LOAN BANK DISTRICT 6

(Indiana, Michigan)

Federal Home Loan Bank of Indianapolis

8250 Woodfield Crossing Boulevard, Indianapolis, IN 46240

FEDERAL HOME LOAN BANK DISTRICT 7

(Illinois, Wisconsin)

Federal Home Loan Bank of Chicago

111 East Wacker Drive, Suite 700, Chicago, IL 60601

FEDERAL HOME LOAN BANK DISTRICT 8

(Iowa, Minnesota, Missouri, North Dakota, South Dakota)

Federal Home Loan Bank of Des Moines

907 Walnut Street, Des Moines, IA 50309

FEDERAL HOME LOAN BANK DISTRICT 9

(Arkansas, Louisiana, Mississippi, New Mexico, Texas)

Federal Home Loan Bank of Dallas

5605 North MacArthur Boulevard, Irving, TX 75038

FEDERAL HOME LOAN BANK DISTRICT 10

(Colorado, Kansas, Nebraska, Oklahoma)

Federal Home Loan Bank of Topeka

Townsite Plaza Two, 120 East Sixth Street, Topeka, KS 66603

FEDERAL HOME LOAN BANK DISTRICT 11

(Arizona, California, Nevada)

Federal Home Loan Bank of San Francisco

600 California Street, San Francisco, CA 94108

FEDERAL HOME LOAN BANK DISTRICT 12

(Alaska, Guam, Hawaii, Idaho, Montana, Oregon, Pacific Islands, Utah, Washington, Wyoming)

Federal Home Loan Bank of Seattle

1501 Fourth Avenue, 19th Floor, Seattle, WA 98101–1693

Subpart B—General Organization

§900.10 Board of Directors.

The Board of Directors consists of five members (''Directors''). Four Directors are appointed by the President, with the advice and consent of the Senate, for seven-year terms. The fifth Director, the Secretary of Housing and Urban Development, is an *ex officio* Director. Not more than three Directors may belong to the same political party. By law, the four appointed Directors must have backgrounds in housing finance or a demonstrated commitment to providing specialized housing credit, and one such Director must have a background with an organization with a two-year record of representing consumer or community interests on either banking services, credit needs, financial consumer protection or housing. The Board of Directors sets agency policy and issues resolutions, rules, regulations and orders, as necessary.

§900.11 Chairperson.

The President designates one appointed Director as Chairperson of the Board of Directors, who presides over the meetings of the Board of Directors. The Board of Directors has delegated, by resolution, the responsibility of overall management and organizational or personnel administration of the Finance Board to the Chairperson.

§900.12 Office of the Managing Director.

(a) The Managing Director is the Finance Board's chief operating officer. By order of the Chairperson, the Managing Director has been delegated the authority and power necessary and convenient to effect the day-to-day management, functioning, and organization of the Finance Board, including the authority to appoint, remove, promote, direct, set compensation for, and pay Finance Board personnel. The Managing Director is authorized to execute documents on behalf of the Board of Directors, including regulations, resolutions, or orders duly passed by the Board of Directors. The Managing Director is also the Finance Board's Chief Information Officer.

(b) The Executive Secretariat is a division within the Office of the Managing Director. The Executive Secretary is the recording officer for the Board of Directors and is responsible for maintaining the Finance Board's records, including copies of all resolutions and rules adopted by the Board of Directors and orders issued by the Chairperson. The Executive Secretary also is responsible for the preparation and maintenance of the minutes or other records of all official actions and proceedings of the Board of Directors, and is responsible for the official seals of the Finance Board. This division also is responsible for the agency's Freedom of Information Act, Privacy Act, and Records Management Programs. The Executive Secretary is the primary liaison with the Office of the Federal Register.

(c) The District Banks Secretariat is a division within the Office of the Managing Director responsible for administering the election of directors of the Banks and for maintaining records on each of the Banks' policies and marketing activities.

[61 FR 68129, Dec. 27, 1996]

§ 900.13 Office of Policy.

(a) The Office of Policy coordinates the Finance Board's policy development activities and provides advice to the Chairperson and the Board of Directors on the economic, financial, housing and community and economic development, and competitive environments in which the Bank System and its members operate. The responsibilities of the Office of Policy include:

(1) Analysis and modeling of the financial performance of the Banks;

(2) Collection and analysis of financial data in order to prepare the Bank System's annual combined financial reports and other periodic reports on Bank System operations;

(3) Collection and analysis of data on the housing and community and economic development activities of the Banks;

(4) Analysis of the Banks' performance under the Affordable Housing Program and the Community Investment Program;

(5) Analysis of policy issues arising under the Affordable Housing Program and the Community Investment Program;

(6) Preparation of the Monthly Survey of Rates and Terms of Conventional One-Family Nonfarm Mortgage Loans and determination of the conforming loan limit for Federal National Mortgage Association (Fannie Mae) and Federal Home Loan Mortgage Corporation (Freddie Mac) purchases and guarantees; and

(7) Review of the Banks' quarterly dividend recommendations.

(b) The Office of Policy is the Finance Board's primary liaison with the Banks' Chief Financial Officers concerning financial management issues, the Banks' Community Investment Officers concerning community and economic development, the Banks' Advisory Councils concerning Bank System support of affordable housing, and the Bank System's fiscal agent, the Office of Finance. It prepares the annual reports to Congress and to the Banks' Advisory Councils concerning Bank System support for low-income housing and community development.

[61 FR 68130, Dec. 27, 1996]

§ 900.14 Office of Supervision.

The Office of Supervision oversees the Banks, the Office of Finance and the Financing Corporation to ensure that they operate in a financially safe and sound manner, that the Banks are carrying out their housing and community and economic development finance mission and are in compliance with applicable statutes and regulations, as well as Finance Board policies and orders. The responsibilities of the Office of Supervision include:

(a) The conduct of examinations, at least annually, of the Banks, the Office of Finance and the Financing Corporation and the furnishing of reports thereon to the Chairpersons of their Boards of Directors;

(b) The follow-up and resolution of outstanding examination issues;

(c) Liaison with each Bank's audit committee and the review and evaluation of the work of each Bank's internal audit staff;

(d) The monitoring of Bank and System interest rate risk, financial trends and mission-related activities; and

(e) The review of Community Support Statements of Bank System members.

[61 FR 68130, Dec. 27, 1996]

§ 900.15 Office of General Counsel.

The General Counsel is the chief legal officer of the Finance Board. The Office of General Counsel provides advice to the Board of Directors, the Chairperson, and other Finance Board officials, on interpretations of statutes and regulations. The Office of General Counsel prepares all legal documents on behalf of the Finance Board and prepares opinions, regulations, and memoranda of law. It represents the Finance Board in all administrative adjudicatory proceedings before the Board of Directors. The Chairman appoints the Finance Board's Designated Agency Ethics Official from the staff of the Office of General Counsel.

[61 FR 68130, Dec. 27, 1996]

§ 900.16 Office of Inspector General.

The Inspector General is subject to, and operates under, the provisions of the Inspector General Act of 1978, as amended (5 U.S.C. app. 3). The Inspector General reports to and is under the

general supervision of the Chairperson. The Inspector General's responsibilities under the Inspector General Act include providing policy direction for, and conducting, supervising, and coordinating audits and investigations relating to the programs and operations of the Finance Board, and recommending policies for promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, the Finance Board's programs and operations. The Inspector General prepares and furnishes to the Chairman for transmittal to the Congress semiannual reports on the activities of the Office of Inspector General.

[61 FR 68130, Dec. 27, 1996]

§900.17 Office of Congressional Affairs.

The Office of Congressional Affairs is responsible for ensuring the effective coordination and communication with the Congress and interest groups, and for briefing the Chairperson, the other Directors, and the Managing Director, on legislative issues before Congress pertaining to the Finance Board, the Bank System, and the Financing Corporation.

[61 FR 68130, Dec. 27, 1996]

§900.18 Office of Public Affairs.

The Office of Public Affairs is responsible for the dissemination of information about the Finance Board to the public and the news media. The Office of Public Affairs is the Finance Board's primary liaison with news reporters. It also responds to general inquiries about the activities of the Finance Board.

[61 FR 68130, Dec. 27, 1996]

§900.19 Office of Resource Management.

The Office of Resource Management advises the Chairperson and the Board of Directors on internal agency management and organization and provides support services to the agency and to individual employees. The responsibilities of the Office of Resource Management include:

(a) Developing and managing agency policies and procedures governing employment and personnel action requirements, compensation and agency payroll requirements, travel, awards, insurance, retirement benefits, and other employee benefits;

(b) Providing support for all facility and supply requirements;

(c) Agency procurement and contracting programs;

(d) Agency financial management, budgeting and accounting; and

(e) Coordinating the design, programming, operation, and maintenance of the Finance Board's electronic data systems.

[61 FR 68130, Dec. 27, 1996]

Subpart C—Delegations of Authority

§900.30 Office of Finance Board of Directors.

(a) *Consolidated obligations.* Subject to Finance Board regulations, resolutions or policies, the Office of Finance Board of Directors is delegated the authority:

(1) To issue through the Office of Finance the Federal Home Loan Bank consolidated debentures, bonds or notes pursuant to the Finance Board's authority under section 11 of the Bank Act (12 U.S.C. 1431); and

(2) To determine their denominations, interest rate and terms.

(b) *Treasury policy.* The Office of Finance Board of Directors shall implement this delegation in accordance with the policies and guidelines issued by the Secretary of the Treasury under section 9108 of title 31 of the United States Code (31 U.S.C. 9108).

[57 FR 6468, Feb. 25, 1992]

Subpart D—Procedures

§900.50 General statement on procedures and forms.

Regulations and rules of procedure of the Finance Board are published in chapter IX of title 12 of the Code of Federal Regulations and in supplementary material published in the FEDERAL REGISTER. The Finance Board will prescribe the procedures governing the course and conduct of proceedings before the Board of Directors in its General Regulations. When and wherever appropriate, the Finance Board

may supplement its administrative procedures with informal procedures designed to aid the public or facilitate the proceedings, including the rendering of advice or assistance to persons dealing with the Finance Board or its Board of Directors.

§ 900.51 Forms.

The following forms are available at the Finance Board headquarters facility (see § 900.3) and shall be used for the purpose indicated:

FORM

10–91—Monthly Survey of Rates and Terms on Conventional 1 Family Nonfarm Mortgage Loans.
9102—Certificate of Nomination, Election of Federal Home Loan Bank Directors.
9103—Election Ballot, Election of Federal Home Loan Bank Directors.
A–1—Appointive Director Candidates—Personal Certification and Disclosure Form.
A–2—Appointive Directors—Personal Certification and Disclosure Form.
E–1—Elective Director Nominees—Personal Certification and Disclosure Form.
E–2—Elective Directors—Personal Certification and Disclosure Form.
90–T04—Local Travel Claim.

[60 FR 49199, Sept. 22, 1995]

§ 900.52 Submittal of requests for information.

Requests for general information concerning the Finance Board or the Bank System should be made in person at the headquarters facility, at the address listed in § 900.3, or in writing addressed to the Executive Secretary at the same address.

§ 900.53 Official Seal.

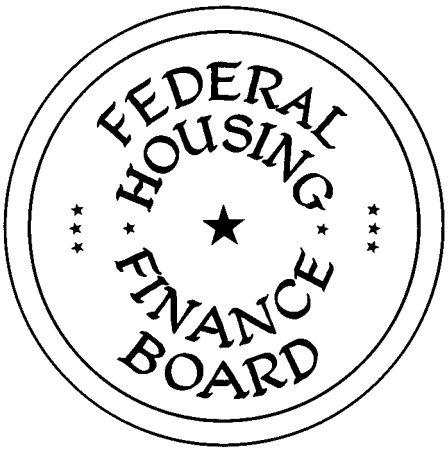
This section describes and displays the official seals used by the Finance Board to certify and authenticate official documents of the Board of Directors:

(a)(1) *Description*. A disc with the term ''SEAL'' in capital letters in its center, encircled by a designation scroll having an outer border with a roped edge and an inner border with a beaded edge, and containing the words ''FEDERAL HOUSING FINANCE BOARD'' in capital letters, in caslon type, with a mullet, in base.

(2) *Display*.

(b)(1) *Description*. A disc with a large mullet at its center and the term ''FEDERAL'' atop the term ''HOUSING'' in capital letters, in uncial type, arranged in a curved format on the upper part of the disc above the large mullet and the term ''FINANCE'' atop the term ''BOARD'' in capital letters, in uncial type, both terms arranged in a curved format on the lower part of the disc below the mullet, with two smaller mullets separating the two aforementioned terms ''HOUSING'' and ''FINANCE'', and with six mullets arranged three each in a vertical row on the left and right sides of the disc, and surrounded by a boarder consisting of two plain lines.

(2) *Display*.



(c) *Description*. A disc having the same design and description as the official logo, contained in §900.54 and displayed in paragraph (b) of that section.

[56 FR 67155, Dec. 30, 1991; 57 FR 749, Jan. 8, 1992]

§900.54 Official logo.

This section describes and displays the logo adopted by the Board of Directors as the official symbol representing the Finance Board. It is displayed on correspondence and selected documents.

(a) *Description*. A disc with its center consisting of three polygons arranged in an irregular line partially overlapping—each polygon drawn in a manner resembling a silhouette of a pitched roof house and with distinctive eaves under its roof—encircled by a designation scroll having an outer and inner border of plain heavy lines and containing the words ''FEDERAL HOUSING FINANCE BOARD'' in capital letters, in sans serif type, with two mullets on the extreme left and right of the scroll.

(b) *Display*.

PART 902—OPERATIONS

Sec.

902.1 Definitions.
902.2 Assessments.
902.3 Monthly interest rate survey.
902.4 Schedule of charges for agency services.
902.5 Minority Contractors Outreach Program.
902.6 Procedure for consideration of waiver of regulatory provisions.

AUTHORITY: 12 U.S.C. 1422b, 1438(b), 1833e.

SOURCE: 58 FR 19195, Apr. 13, 1993, unless otherwise noted.

§902.1 Definitions.

As used in this part:

Bank means a Federal Home Loan Bank.

Bank System means the Federal Home Loan Bank System, consisting of all twelve Banks.

Business means an enterprise, including a firm, corporation, joint stock company, partnership, joint venture or association that engages in commercial activity on a regular basis.

Chairperson means the Chairperson of the Board of Directors.

Finance Board means the Federal Housing Finance Board.

Minority means:

(1) A male person or persons classified as either an African-American, a Native-American, a Hispanic-American, or an Asian-American; or

(2) A female person or persons regardless of ethnic or racial classification.

Minority-owned entity means a business that is:

(1) Owned or controlled by any combination of African-Americans, Native-Americans, Hispanic-Americans or Asian-Americans, regardless of gender, where such ownership or control includes the management of the daily business operations; or

(2) Owned or controlled by female persons, regardless of ethnic origin, where such ownership or control includes the management of its daily business operations.

§902.2 Assessments.

(a) Pursuant to section 18(b) of the Federal Home Loan Bank Act, as amended, (12 U.S.C. 1438(b)), the Finance Board will assess the Bank System for such funds as may be necessary to meet the annual administrative and operating expenses of the Finance Board. This section governs the procedures under which each Bank shall be assessed for its portion of the Finance Board's annual expenses.

(b) Prior to the end of each calendar year, or as soon as possible thereafter, the Finance Board shall adopt a resolution approving an annual budget for all Finance Board expenses for the next calendar year. A copy of such resolution shall be forwarded to each Bank president.

(c) The Finance Board shall make two assessments on the Bank System for each calendar year. The first assessment shall cover the first six-month period of each calendar year, and the second assessment shall cover the second such period.

(d) Each assessment for each six-month period on the Bank System will be for one-half of the budget approved by the Finance Board pursuant to paragraph (b) of this section, except that such amount may be offset by:

(1) Revenues received by the Finance Board from subleasing portions of its office building in the District of Columbia; and

(2) Funds, determined by the Finance Board to be surplus funds from prior assessments, in the Finance Board's special deposit account in the United States Treasury at the time of assessment.

(e) Each assessment made pursuant to this section shall be paid by the Bank System. Each Bank's *pro rata* share of such assessment will be based on the total paid-in value of its capital stock, relative to the total paid-in value of all capital stock of the Bank System.

(f) Prior to making an assessment pursuant to this section, the Finance Board shall adopt a resolution notifying the Banks that an assessment is being levied for a particular six-month period and shall forward a copy of such resolution to each Bank president.

(g) Following the notification in paragraph (f) of this section, the Chairperson, or designee, shall determine the assessment for each Bank and notify the Banks in writing of the amount due under the assessment, based on the formula in paragraph (e) of this section.

(h) Unless otherwise instructed by the Chairperson, or designee, each Bank may transfer its *pro rata* share of an assessment to the Finance Board in equal monthly installments over the six-month period covered by the assessment.

§ 902.3 Monthly interest rate survey.

The Finance Board conducts its Monthly Survey of Rates and Terms on Conventional One-Family Nonfarm Mortgage Loans in the following manner:

(a) *Initial survey*. Each month, the Finance Board samples approximately 1,000 mortgage lenders (savings and loan associations, savings banks, commercial banks, and mortgage loan companies) and asks them to report the terms and conditions on all conventional mortgages (not federally insured or guaranteed) used to purchase single-family homes that each such lender closes during the last five working days of the month. In most cases, the information is reported electronically in a format similar to Finance Board Form FHFB 10–91. The data is weighted so that the pattern of weighted responses matches the actual pattern of mortgage originations by lender type and by region. The Finance Board tabulates the data and publishes standard data tables late in the following month.

(b) *Adjustable-rate mortgage index*. The weighted data, tabulated and published pursuant to paragraph (a) of this section, is used to compile the Finance Board's adjustable-rate mortgage index, entitled the ''National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders.'' This index is the successor to the index maintained by the former Federal Home Loan Bank Board and is used for determining the movement of the interest rate on the renegotiable-rate mortgages and on some other adjustable-rate mortgages.

(c) *Means of survey*. The Finance Board collects the data for the compilation of the indices described in this section by contract. Pursuant to such contract, a Finance Board form, entitled ''Monthly Survey of Rates and Terms on Conventional One-Family Nonfarm Mortgage Loans'' (FHFB Form 10–91), is distributed to selected lending institutions. The data is collected, compiled and processed, and the completed survey results are forwarded to the Housing Finance Directorate of

the Finance Board for tabulation and distribution.

§902.4 Schedule of charges for agency services.

(a) *Authority.* Section 9701 of title 31, United States Code, directs government agencies to charge a fee for any special service provided to a selected segment of the public that makes use of such special service (31 U.S.C. 9701). The Office of Management and Budget's Circular A–25 contains guidelines for agencies to follow when promulgating regulations for such user fee charges. This section implements that authority.

(b) *ARM Index special programming service.* (1) The Finance Board develops and makes available special tabulations of its monthly interest rate survey data for individual users, upon request.

(2) Each request for a specialized interest rate survey will be made in writing to the Housing Finance Directorate.

(3) The fee for such special service is a $100 per hour for the analyist's time, with a minimum charge of $100, prepaid, to accompany the written request.

§902.5 Minority Contractors Outreach Program.

(a) *Scope.* (1) This section establishes the Finance Board's Minority Contractors Outreach Program and designates the officials responsible for implementing the Program and its oversight.

(2) The Minority Contractor Outreach Program:

(i) Seeks to encourage the maximum participation of minorities in all Finance Board procurement contracts for goods or services;

(ii) Shall operate consistent with the principle of full and open competition and the concept of contracting for minimum agency needs at the lowest practical cost; and

(iii) Shall not be construed to be a substitute means of procurement for the Finance Board's established procedural process for the procurement of goods or services.

(b) *Responsibilities.* (1) The Director of Administration shall have general oversight of the Minority Contractors Outreach Program.

(2) The Chairperson shall:

(i) Appoint an Minority Contractors Advocate, who shall—

(A) Have primary responsibility for furthering the purposes of the Minority Contractors Outreach Program;

(B) Be responsible for challenging barriers to, and promoting maximum participation by, minorities or minority-owned entities in the Finance Board procurement process; and

(C) Develop a manual describing the procedures by which the Finance Board will implement the Minority Contractors Outreach Program.

(ii) Assign such Advocate only such duties or responsibilities, with respect to the Minority Contractors Outreach Program, as are consistent with this section, and shall not assign such Advocate any duties of a contracting officer or of a technical representative on a contract.

(c) *Program components.* The Minority Contractors Outreach Program procedures shall include the following:

(1) *Contractor File.* (i) The Minority Contractors Advocate shall compile and maintain an ongoing file consisting of minority-owned entities that are interested in contracting with the Finance Board for goods or services through the competitive bidding or negotiated procurement process.

(ii) The information in such file shall list the current name and address of each such minority-owned entity and shall categorize each name and address as follows:

(A) Accounting services;

(B) Building support services;

(C) Computer services;

(D) Consulting services;

(E) Legal services;

(F) Office supplies and equipment; or

(G) Other services.

(2) *Solicitation.* The Minority Contractors Advocate shall implement a procedure for soliciting potential candidates for the contractor file provided for in paragraph (c)(1) of this section, by means of any of the following:

(i) Referrals from executive departments, agencies or instrumentalities of the Federal Government;

(ii) Direct solicitation of selected candidates;

(iii) Advertising by direct mail or publications specifically directed to minorities, or minority-owned entities;

(iv) Sponsoring Finance Board seminars designed to explain the Minority Contractors Outreach Program to minority contractors or minority-owned entities who have the potential of contracting with the Finance Board;

(v) Attendance at conventions, seminars or other professional conferences of minorities or minority-owned entities located in the greater Washington metropolitan area.

(3) *Certification*. (i) No minority-owned entity (whether solicited by the Minority Contractors Advocate or not) may participate in the Finance Board procurement process as a minority-owned entity unless certified as such by the Chairperson, or designee.

(ii) The certification shall be by a means and form approved by the Finance Board.

(iii) Nothing in this section shall be deemed to prevent an non-certified minority-owned entity from participating in the procurement process as an entity not designated or deemed a minority or minority-owned entity.

(4) *Promotion*. (i) The Minority Contractors Advocate shall maintain an ongoing campaign of promotion of the Minority Contractors Outreach Program with all certified minority-owned entities.

(ii) This campaign shall include:

(A) Ongoing dissemination of information about the Minority Contractors Outreach Program with certified minority-owned entities;

(B) Alerting appropriate certified minority-owned entities when the Finance Board makes a solicitation for a bid or initiates the negotiation of a procurement contract for goods or services;

(C) Acting as a liaison between the Finance Board contracting authorities and a particular minority-owned entity; and

(D) Assisting any certified minority-owned entity to understand Finance Board contracting procedures or other information regarding a particular bid or contract.

(iii) Nothing in this paragraph (c)(4) shall authorize the Minority Contractors Advocate to represent the interests of any minority-owned entity in any contract matter or bid before the Finance Board.

(5) *Contract award guidelines*—(i) *Contracts not exceeding $25,000.* The Finance Board Contracting Officer shall, from time to time, award contracts for the procurement of goods or services, that do not exceed $25,000 in costs, to certified minority-owned entities listed in the contractor file provided for in paragraph (c)(1) of this section, to the extent not inconsistent with the principles of Federal Government procurement laws. Such awards shall be made after consultation with the Minority Contractors Advocate.

(ii) *Contracts exceeding $25,000.* Contracts for goods or services that exceed $25,000 will be awarded on the basis and consistent with the principles of the Federal Government procurement laws. The Finance Board Contracting Officer and the Minority Contractors Advocate shall work to ensure, promote and facilitate the maximum participation of minority-owned entities in the Finance Board's procurement of goods or services that exceed $25,000.

§ 902.6 Procedure for consideration of waiver of regulatory provisions.

(a) *Authority*. The Finance Board reserves the right, in its discretion and in connection with a particular transaction, to waive any provision, restriction, or requirement of this chapter, or any required submission of information, not otherwise required by law, if such waiver is not inconsistent with the law and does not adversely affect any substantial existing rights, upon a determination by the Finance Board that application of the provision, restriction, or requirement would adversely affect achievement of the purposes of the Federal Home Loan Bank Act, or upon a showing of good cause.

(b) *Waiver requests.* Any person or entity may file a written waiver request with the Finance Board.

(1) *Procedure.* Any request for a waiver shall be filed with the Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, DC 20006, and, if from a Bank member institution, with the appropriate Bank.

(2) *Documentation*. A waiver request shall include the following:

(i) A detailed statement of facts, including the provisions of this chapter to which the request relates, the participants in the proposed transaction, and the reasons for the request; and

(ii) An analysis of each legal issue raised.

[61 FR 64614, Dec. 6, 1996]

EFFECTIVE DATE NOTE: At 61 FR 64614, Dec. 6, 1996, §902.6 was added, effective Jan. 6, 1997.

PART 904—FREEDOM OF INFORMATION ACT REGULATIONS

Sec.
904.1 Purpose and scope.
904.2 Definitions.
904.3 Published information.
904.4 Records available to public.
904.5 Procedure for requesting records.
904.6 Fees for records disclosed.
904.7 Records not disclosed.
904.8 Disclosure of Federal Home Loan Bank examination reports to Financial Regulatory Agencies.
904.9 Records of Financial Regulatory Agencies held by Federal Housing Finance Board.
904.10 Service of process.

AUTHORITY: 5 U.S.C. 552, 12 U.S.C. 1422b(a)(1).

SOURCE: 58 FR 19198, Apr. 13, 1993, unless otherwise noted.

§904.1 Purpose and scope.

(a) This part implements section 552 of title 5, United States Code, that requires the Federal Housing Finance Board to issue regulations informing the public of the places at which, the officers from whom, and the methods by which the public may request records, and to set a uniform schedule of fees for obtaining records.

(b) Any action or determination required or permitted by this part to be performed by the Finance Board, Executive Secretary or General Counsel may be delegated to another responsible agency officer or employee specifically designated for that purpose.

§904.2 Definitions.

As used in this part:

Commercial use request means a request from, or on behalf of, a requester seeking information for a use or purpose that furthers the commercial, trade or profit interest of the requester or ultimate user.

Direct costs means the expenditures actually incurred by the Finance Board in searching for, duplicating (and in the case of commercial use requests, reviewing) records in response to a FOIA request, including the time spent by Finance Board employees performing the work and the cost of operating duplicating equipment.

Duplication means the process of making a copy of a record necessary to respond to a FOIA request, including a paper copy, microfilm, audio-visual material, or magnetic tape or disc.

Educational institution means a public or private college or university, preparatory school, or similar accredited institution of professional or vocational education that operates a program or programs of scholarly research.

Executive Secretary means the Executive Secretary of the Federal Housing Finance Board.

Finance Board means the Federal Housing Finance Board.

Financial Regulatory Agency means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, The Federal Deposit Insurance Corporation or the National Credit Union Administration.

FOIA means the Freedom of Information Act.

Non-commercial scientific institution means a nonprofit institution operated solely for the purpose of conducting scientific research not intended to promote any particular product or industry.

Record means documentary material, regardless of physical form, that is made or received by the Finance Board under Federal law or in connection with the transaction of public business, is preserved or appropriate for preservation as evidence of agency activities or because of the value of the information it contains, and is under the Finance Board's control at the time a request is received.

Representative of the news media means a requester, as defined below, actively gathering information about current events of interest to the public for a publishing or broadcasting entity.

Requester means any person, including an individual, firm, corporation, organization, or other entity, making a request to the Finance Board for a record or records.

Review means the process of examining a record in response to a request to determine whether any portion thereof is permitted to be withheld, and includes processing any records for disclosure, such as redacting portions thereof, to ready them for disclosure to a requester. The term does not include the time spent by Finance Board staff resolving general legal or policy issues regarding the application of FOIA exemptions to the record.

Search means the time spent locating records in response to a request, including page-by-page or line-by-line identification of information requested within a record, performed by Finance Board staff manually or by computer using existing programming.

§ 904.3 Published information.

(a) FEDERAL REGISTER. As required by sections 552 and 553 of title 5 of the United States Code, the Finance Board publishes in the FEDERAL REGISTER for the guidance of the public:

(1) A description of its organization;

(2) Statements of the general course and methods by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of available forms and where they may be obtained, and instructions as to the scope and contents of all papers or reports;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Finance Board;

(5) Every amendment, revision, or repeal of the foregoing; and

(6) General notices of proposed rulemaking.

(b) *Annual Report.* The Finance Board submits an Annual Report to Congress pursuant to section 2B(d) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1422b(d)). It is available to the public after its submission.

(c) *Other published information.* From time to time, the Finance Board provides information to the press regarding statements of policy, actions with respect to certain types of applications, and other matters.

(d) *Access to published information.* The publications referred to in paragraphs (b) and (c) of this section may be examined and, if available, copies may be obtained at the address set forth in § 904.5(b)(1).

§ 904.4 Records available to public.

(a) *General.* It is the policy of the Finance Board to provide as promptly and reasonably as possible all information, documents and records requested of the agency subject to the limitations stated in § 904.7 and 904.9. Information customarily furnished to the public in the regular course of the performance of official duties may continue to be furnished to the public without complying with this part, provided that the furnishing of such information would not violate the Privacy Act of 1974, 5 U.S.C. 552a, and would not be consistent with other subparts of this part. To the extent permitted by other laws, the Finance Board also will consider making available records that it is permitted to withhold under the FOIA, if it determines that such disclosures would be in the public interest.

(b) *Available records.* Subject to § 904.7, the Finance Board makes available for inspection and copying:

(1) All final opinions by the Finance Board made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Finance Board, not published in the FEDERAL REGISTER; and

(3) Administrative manuals and regulations that affect any member of the public. To the extent required to prevent a clearly unwarranted invasion of personal privacy, however, the identifying details in any material of the kinds described above may be deleted.

(c) *Votes of Finance Board members.* Subject to the provisions of § 904.7, a record of the final votes of each member of the Finance Board in any proceeding is available for public inspection.

§904.5 Procedure for requesting records.

(a) *General.* Requests for access to, or copies of, Finance Board records shall be in writing and describe the information or records requested in a manner reasonably sufficient to identify them. The request shall state that it is being made pursuant to the FOIA, and shall state the full name and address of the requester. The request also may specify a dollar limit which the requester is willing to pay for the costs of searching, reviewing or duplicating, and the Finance Board will limit its search, review or duplication of the record to the dollar amount specified in the request.

(b) *Initial determination.* (1) All requests to access or to copy Finance Board records shall be in writing and addressed to the Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

(2) If it is determined that a request does not reasonably describe the records sought, the Executive Secretary shall advise the requester that additional information is needed.

(3) The Executive Secretary shall forward any request for records made under this section to the appropriate Finance Board administrative unit that has custody of the requested record. Such unit will recommend whether to grant or deny the request for records promptly after receipt from the Executive Secretary of a written request for records that complies with paragraphs (a) and (b) of this section.

(4) All approvals or denials of requests for records under this part shall be in writing and signed by the Executive Secretary, or the Executive Secretary's designee, within ten days (except Saturdays, Sundays or Federal Government holidays) after receipt of the request by the Executive Secretary. Records will be disclosed after a party either pays the fees specified in §904.6(1) or agrees to do so.

(5) All denials sent by the Executive Secretary to the requester shall:

(i) State whether the denial is in part or in whole;

(ii) State, briefly the reasons therefor; and

(iii) Inform the requester that the denial is not a final agency action and may be appealed under paragraph (c) of this section.

(c) *Appeal.* (1) A requester may appeal a denial of a request for records under paragraph (b) of this section by mailing an appeal to the Executive Secretary at the address set forth in paragraph (b)(1) of this section, within 30 days (except Saturdays, Sundays or Federal Government holidays) of the date of written notification of the denial.

(2) The appeal shall be by written application addressed to the Finance Board and shall state the grounds therefor.

(3) The Finance Board, or designee, shall determine whether to grant the appeal or uphold the initial determination within 20 days (excluding Saturdays, Sundays or Federal Government holidays) after receipt of the application by the Executive Secretary. If the initial determination is upheld in whole or in part, the Executive Secretary, on behalf of the Finance Board, will notify the requester in writing of the decision, the name of the official responsible for the decision, and of the provisions for judicial review of the final action under 5 U.S.C. 552(a)(4).

(d) *Appeal during pendency of judicial review.* If a suit is brought in a United States district court under 5 U.S.C. 552(a)(4) after the Executive Secretary has denied a request for Finance Board records but before the Finance Board, or its designee, has ruled on the appeal, the Finance Board, or its designee, may at its option:

(1) If an appeal has been made, continue to process the appeal; or

(2) If an appeal has not been made, decide on its own to initiate an appeal.

(e) *Time computation*—(1) *Agency.* For the Finance Board, the time limits in §§904.5 (b)(4) and (c)(3) with respect to initial determinations or appeals shall begin as of the date on which a reasonably described, written request for records, or a written application on appeal, is actually received by the Executive Secretary.

(2) *Requester.* For a requester making an appeal, the time limits in §904.5(c)(1) with respect to an appeal shall begin three working days after the date of the initial determination.

(f) *Extension of time.* (1) The Executive Secretary may extend the time limits

prescribed in §§ 904.5 (b)(4) and (c)(3) for not more than ten working days by written notice to the requester, giving the reasons for the extension and a new date for the determination or appeal decision.

(2) Extensions may be granted for:

(i) The need to search for and collect the requested records from establishments other than the Finance Board;

(ii) The need to search, collect and examine a large amount of separate and distinct records demanded by a single request;

(iii) The need to consult with another executive department or agency having substantial interest in the outcome of the request or appeal.

§ 904.6 Fees for records disclosed.

(a) *General statement.* In accordance with this section, the Finance Board shall recover the full allowable direct costs of providing copies of records pursuant to 5 U.S.C. 552. Accordingly, except as provided herein, the Finance Board shall assess fees for searching, reviewing and duplicating any record in accordance with the fee schedule herein. The fee schedule is based upon the category of requester and upon the services requested.

(b) *Categories of requesting parties*—(1) *Designation.* The Finance Board shall categorize requesters based on the following five categories:

(i) Commercial use requesters;

(ii) Educational institution requesters;

(iii) Non-Commercial scientific institution requesters;

(iv) Representatives of the news media; and

(v) All other requesters.

(2) *Limitations on fees charged.* The Finance Board shall assess fees pursuant to this section as follows:

(i) *Commercial use requesters.* Requesters making a commercial use request for a record shall be assessed the full direct costs for searching for, reviewing, and duplicating records, in accordance with the fee schedule at § 904.6(1). They are not entitled to the free search time or free pages of duplication provided to other categories of requesters.

(ii) *Educational institution requesters.* Educational institution requesters may be assessed fees only for duplication of records in excess of the first 100 pages. They may not be assessed fees for search or review.

(iii) *Non-commercial scientific institution requesters.* Non-commercial scientific institution requesters will be assessed in the same manner as educational institution requesters.

(iv) *Representatives of the news media.* Representatives of the news media will be assessed in the same manner as educational institution requesters.

(v) *All other requesters.* Requesters for Finance Board records who do not fit into any of the categories above shall be assessed fees only for searching and duplicating records except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. Requesters in this category may not be assessed fees for review.

(c) *Review of records.* Charges will be assessed only for the initial review of the located documents and not for time spent at the administrative appeal level on an exemption applied at the initial determination level. However, where records or portions thereof are withheld in full under an exemption that is subsequently determined not to apply, and these records are reviewed again to determine the applicability of other exemptions not previously considered, charges for review are properly assessable.

(d) *Additional copies.* The Finance Board will furnish one copy of any record. The allowance of 100 free pages of duplication under paragraphs (b)(2)(ii), (iii), (iv), and (v) of this section shall not apply to additional copies furnished at the request of the record requester. Full duplication fees shall be assessed for each page of each additional copy.

(e) *Requests under other statutes*—(1) *Privacy Act.* Requests from individuals for records about themselves filed in a system of records maintained by the Finance Board will be treated under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a).

(2) *Sunshine Act.* Requests for copies of transcripts or minutes, or for transcription of electronic recordings of Finance Board meetings, or portions thereof, will be treated under the fee

provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

(f) *Charges for unsuccessful search.* Where applicable under this section, fees may be assessed for time spent searching, even if the Finance Board fails to locate the records or if located records are determined to be exempt from disclosure. By making an application for a request for Finance Board records, a requester agrees to pay such charges for unsuccessful searches by Finance Board staff.

(g) *Procedure for fee collection.* The Finance Board will collect fees for the direct costs of searching, reviewing, duplicating and related costs under the following procedures:

(1) *Agreement.* If after receiving a request for Finance Board records, the Executive Secretary estimates that the search, duplication or review costs of such request will exceed $25 but not exceed $250, the Executive Secretary will notify the requester to execute an agreement with the Finance Board to pay the final actual costs of the request. Notwithstanding any provision of this part, the Finance Board will not disclose any record prior to receiving the executed agreement.

(2) *Advance payment.* If the Executive Secretary estimates that the search, review or duplication costs of a request will exceed $250.00 and the Executive Secretary determines that the requester either has no prior history of payment of FOIA fees to the Finance Board or has previously failed to pay a FOIA fee in a timely fashion, the Executive Secretary will notify the requester to make an advance payment of the estimated amount prior to the disclosure of the requested records. For the purposes of this paragraph, ''timely fashion'' means a payment received by the Finance Board within 30 days following transmittal of disclosed records to the requester. The Finance Board shall promptly remit any amount of an advance payment that exceeds the actual final cost of disclosing the requested records, and the requester shall be liable for any actual cost exceeding the estimate.

(3) *Interest.* Where the requesting party has executed an agreement to pay the fee for the FOIA request, the Finance Board will assess interest charges on any unpaid fees starting on the 31st day following the day on which the billing for fees was sent to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing. Interest is not chargeable for unpaid advance payments requested under this section.

(h) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of the document or documents, solely in order to avoid payment of fees. When the Finance Board reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, it may aggregate any such requests and charge accordingly.

(i) *Waiver or reduction of fee*—(1) *Collection and processing costs.* In its sole discretion, the Finance Board may opt to forego a fee for any costs of a request for records from any category of requester if it determines that the routine costs of collection and processing of the fees are likely to equal or exceed the fee amount.

(2) *Public policy.* (i) The Finance Board will furnish documents without charge or at a reduced charge when it is determined that disclosure of the record is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(ii) In determining whether disclosure is in the public interest, the following factors may be considered:

(A) The relationship of the records to Finance Board operations or activities;

(B) The informative value of the record to be disclosed;

(C) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(D) The significance of that contribution to the public understanding of the subject;

(E) The nature of the requester's commercial interest, if any, in disclosure; and

(F) Whether the disclosure would be primarily in the requester's commercial interest.

(iii) In making a request for a waiver or reduction of fees, a requester should include:

(A) A clear statement of the requester's interest in the requested documents;

(B) The proposed use for the documents and whether the requester will derive income or other benefit from such use;

(C) A statement of how the public will benefit from such use or the release of the requested records; and

(D) If specialized use of a record is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(iv) The burden shall be on the requester to provide evidence or information in support of a waiver or reduction of fees.

(v) Determinations concerning waiver or reduction of fees shall be made by the Executive Secretary.

(vi) Appeals from such determinations shall be decided by the Finance Board, or its designee.

(j) *Fee payment method.* Fees assessed under this part will be delivered to the Executive Secretary by check or money order, payable to the ''Federal Housing Finance Board.''

(k) *FAX transmission.* The Executive Secretary and the requester may agree that any Finance Board records made available pursuant to a request under this part may be made by facsimile transmission (''FAX''). The charge for FAX transmission shall be the long distance charge on the telephone call, or $.25 for a call within the metropolitan Washington area in addition to a $.25 per page charge for use of the FAX apparatus.

(l) *Fee schedule.* Fees for searching, reviewing, duplicating, and providing Finance Board records under this section will be assessed in accordance with the following schedule:

Search (Manual):	
Supervisory/Professional Staff	$16.00 per hour.
Clerical Staff	$8.00 per hour.
Search (Computer):	
Operator	$16.00 per hour.
Computer output (PC).	$6.00 per hour.
Computer output (Mainframe).	[Actual cost].
Review	$16.00 per hour.
Duplication:	
Photocopy	$0.10 per page.
Computer generated.	$0.76 per 1000 lines.
Copy of microfiche	$0.30 per page.
Transcription of audio tape.	$4.50 per page.
Certification with seal and attestation by:	
Executive Secretary.	$5.00 per document.
Address labels	$8.00 per 1000 labels.

(m) *Other charges.* Complying with requests for special services associated with providing records (e.g., supplying special computer tabulations, or sending copies by express mail or messenger) is entirely at the Finance Board's discretion, and fees will be assessed to recover the actual cost of such services.

§ 904.7 Records not disclosed.

(a) *General.* Except as otherwise provided in this part, or as may be specifically authorized by the Finance Board, Finance Board records not otherwise publicly available will not be disclosed to a requester if such records are:

(1) *Authorized.* (i) Under criteria established by an Executive order to be kept secret because of national defense or foreign policy, and

(ii) In fact so classified pursuant to such order.

(2) Related solely to Finance Board internal personnel rules and practices.

(3) Specifically exempted from disclosure by:

(i) A statute other than the FOIA if:

(A) It requires that the record be withheld from the public in such a manner as to leave no discretion to the Finance Board; or

(B) It establishes particular criteria for withholding or refers to particular types of records to be withheld; or

(ii) Section 22 of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1442).

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(5) Inter-agency or intra-agency memoranda or letters that would not be available by law to a requester other than an agency in litigation with the Finance Board, including records of deliberation between Finance Board members and staff.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution or a Federal Home Loan Bank which furnished information on a confidential basis, and, in the case of a record compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of an individual.

(8) Contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of the Finance Board, a Financial Regulatory Agency or a Federal Home Loan Bank.

(b) *Segregation*. Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt from disclosure under this section.

(c) *Prohibition against disclosure*. (1) Except as authorized by this part or otherwise by the Finance Board, no Finance Board officer, employee, or agent shall disclose or permit disclosure of any unpublished Finance Board record to anyone (other than another officer, employee, or agent properly entitled to such information for the performance of official duties), whether by giving out or furnishing such record or a copy thereof or by allowing any person to inspect, examine or copy such record or copy thereof, or otherwise. Notwithstanding the foregoing, unpublished economic, statistical or similar information or unpublished records regarding Finance Board interpretations of statutory or regulatory provisions may be disclosed, orally or in writing, by a Finance Board officer, employee or agent, subject, however, to the restrictions stated in this section.

(2) Notwithstanding any other provision in this part, no disclosure of a record will be made to a requester when the Executive Secretary determines that such requester has failed to make a timely payment of a fee charged for a previous request for records under §904.6(g) until such time as such requester pays the full fee plus accrued interest to the Finance Board.

§904.8 Disclosure of Federal Home Loan Bank examination reports to Financial Regulatory Agencies.

The Director of the District Banks Directorate may disclose a report of examination of a Federal Home Loan Bank, or related record, to a Financial Regulatory Agency. Before disclosing such report, the Director shall make an affirmative determination that the requesting agency official is authorized to request the record on behalf of the agency and that the records are requested for a legitimate regulatory purpose and that the requesting agency has agreed not to disclose the contents of the record pursuant to the FOIA or the agency's regulations.

§ 904.9 Records of Financial Regulatory Agencies held by Federal Housing Finance Board.

(a) *Policy*. The Finance Board will not disclose information contained in records that have been given to it by one of the financial regulatory agencies.

(b) *Procedure*. Upon a receipt of a request for a record that was created by by another financial regulatory, the Finance Board will promptly forward the request to the appropriate financial regulatory agency and also will notify the requester of this action. No further action by Finance Board will be taken on the request.

§ 904.10 Service of process.

(a) *Service on agency*. Any legal process served on the Finance Board demanding access to its records under the FOIA shall be addressed to the Executive Secretary and may be served by mailing the process, by certified mail, postage prepaid, to the address shown in § 904.5(b)(1).

(b) *Action by person served*. (1) This section applies to any person in possession of a Finance Board record that may not be disclosed under this part, regardless of whether such person is a Finance Board officer or employee.

(2) Any person who is served with a subpoena, order or other process requiring attendance as a witness or document production of a record in any proceeding shall:

(i) Promptly advise the General Counsel of the Finance Board of such service and of all relevant facts, including the record requested; and

(ii) Advise both the authority issuing the subpoena, and the attorney for the party seeking the record, of the substance of these regulations.

(c) *Appearance by person served*. Except where disclosure of the record has been authorized by the Finance Board or law, any person, described in paragraph (b)(1) of this section, who is required to respond to a subpoena, shall attend the proceeding and respectfully decline to produce such record or give testimony with respect thereto, on the basis of this part. If the authority nevertheless orders the disclosure of the record or testimony, such person shall continue to respectfully decline to produce such record or testimony and shall promptly report the incident to the Finance Board.

PART 906—INFORMATION REGARDING MEETINGS OF THE BOARD OF DIRECTORS OF THE FEDERAL HOUSING FINANCE BOARD

Sec.
906.1 Purpose and scope.
906.2 Definitions.
906.3 Open meetings.
906.4 Closed meetings.
906.5 Procedures for closing meetings.
906.6 Notice of meetings.

AUTHORITY: 5 U.S.C. 552b.

SOURCE: 58 FR 19202, Apr. 13, 1993, unless otherwise noted.

§ 906.1 Purpose and scope.

(a) This part is issued by the Federal Housing Finance Board pursuant to the Government in the Sunshine Act (5 U.S.C. 552b), that requires Federal agencies, headed by collegial bodies, to promulgate regulations to implement its provisions. The purpose of these regulations is to provide the public with access to information regarding the decisionmaking processes of the Board of Directors of the Finance Board, while protecting the privacy rights of individuals and the ability of the Board of Directors to carry out its responsibilities.

(b) The Board of Directors shall not jointly conduct or dispose of official Finance Board business other than in accordance with this part.

§ 906.2 Definitions.

For the purpose of this part:

Board of Director or *Director* means a member of the Board of Directors.

Board of Directors means the five member governing Board of Directors of the Federal Housing Finance Board.

Chairperson means the Chairperson of the Board of Directors and includes the Acting Chairperson.

Executive Secretary means the Executive Secretary to the Board of Directors, and includes the Acting Secretary in the event the Executive Secretary position is vacant.

FHLBank means a Federal Home Loan Bank.

Finance Board means the Federal Housing Finance Board.

Meeting means any deliberations of three or more Directors of the Board of Directors, that determines or results in the joint conduct or disposition of official Finance Board business, but does not include:

(1) Discussions to determine whether meetings will be open or closed or whether information pertaining to closed meetings will be disclosed;

(2) Discussions to determine whether to schedule a meeting with less than seven days notice, or to change the time, place or subject matter of a scheduled meeting; and

(3) Disposition of Finance Board business by circulation of written materials on proposed actions to individual Directors for proposed actions, and notational voting by the individual Directors on such proposed actions.

Public observation means the right of the general public to attend open meetings of the Board of Directors, but does not include the right to participate therein unless invited to do so by the Chairperson.

Sunshine Act means the Government in the Sunshine Act.

§906.3 Open meetings.

(a) Except as provided in §906.4, every portion of every meeting of the Board of Directors shall be open to public observation.

(b) Unless otherwise specified in the public notice, open meetings of the Board of Directors shall be held in the Board Room of the Finance Board at 1777 F Street, NW., Washington, DC, at the time specified in the public notice.

§906.4 Closed meetings.

(a) The Board of Directors may close a meeting, or portion thereof, to public observation, or withhold information from the public pertaining to a meeting, when it determines that opening the meeting, or a portion thereof, or the public disclosure of information pertaining to such meeting, or portion thereof, is likely to:

(1) Disclose matters that are:

(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and

(ii) Are, in fact, properly classified pursuant to such Executive Order;

(2) Relate solely to the internal personnel rules and practices of the Finance Board;

(3) Disclose matters specifically exempt from disclosure by statute (other than the Freedom of Information Act (5 U.S.C. 552)), *Provided* that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding matters from the public or refers to particular types of matters to be withheld;

(4) Disclose trade secrets or commercial or financial information that is obtained from a person and is privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating,

or condition reports prepared by, on behalf of, or for the use of the Finance Board or another agency responsible for the regulation or supervision of FHLBanks or other financial institutions.

(9) Disclose information the premature disclosure of which would be likely to:

(i) (A) Lead to significant financial speculation in currencies, securities, or commodities;

(B) Significantly endanger the stability of any of the FHLBanks or any other financial institution; or

(ii) Significantly frustrate implementation of a proposed Finance Board action, except that this paragraph shall not apply in any instance where the Finance Board has already disclosed to the public the content or nature of its proposed action, or where the Finance Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena by the Board of Directors, or the Finance Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(b) A meeting or portions of a meeting shall not be closed nor information withheld pursuant to paragraph (a) of this section if the Board of Directors finds that the public interest requires otherwise.

§ 906.5 Procedures for closing meetings.

(a) *Regular procedures.* (1) Except as provided in paragraph (b) of this section, a meeting of the Board of Directors, or portion thereof, will be closed to public observation, and information pertaining to such meeting, or portion thereof, will be withheld from the public, when a majority of the Board of Directors determines by recorded vote that such meeting, or portion thereof, or the withholding of information qualifies for exemption under § 906.4, and the Board of Directors does not find that the public interest requires otherwise.

(2) Except as provided in paragraph (a)(3) of this section, a separate vote of the Board Directors will be taken with respect to the closing or the withholding of information as to each meeting or portion thereof that is proposed to be closed to public observation, or with respect to information that is proposed to be withheld pursuant to paragraph (a) of this section.

(3) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation, or with respect to any information concerning such series of meetings proposed to be withheld, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(4) The vote of each Board Director taken pursuant to paragraph (a) of this section shall be recorded, and no proxies shall be allowed.

(5) Whenever any person's interests may be directly affected by any portion of a meeting for any of the reasons referred to in paragraphs (a) (5), (6), or (7) of § 906.4, such person may send a written request to the Executive Secretary asking that such portion of the meeting be closed to public observation. The Executive Secretary will transmit the request to each Board Director, and upon the request of a Director, a recorded vote will be taken of the Board of Directors whether to close the meeting to public observation.

(6) (i) Within one day of any vote taken pursuant to paragraph (a) of this section, the Finance Board will make publicly available through the Executive Secretary a written copy of such vote reflecting the vote of each Board Director.

(ii) If a meeting or portion thereof is to be closed to public observation, the Finance Board within one day of the vote taken pursuant to paragraph (a) of this section will make publicly available through the Executive Secretary a full, written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their

affiliation, except to the extent such information is determined by the Board to be exempt from disclosure under paragraph (a) of § 906.4.

(7) Any person may request in writing to the Executive Secretary that an announced closed meeting, or portion thereof, be open to public observation. The Executive Secretary will transmit the request to each Board Director, and upon the request of a Director, a recorded vote will be taken of the Board of Directors on whether to open the meeting to public observation.

(b) *Expedited procedures.* (1) Since a majority of the meetings, of the Board of Directors may be closed pursuant to paragraphs (a)(4), (8), (9)(i) or (10) of § 906.4, 5 U.S.C. 552b(d)(4) allows the Finance Board to use expedited procedures in closing such meetings. The following are examples of meetings of the Board of Directors, or portions thereof, that may be closed to the public under these expedited procedures: sale of FHLBank consolidated bonds or notes, and review of examination, operating or condition reports of FHLBanks.

(2) A decision to close a meeting, or portion thereof, under paragraph (b) of this section shall be made at the beginning of the meeting, or portion thereof, by majority vote of the Directors.

(3)(i) The Finance Board shall maintain a record of each of the votes taken by its Board of Directors to close a meeting, or portion thereof, or to withhold public access to information thereof, under paragraph (b) of this section.

(ii) A copy of such record, reflecting the vote of each Board Director on the question of closing a meeting, or portion thereof, or withhholding public access to information thereof, under this paragraph (b) of this section, shall be made available to any member of the public upon request to the Executive Secretary.

(4) Public announcement of the time, place and subject matter of meetings, or portions thereof, closed under this paragraph (b) of this section shall be made at the earliest practical time.

(c) *Records of closed proceedings*—(1) *Transcripts or electronic recording.* Except as provided in paragraph (c)(2) of this section, the Finance Board shall make and maintain a complete transcript or verbatim electronic recording of the proceedings at each meeting, or portion thereof, closed to public observation under paragraph (a) or (b) of this section.

(2) *Minutes.* The Finance Board may make and maintain a set of complete minutes, in lieu of such transcript or electronic recording, with respect to meetings, or portions thereof, closed or information withheld under paragraphs (a)(8), (9)(i) or (10) of § 906.4. Such set of minutes shall fully and clearly describe all matters discussed and provide a full and accurate summary of any action taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each Board Director on the question). All documents considered in connection with any action shall be identified in such set of minutes.

(3) *Availability of Records.* (i) The transcript, electronic recording or set of minutes of an item discussed, or of testimony received, at a meeting, shall be made available promptly to the public through the Executive Secretary except in cases where the Board of Directors determines that the item or testimony contains information which may be withheld under § 906.4(a).

(ii) Copies of such transcript, electronic recording or set of minutes, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(iii) The Finance Board shall maintain a complete copy of the transcript, verbatim electronic recording or complete set of minutes of each meeting, or portion thereof closed to the public, for at least two years after such meeting, or until one year after the conclusion of any proceeding of the Board of Directors with respect to which the meeting or portion thereof was held, whichever occurs later.

(d) *Legal certification for closing meeting.* (1) For every meeting, or portion thereof, of the Board of Directors closed pursuant to paragraphs (a) or (b) of this section, the General Counsel (or in the General Counsel's absence or incapacity the senior legal officer available) shall publicly certify that the meeting or portion thereof may be

closed to the public pursuant to the Sunshine Act and this part, and specifically state the relevant exemption in support thereof.

(2) A copy of the certification, together with a statement from the Chairperson or, when appropriate, the Acting Chairperson or designee, setting forth the time and place of the meeting and the persons present, shall be retained in the permanent files of the Finance Board.

§ 906.6 Notice of meetings.

(a) *Scope of notice.* (1) Except as provided in paragraph (a) of § 906.4 that such information is determined to be exempt from disclosure, each open meeting of the Board of Directors, or each meeting closed under the regular procedures in paragraph (a) of § 906.5, will be preceded by public notice as described in this section.

(2) The notices for meetings of the Board of Directors closed under the expedited procedures pursuant to paragraph (b) of § 906.5 will be made in accordance with § 906.5(b)(4).

(b) *Content of notice.* A notice of an open meeting or a meeting closed under the regular procedures in paragraph (a) of § 906.5 will state the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and telephone number of the Executive Secretary for information about the meeting. Each such notice shall be posted in the lobby of the Finance Board offices, and may be made available in addition by other means or at other locations as deemed desirable. Immediately following the posting of each such notice, the Finance Board will publish the notice in the FEDERAL REGISTER.

(c) *Time*—(1) *Seven days notice.* Except as provided in paragraph (c)(2) of this section, a public notice of open meetings or meetings closed under paragraph (a) of § 906.5 will be made at least seven days in advance of each meeting.

(2) *Less than seven days notice.* When a majority of the Board of Directors determine by recorded vote that Finance Board business requires a meeting to be called at any earlier date, the seven-day prior notice rule may be suspended and notice shall be made at the earliest practicable time.

(d) *Amendment of notice*—(1) *Time and place.* A change in the time or place of a meeting following public notice may be made only if announced at the earliest practicable time.

(2) *Subject matter.* A change in the subject matter of a meeting or a re-determination to open or close a meeting, or portions thereof, may be made, after public notice, only if:

(i) At least a majority of the Board Directors determines by recorded vote that Finance Board business so requires and that no earlier notice of the change was possible; and

(ii) The Finance Board publicly announces the change and the vote of each Board Director by posting a notice thereof in the lobby of the Finance Board offices at the earliest practicable time.

(3) *Timing of amendment.* A public announcement of a change in either the time, place or subject matter of a meeting may be made after the commencement of the meeting affected.

(4) *Publication of amendment.* Each change to a notice of a meeting will be published in the FEDERAL REGISTER, following the Finance Board's public announcement of the change.

PART 908—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT [RESERVED]

PART 909—PRIVACY ACT PROCEDURES

Sec.
909.1 General.
909.2 Definitions.
909.3 Procedures for requesting individual records in a system of records; appeal of denials.
909.4 Time, place and identification requirements for requests.
909.5 Disclosure of requested records.
909.6 Procedures for requesting amendment to a record in a system of records; appeal of denials.
909.7 Fees.
909.8 Penalties.
909.9 Exemptions.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 58 FR 19205, Apr. 13, 1993, unless otherwise noted.

§909.1 General.

(a) *Purpose.* This part implements the provisions of the Privacy Act, 5 U.S.C. 552a, which require each executive agency to promulgate regulations for the protection of the privacy of individuals on whom the agency maintains information that is retrieved by reference to an individual's name or an identifying particular assigned to the individual.

(b) *Scope.* These regulations establish procedures by which: an individual may seek access under the Privacy Act to records pertaining to him or her, may request correction or amendment of such records, or may seek an accounting of disclosures of such records maintained by the agency.

§909.2 Definitions.

As used in this part:

(a) *Amendment* means any correction, addition or deletion of information contained in a record, as defined in paragraph (g) of this section.

(b) *Board of Directors* means the five member governing Board of Directors of the Federal Housing Finance Board.

(c) *Business days* means all days except Saturdays, Sundays, or Federal Government holidays.

(d) *Finance Board* means the Federal Housing Finance Board.

(e) *Individual* means a natural person who is either a citizen of the United States of America or an alien lawfully admitted to the United States for permanent residence. The term includes the parent(s) having custody of any minor or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(f) *Maintain* means to keep or hold and preserve in an existing state, and includes the terms ''collect,'' ''use,'' ''disseminate'' and ''control.''

(g) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Finance Board within a system of records, and that contains such individual's name, or identifying number, symbol, or other identifying particular assigned to the individual, including a fingerprint, voice print or photograph.

(h) *Records systems manager* means the employee responsible for maintaining a designated system of records at the Finance Board, as such official or employee may be identified through public notice in the FEDERAL REGISTER from time to time by the Finance Board entitled: ''Privacy Act of 1974: Systems of Records.''

(i) *Routine use* means the use of a record for a purpose compatible with the purpose for which it was originally created.

(j) *System of records* means a group of records maintained or controlled by the Finance Board from which information is or may be retrieved by the name of an individual or some identifying number, symbol or other identifying particular assigned to the individual.

(k) *Designated system of records* means a system of records, as defined in paragraph (j) of this section, that has been listed in the FEDERAL REGISTER as required by 5 U.S.C. 552a(e).

§909.3 Procedures for requesting individual records in a system of records; appeal of denials.

(a) *Current or former employees.* Any current or former Finance Board employee seeking access to such employee's official personnel record maintained by the Finance Board shall submit a request to the Finance Board in the manner prescribed by regulations of the Office of Personnel Management, at title 5, Code of Federal Regulations.

(b) *Other requests.* Other requests for access to a record that contains information on the requesting individual and is maintained in a Finance Board designated system of records shall be writing, shall contain a reasonable, succinct description of the record sought, and shall identify the particular designated system of records in which the record may be maintained, as identified in a notice published by the Finance Board from time to time in the FEDERAL REGISTER.

(c) *Accounting for previous disclosures.* An individual may use the procedures of this section to request an accounting from the Finance Board of previous disclosures of records pertaining to such individual in a designated system of records, pursuant to the Privacy Act, 5 U.S.C. 552a(c).

(d) *Medical records procedures.* Information on an individual contained in medical records will be disclosed to a requesting individual in accordance with the procedures in paragraph (b) of this section and the requirements of this part, except, if in the judgment of the Finance Board the disclosure of such information could have an adverse effect on the individual, the Finance Board may withhold such information from the individual and transmit it to a licensed medical physician named by the requesting individual.

(e) *Response policy.* The Finance Board will acknowledge, or substantially respond to if practicable, a request made under this section within ten (10) business days of its receipt.

(f) *Initial review.* (1) The Executive Secretary will make the initial determination whether to grant or deny a request for records under this part, after consultation with the systems manager of the appropriate designated system of records.

(2) The Executive Secretary will notify the requesting individual whether the Finance Board:

(i) has the requested record in a Finance Board designated system of records; and

(ii) will release the requested record or not.

(3) If the request is denied, the Executive Secretary will inform the requesting individual of the reasons for nondisclosure, and describe the individual's right to appeal the determination.

(g) *Appeal process.* (1) An individual who has been denied a request made pursuant to paragraph (b) of this section, may appeal to the Board of Directors, or designee, within 30 business days of being notified of the denial pursuant to paragraph (f) of this section.

(2) The appeal shall be in writing, shall be mailed or delivered to the Executive Secretary, and shall give the reasons why the initial determination should be overturned.

(3) The Board of Directors, or such official designated by the Board of Directors, shall decide on the appeal within 30 business days following receipt of the appeal by the Executive Secretary. The Board of Directors or designated official may extend the time period for good cause, after giving notice, and reason therefor, to the individual making the appeal.

(4) If a decision is made to affirm the initial denial of a request for a record by an individual, the Board of Directors or designated official shall notify the individual making the appeal of the decision and the reason therefor, and shall inform the individual of the right of judicial review of the appeal.

§ 909.4 Time, place and identification requirements for requests.

(a) *Time.* An individual may hand deliver a written request for access to or amendment of records, made under § 909.3(b) or § 909.6 of this part, to the Finance Board on any business day, between the hours of 8:30 a.m. and 5:30 p.m.

(b) *Place.* All written requests for access to or amendment of records shall be mailed or hand delivered to the Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

(c) *Identification*—(1) *Mailed requests.* All requests for access to or amendment of records that are mailed to the Finance Board shall be signed by the individual who is the subject of the requested record and who is making the request. The validity of each such signature shall be attested to by a notary public.

(2) *Hand delivered requests.* All requests for access to or amendment of records that are hand delivered to the Finance Board by the requesting individual shall be authenticated as to the identity of the requesting individual by two forms of identification with photographs, or by one such form of identification and a properly authenticated birth certificate.

§ 909.5 Disclosure of requested record.

(a) *Requesting individual.* Except to the extent that records pertaining to an individual are exempt from disclosure under § 909.9 of this part, or were compiled in reasonable anticipation of a civil action or proceedings, the Finance Board will make such records available upon request, pursuant to § 909.3 of this part in either of the following methods, at the option of the requesting individual:

(1) By mailing a copy of the record to the address of the requesting individual; or

(2) By making the record available for inspection and copying by the requesting individual, as soon as practicable, at the offices of the Executive Secretary on regular business days, from 9:30 a.m. until 4:30 p.m. The requesting individual may choose to be accompanied by another person during the inspection and copying by submitting a signed statement authorizing the presence of such person.

(b) *Other individuals.* (1) The Finance Board will disclose a record to a person or entity other than the requesting individual, in the manner provided by paragraph (a) of this section, only when the Finance Board:

(i) Receives a copy of a written authorization for disclosure to such person or entity signed by the requesting individual and attested to by a notary public; and

(ii) Receives adequate identification from such person or entity.

(2) The restrictions contained in paragraph (b)(1) of this section on disclosure of a record shall not apply to:

(i) A disclosure to Finance Board officers or employees who have a need for the record in the performance of their duties;

(ii) A disclosure otherwise required by the Freedom of Information Act (5 U.S.C. 552);

(iii) A routine use listed with respect to a designated system of records;

(iv) A disclosure to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13 of the United States Code;

(v) A disclosure to a recipient who has provided the Finance Board with advance written assurance that the record will be used solely as a statistical research or reporting record, and that the record is to be transferred in a form that is not individually identifiable;

(vi) A disclosure to the National Archives and Records Administration as a record with sufficient historical or other value to warrant its continued preservation by the Federal Government or for evaluation by the Archivist of the United States to determine whether it has such value.

(vii) A disclosure to another agency or to an instrumentality of any government jurisdiction within or under the control of the United States for civil or criminal law enforcement activity authorized by law if the head of such agency or instrumentality has made a written request to the Finance Board specifying the particular record requested and the law enforcement activity for which it is sought;

(viii) A disclosure to any person pursuant to a showing of compelling circumstances affecting the health and safety of an individual if notification of the disclosure is transmitted to the last known address of the individual who is the subject of the disclosed record;

(ix) A disclosure to a joint committee of Congress, or any subcommittee thereof, or to either House of Congress, or to any committee or joint committee, or subcommittee thereof, but only to the extent of matter within such joint committee's, committee's or subcommittee's jurisdiction;

(x) A disclosure to the Comptroller General, or authorized representative, made in the course of performing the duties of the General Accounting Office.

(xi) Pursuant to the order of a court of competent jurisdiction; or

(xii) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

(c) The Finance Board, with respect to each system of records under its control shall:

(1) Except for disclosures made under paragraphs (b)(1) or (b)(2) of this section, keep an accurate accounting of:

(i) The date, nature, and purpose of each disclosure of a record to any person or to another agency made under paragraph (b) of this section; and

(ii) The name and address of the person or agency to whom the disclosure is made;

(2) Retain the accounting made under paragraph (c)(1) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made; and

(3) Except for disclosures made under paragraph (b)(2)(vii) of this section,

make the accounting made under paragraph (c)(1) of this section available to the individual named in the record at his or her request.

(4) When a record has been amended or corrected or when a statement of disagreement has been filed, the Finance Board will advise all prior recipients of the affected record whose identities may be determined pursuant to the disclosure accountings required by the Privacy Act or any other accounting previously made, of the amendment or correction or the filing of the statement of disagreement. Any disclosure of disputed information occurring after a statement of disagreement has been filed will clearly identify the specific information disputed and be accompanied by a copy of the statement of disagreement and a copy of the statement of explanation, if any, as set forth in § 909.6 of this part.

§ 909.6 Procedures for requesting amendment to a record in a system of records; appeal of denials.

(a) *Scope.* This section applies only to amendment of records on an individual maintained in a Finance Board system of records used in making a determination about such individual.

(b) *Individual request.* (1) Any individual may request the Finance Board to amend any portion of a record in a designated system of records pertaining to that individual, where such portion of the record is not accurate, relevant, timely or complete.

(2) A request to amend a record pursuant to this section shall be in writing, shall identify the particular designated system of records containing the record which the individual requests to amend and the portion of that record to be amended, and shall describe the reasons for the requested amendment.

(c) *Prior proceeding.* Nothing in this section shall permit a collateral attack upon any matter decided in a prior judicial, quasi-judicial or other proceeding.

(d) *Response policy.* The Finance Board shall acknowledge, or substantially reply to, if practicable, a request for amendment of records under this section.

(e) *Initial review.* (1) The Executive Secretary shall acknowledge all requests by individuals for amendment of records. The Executive Secretary shall refer all requests to the appropriate systems manager of the designated system of records containing the record to be reviewed, for disposition of the request within 10 business days of the referral. The systems manager shall promptly review the request and review the record for accuracy, relevance, timeliness, completeness or necessity.

(2) The systems manager will promptly provide to the Executive Secretary a recommendation whether the record should be amended and shall state any reasons for denying the request in any part.

(3) The Executive Secretary will promptly notify the requesting individual of his decision and reasons for any denial, and describe the individual's right to appeal any denial.

(f) *Appeal process.* (1) An individual who has been denied a request made pursuant to this section may appeal to the Board of Directors, or an official designated by the Board of Directors, within 30 business days of being notified of the denial pursuant to paragraph (e)(3) of this section.

(2) The appeal shall be in writing, shall be mailed to the Executive Secretary, and shall give the reasons why the initial determination should be overturned.

(3) The Board of Directors, or designated official, shall decide the appeal within 30 business days of its receipt by the Executive Secretary. The Board of Directors or designated official may extend the 30 day limit for good cause, after giving notice, and the reasons therefor, to the individual making the appeal.

(4) If a decision is made to affirm the initial denial of a request for a record by an individual, the Board of Directors or designated official shall notify the individual making the appeal of the decision and the reason therefor, and shall inform the individual of the right of judicial review of the appeal.

(g) *Statements.* (1) Within 30 business days after being denied an appeal pursuant to paragraph (f) of this section, an individual may submit a concise

written statement of disagreement setting forth the individual's reasons for disagreeing with the Finance Board's refusal to amend the record.

(2) Such statement shall be provided to persons or other agencies or entities to whom the record is disclosed.

(3) The Finance Board may, if deemed appropriate, prepare a concise statement of explanation of the reason(s) why the requested amendment or correction was not made. Any statement of explanation will be included in the system of records in the same manner as the statement of disagreement. A copy of the statement of explanation and of the notation of the dispute as marked on the original record will be provided to the individual who requested correction or amendment of the record.

§909.7 Fees.

The Finance Board, upon a request for records disclosable pursuant to these regulations, shall charge a fee of $0.10 per page for duplicating, unless:

(a) The Finance Board determines that it shall grant access to the record only by making a copy thereof;

(b) The total fee will not exceed $2.00; or

(c) The Finance Board determines, in its sole discretion, that a reduction or waiver of the fees is warranted for good cause.

§909.8 Penalties.

Subsection (i)(3) of the Privacy Act of 1974 (5 U.S.C. 552a(i)(3)) imposes criminal penalties for obtaining Finance Board records on individuals under false pretenses. It provides as follows:

> Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretense shall be guilty of a misdemeanor and fined not more than $5,000.00.

§909.9 Exemptions.

The following information is exempt from disclosure:

(a) The Office of Inspector General Investigative Files system of records is exempt from all sections of the Privacy Act (5 U.S.C. 552a) except the following: (b) relating to conditions of disclosure; (c)(1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4) (A) through (F) relating to publishing a system notice setting forth name, location, categories of individuals and records, routing uses and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e) (6), (7), (9), (10) and (11) relating to dissemination and maintenance of records, and relating to criminal penalties. This system of records is also exempt from §§909.3, 909.4, 909.5 (a) and (c)(3) and (4), and 909.6 of this part. This exemption applies to those records and information contained in the system of records pertaining to the enforcement of criminal laws.

(b) To the extent that there may exist within this system of records and investigative files compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act, the Inspector General Investigative Case Files system of records is exempt from the following sections of the Privacy Act (5 U.S.C. 552(a)): (c)(3) relating to access to the disclosure accounting, (d) relating to access to records, (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H) and (I) relating to publishing the system notice information as to agency procedures of access and amendment and information as to the categories of sources or records, and (f) relating to developing agency rules for gaining access and making corrections. This system of records is also exempt from §§909.3, 909.4, 909.5 (a) and (c)(3), and 909.6 of this part.

(c) Reason for exemptions.

(1) The Office of Inspector General is a component of the Finance Board which performs, as its principal function, activity pertaining to the enforcement of criminal laws, within the meaning of 5 U.S.C. 552a(j)(2). This exemption applies only to those records and information contained in the system of records pertaining to criminal investigations. This system of records is exempt for one or more of the following reasons:

(i) To prevent interference with law enforcement proceedings.

(ii) To avoid unwarranted invasion of personal privacy by disclosure of information about third parties, including other subjects of investigation, investigators, and witnesses.

(iii) To protect the identity of Federal employees who furnish a complaint or information to the Office of the Inspector General, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(iv) To protect the confidentiality of non-Federal employee sources of information.

(v) To assure access to sources of confidential information, including those contained in Federal, State and local criminal law enforcement information systems.

(vi) To prevent disclosure of law enforcement techniques and procedures.

(vii) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(2) Investigative records within this system of records which are compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), are exempt under the provisions of 5 U.S.C. 552a(k)(2); provided, however, that if any individual is denied any right, privilege, or benefit that they would otherwise be entitled by Federal law, or for which they would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is exempt for one or more of the following reasons:

(i) To prevent interference with law enforcement proceedings.

(ii) To protect investigatory material compiled for law enforcement purposes.

(iii) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, law enforcement personnel and sources of information.

(iv) To fulfill commitments made to protect the confidentiality of sources.

(v) To protect the identity of Federal employees who furnish a complaint or information of OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(vi) To assure access to sources of confidential information, including those contained in Federal, State and local criminal law enforcement systems.

(vii) To prevent disclosure of law enforcement techniques and procedures.

(viii) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(d) Records within a Finance Board System of records comprised of investigatory material compiled solely for the purpose of determining suitability or eligibility for Federal civilian employment, Federal contractors, or access to classified information, are exempt under the provisions of 5 U.S.C. 552a(k)(5), but only to the extent that disclosure would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is exempt for one or more of the following reasons:

(1) To fulfill commitments made to protect the confidentiality of sources.

(2) To assure access to sources of confidential information; including those contained in Federal, State, and local criminal law enforcement information systems.

(e) Testing or examination material used solely to determine or assess individual qualifications for appointment to employment at the Finance Board, or promotion therein—the disclosure of which would compromise the objectivity or fairness of the testing, evaluation or examining process is exempt under 5 U.S.C. 552a(k)(6).

PART 910—CONSOLIDATED BONDS AND DEBENTURES

Sec.

910.0 Definitions.
910.1 Issuance of consolidated bonds.

910.2 Form of consolidated bonds.
910.3 Transactions in consolidated bonds.
910.4 Lost, stolen, destroyed, mutilated, or defaced bonds.
910.5 Administrative provision.
910.6 Reservation of right to revoke or amend; limitations thereon.

AUTHORITY: 12 U.S.C. 1422b, 1431.

§910.0 Definitions.

(a) *Board* means the Federal Housing Finance Board.

(b) *Consolidated bonds* means bonds or notes issued on behalf of all Federal Home Loan Banks.

(c) *Senior bonds* means consolidated bonds issued pursuant to 12 U.S.C. 1431 and this part and not defeased, other than bonds specifically subordinated to any then outstanding consolidated bonds.

(d) *Unsecured, senior liabilities* means all obligations of the Banks recognized as a liability under Generally Accepted Accounting Principles, except:

(1) Liabilities that are covered by a perfected security interest;

(2) Consolidated bonds;

(3) Bonds issued pursuant to 12 U.S.C. 1431(a); and

(4) Allowance for losses for off-balance sheet obligations.

[57 FR 62186, Dec. 30, 1992]

§910.1 Issuance of consolidated bonds.

(a) *General.* The Board will determine and authorize the issuance of all consolidated bonds, dates of issue, maturities, rates of interest, terms and conditions thereof, and the manner in which such bonds shall be issued, subject to the provisions of 31 U.S.C. 9108. The Board in its discretion may delegate this responsibility.

(b) *Leverage limit.* The Board shall not issue senior bonds, other than bonds issued to refund consolidated bonds previously issued, if, immediately following such issuance, the aggregate amount of senior bonds and unsecured, senior liabilities of the Federal Home Loan Banks exceeds twenty (20) times the total paid-in capital stock, retained earnings and reserves (excluding loss reserves and deposit reserves pursuant to 12 U.S.C. 1431(g)), of all the Federal Home Loan Banks.

(c) *Negative pledge requirement.* The Federal Home Loan Banks shall at all times maintain assets of the following types, free from any lien or pledge, in a total amount at least equal to the amount of senior bonds outstanding:

(1) Cash;

(2) Obligations of or fully guaranteed by the United States;

(3) Secured advances;

(4) Mortgages as to which one or more Federal Home Loan Banks have any guaranty or insurance, or commitment therefore, by the United States or any agency thereof;

(5) Investments described in section 16(a) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1436(a)); and

(6) Other securities which have been assigned a rating or assessment by a major nationally recognized securities rating agency that is equivalent to or higher than the rating or assessment assigned by such agency on senior bonds outstanding.

Provided, however, that any assets of the types described in paragraphs (c)(1) through (6) of this section which are subject to a lien or pledge for the benefit of the holders of any issue of senior bonds shall be treated as if they were assets free from any lien or pledge for purposes of compliance with this provision.

[57 FR 62186, Dec. 30, 1992]

§910.2 Form of consolidated bonds.

Consolidated Federal Home Loan Bank bonds shall be issued in series and all consolidated bonds of the same series shall be of like date, tenor, and effect except as to denominations, which shall be in such amounts as may be authorized by the Board. The form of each consolidated bond shall be prescribed by the Board. Consolidated bonds issued with maturities of 1 year or less may be designated consolidated notes.

[42 FR 56316, Oct. 25, 1977. Redesignated at 54 FR 36759, Sept. 5, 1989]

§910.3 Transactions in consolidated bonds.

The general regulations of the Department of Treasury now or hereafter in force governing transactions in United States securities, except 31 CFR part 357, regarding book-entry procedure, are hereby incorporated into this

part, so far as applicable and as necessarily modified to relate to consolidated Federal Home Loan Bank bonds, as the regulations of the Board for similar transactions in consolidated Federal Home Loan Bank bonds. The book-entry procedure for consolidated Federal Home Loan Bank bonds is contained in part 912 of this subchapter.

[61 FR 64024, Dec. 3, 1996]

§ 910.4 Lost, stolen, destroyed, mutilated, or defaced bonds.

The statutes of the United States now or hereafter in force, and the regulations of the Treasury Department, now or hereafter in force, governing relief on account of the loss, theft, destruction, mutilation, or defacement of United States securities, so far as applicable and as necessarily modified to relate to consolidated Federal Home Loan Bank bonds, are hereby adopted as the regulations of the Board for the issuance of substitute consolidated Federal Home Loan Bank bonds or the payment of lost, stolen, destroyed, mutilated, or defaced consolidated Federal Home Loan Bank bonds.

[23 FR 9878, Dec. 23, 1958. Redesignated at 54 FR 36759, Sept. 5, 1989]

§ 910.5 Administrative provision.

The Secretary of the Treasury, or the Acting Secretary of the Treasury, is hereby authorized and empowered, as the agent of the Board and the Federal Home Loan Banks, to administer the regulations of the Board adopted by §§ 910.3 and 910.4, and to delegate such authority at his discretion to other officers, employees, and agents of the United States Treasury Department. Any such regulations may be waived on behalf of the Board and the Federal Home Loan Banks by the Secretary of the Treasury or the Acting Secretary of the Treasury or by an officer of the United States Treasury Department authorized to waive similar regulations with respect to United States securities, but only in any particular case in which a similar regulation, with respect to United States Securities would be waived. The terms ''securities'' and ''bonds'' as used in this section shall, unless the context otherwise requires, include and apply to coupons and interim certificates.

[23 FR 9878, Dec. 23, 1958. Redesignated at 54 FR 36759, Sept. 5, 1989, and amended at 55 FR 2229, Jan. 23, 1990]

§ 910.6 Reservation of right to revoke or amend; limitations thereon.

(a) *General.* The right to revoke or amend this part, or to prescribe and issue supplemental or amendatory rules and regulations thereto, is hereby reserved.

(b) *Limitation on amendment of leverage limit or negative pledge requirement.* No revocation or relaxation of any of the restrictions or requirements contained in or imposed by § 910.1 (b) or (c) shall be effected except:

(1) If there are no senior bonds then outstanding or if there shall have been deposited with the Treasurer of the United States, noncallable (or called) direct obligations of the United States of America or obligations fully guaranteed by the United States of America of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient to pay in full (together with any other moneys placed in trust and irrevocably committed for such payment and without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom) the principal of and interest to date of maturity or to such date designated for redemption and any redemption premium on all senior bonds the holders of which have not consented to such revocation or relaxation; or

(2) Section 910.1(b) may be changed by the Board in any manner if the Board receives either:

(i) Written evidence from at least one major nationally recognized securities rating agency which rates or makes an assessment of the senior bonds that such change in that provision will not result in the lowering of its then-current rating or assessment on senior bonds outstanding or next to be issued; or

(ii) A written opinion from an investment banking firm that such change

would not have a materially adverse effect on the creditworthiness of senior bonds outstanding or next to be issued.

[57 FR 62186, Dec. 30, 1992]

PART 912—BOOK-ENTRY PROCEDURE FOR FEDERAL HOME LOAN BANK SECURITIES

Sec.

912.1 Definitions.
912.2 Law governing rights and obligations of Federal Home Loan Banks and Federal Reserve Banks; rights of any Person against Federal Home Loan Banks and Federal Reserve Banks.
912.3 Law governing other interests.
912.4 Creation of Participant's Security Entitlement; security interests.
912.5 Obligations of the Federal Home Loan Banks; no adverse claims.
912.6 Authority of Federal Reserve Banks.
912.7 Liability of Federal Home Loan Banks and Federal Reserve Banks
912.8 Notice of attachment for Book-entry Federal Home Loan Bank Securities.
912.9 Reference to certain Department of Treasury commentary and determinations.
912.10 Obligations of United States with respect to Federal Home Loan Bank Securities.

AUTHORITY: 12 U.S.C. 1422a, 1422b, 1431, 1435.

SOURCE: 61 FR 64024, Dec. 3, 1996, unless otherwise noted.

§912.1 Definitions.

For purposes of this part, unless the context otherwise requires or indicates:

(a) *Adverse Claim* means a claim that a claimant has a property interest in a Book-entry Federal Home Loan Bank Security and that it is a violation of the rights of the claimant for another Person to hold, transfer, or deal with the Security.

(b) *Book-entry Federal Home Loan Bank Security* means a Federal Home Loan Bank Security maintained in the book-entry system of the Federal Reserve Banks.

(c) *Entitlement Holder* means a Person to whose account an interest in a Book-entry Federal Home Loan Bank Security is credited on the records of a Securities Intermediary.

(d) *Federal Home Loan Bank Security* means a consolidated bond, debenture, note, or other obligation of the Federal Home Loan Banks issued under authority of section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431).

(e) *Federal Reserve Bank* means the a Federal Reserve Bank or branch, acting as fiscal agent of the Federal Home Loan Banks, unless otherwise indicated.

(f) *Federal Reserve Bank Operating Circular* means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Federal Reserve Bank maintains Book-entry Securities accounts and transfers Book-entry Securities.

(g) *Funds account* means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, Book-entry Securities transaction fees, or principal and interest payments.

(h) *Participant* means a Person that maintains a Participant's Securities Account with a Federal Reserve Bank.

(i) *Participant's Securities Account* means an account in the name of a Participant at a Federal Reserve Bank to which Book-entry Federal Home Loan Bank Securities held for a Participant are or may be credited.

(j) *Person* means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, a Federal Home Loan Bank, or a Federal Reserve Bank.

(k) *Revised Article 8* means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text. Copies of this publication are available from the Executive Office of the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, IL 60611.

(l) *Securities Intermediary* means:

(1) A Person that is registered as a ''clearing agency'' under the federal securities laws; a Federal Reserve Bank; any other person that provides clearance or settlement services with respect to a Book-entry Federal Home

Loan Bank Security that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority; or

(2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(m) *Security Entitlement* means the rights and property interest of an Entitlement Holder with respect to a Book-entry Federal Home Loan Bank Security.

(n) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(o) *Transfer Message* means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Federal Home Loan Bank Security, as set forth in Federal Reserve Bank Operating Circulars.

§ 912.2 Law governing rights and obligations of Federal Home Loan Banks and Federal Reserve Banks; rights of any Person against Federal Home Loan Banks and Federal Reserve Banks.

(a) Except as provided in paragraph (b) of this section, the rights and obligations of the Federal Home Loan Banks and the Federal Reserve Banks with respect to: A Book-entry Federal Home Loan Bank Security or Security Entitlement and the operation of the Book-entry system, as it applies to Federal Home Loan Bank securities; and the rights of any Person, including a Participant, against the Federal Home Loan Banks and the Federal Reserve Banks with respect to: A Book-entry Federal Home Loan Bank Security or Security Entitlement and the operation of the Book-entry system, as it applies to Federal Home Loan Bank Securities; are governed solely by regulations of the Federal Housing Finance Board, including the regulations of this part 912, the applicable offering notice, applicable procedures established by the Federal Home Loan Banks, and Federal Reserve Bank Operating Circulars.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 912.4(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 912.4(c)(1), is governed by the law determined in the manner specified in § 912.3.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law specified in the first sentence of paragraph (b) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State.

§ 912.3 Law governing other interests.

(a) To the extent not inconsistent with this part 912, the law (not including the conflict-of-law rules) of a Securities Intermediary's jurisdiction governs:

(1) The acquisition of a Security Entitlement from the Securities Intermediary;

(2) The rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlement;

(3) Whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlement;

(4) Whether an Adverse Claim can be asserted against a Person who acquires a Security Entitlement from the Securities Intermediary or a Person who purchases a Security Entitlement or interest therein from an Entitlement Holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection, and priority of a security interest in a Security Entitlement.

(b) The following rules determine a ''Securities Intermediary's jurisdiction'' for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder's account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the Entitlement Holder's account as provided in paragraph (b)(3) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted Revised Article 8, then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Securities Account is a clearing corporation, and the Participant's interest in a Federal Home Loan Bank Book-entry Security is a Security Entitlement.

§912.4 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book entry that a Book-entry Federal Home Loan Bank Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including, without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the Securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the Security. For purposes of this paragraph (b), an ''authorized representative of the United States'' is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Federal Home Loan Banks and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in a Security Entitlement in favor of any Person except to the extent of any specific requirement of Federal law or regulation

or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the Securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest in a Security Entitlement, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 912.2(b) or § 912.3. The perfection, effect of perfection or non-perfection, and priority of a security interest are governed by that applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under that law, including with respect to the effect of perfection and priority of the security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 912.5 Obligations of the Federal Home Loan Banks; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 912.4(c)(1), for the purposes of this part 912, the Federal Home Loan Banks and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Federal Home Loan Bank Security has been credited as the person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to the Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks nor the Federal Home Loan Banks are liable to a Person asserting or having an Adverse Claim to a Security Entitlement or to a Book-entry Federal Home Loan Bank Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Federal Home Loan Bank Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Federal Home Loan Banks to make payments of interest and principal with respect to Book-entry Federal Home Loan Bank Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry Federal Home Loan Bank Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at the Federal Reserve Bank or otherwise paid as directed by the Participant.

(2) Book-entry Federal Home Loan Bank Securities are paid, either at maturity or upon redemption, in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the proceeds, including both principal and interest, where applicable, to a Funds Account at the Federal Reserve Bank or otherwise paying such principal and interest as directed by the Participant. No action by the Participant is required in connection with the payment of a Book-entry Federal Home Loan Bank Security, unless otherwise expressly required.

§ 912.6 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Federal Home Loan Banks to perform functions with respect to the issuance of Book-entry Federal Home Loan Bank Securities, in accordance with the terms of the applicable offering notice and with procedures established by

the Federal Home Loan Banks; to service and maintain Book-entry Federal Home Loan Bank Securities in accounts established for such purposes; to make payments of principal, interest and redemption premium (if any), as directed by the Federal Home Loan Banks; to effect transfer of Book-entry Federal Home Loan Bank Securities between Participants' Securities Accounts as directed by the Participants; and to perform such other duties as fiscal agent as may be requested by the Federal Home Loan Banks.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this part 912, governing the details of its handling of Book-entry Federal Home Loan Bank Securities, Security Entitlements, and the operation of the book-entry system under this part 912.

§912.7 Liability of Federal Home Loan Banks and Federal Reserve Banks.

The Federal Home Loan Banks and the Federal Reserve Banks may rely on the information provided in a tender, transaction request form, other transaction documentation, or Transfer Message, and are not required to verify the information. The Federal Home Loan Banks and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a tender, transaction request form, other transaction documentation, or Transfer Message, or evidence submitted in support thereof.

§912.8 Notice of attachment for Book-entry Federal Home Loan Bank Securities.

The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

§912.9 Reference to certain Department of Treasury commentary and determinations.

(a) The Department of Treasury TRADES Commentary (Appendix B to 31 CFR part 357) addressing the Department of Treasury regulations governing book-entry procedure for Treasury Securities is hereby referenced, so far as applicable and as necessarily modified to relate to Book-entry Federal Home Loan Bank Securities, as an interpretive aid to this part 912.

(b) Determinations of the Department of Treasury regarding whether a State shall be considered to have adopted Revised Article 8 for purposes of 31 CFR part 357, as published in the FEDERAL REGISTER or otherwise, shall also apply to this part 912.

§912.10 Obligations of United States with respect to Federal Home Loan Bank Securities.

Federal Home Loan Bank Securities are not obligations of the United States and are not guaranteed by the United States.

PART 914—HEARINGS [RESERVED]

PART 916—PROMULGATION OF REGULATIONS AND AMENDMENTS [RESERVED]

PART 918—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT [RESERVED]

PART 920—USE OF PENALTY MAIL IN THE LOCATION AND RECOVERY OF MISSING CHILDREN [RESERVED]

PART 922—BOARD OF DIRECTORS AND EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Board of Directors Responsibilities and Conduct

Sec.

922.1 Definitions.
922.2 Qualifications.
922.3 Prohibited service, financial interests and financial relationships.
922.4 Permitted financial interests—mutual funds.

922.5 Prohibited acceptance of things of monetary value.
922.6 Duty to report.

AUTHORITY: 12 U.S.C. 1422a, 1422b.

SOURCE: 56 FR 55218, Oct. 25 1991, unless otherwise noted.

Subpart A—Board of Directors Responsibilities and Conduct

§ 922.1 Definitions.

The definitions contained in §§ 931.14, 931.16, 931.18, 931.19, 931.20, 931.21, 931.22, 931.23, 931.25, 931.30, 931.32, 931.34, 931.36, 931.38, and 931.40 of this chapter also shall apply where such terms are used in this part.

§ 922.2 Qualifications.

Each Board director appointed pursuant to section 2A(b)(1)(B) of the Act shall:

(a) Be a citizen of the United States; and

(b) Comply with all requirements of the Act, and the regulations and policies of the Board presently in effect or to be established by the Board.

§ 922.3 Prohibited service, financial interests and financial relationships.

(a) No Board director appointed pursuant to section 2A(b)(1)(B) of the Act shall serve as a director or officer of any Bank, or any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

(b) The financial interest provisions set forth in § 932.18(b)(2) of this chapter also shall apply to Board directors appointed pursuant to section 2A(b)(1)(B) of the Act during their term of office, except that the reference to any member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

(c) The financial relationship provisions set forth in § 932.18(b)(3) of this chapter also shall apply to Board directors appointed pursuant to section 2A(b)(1)(B) of the Act during their term of office, except that all references to a member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank.

§ 922.4 Permitted financial interests—mutual funds.

A Board director appointed pursuant to section 2A(b)(1)(B) of the Act may have an interest in securities or other financial interests of any member of any Bank that arises solely through ownership of shares or other investment units of one or more diversified mutual funds (as defined in section 5(a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–5(a), (b)(1)) that have invested in the member, provided the director does not contribute to investment decisions of the fund.

§ 922.5 Prohibited acceptance of things of monetary value.

The provisions on soliciting or accepting things of monetary value set forth in § 932.18(d) of this chapter also shall apply to Board directors appointed pursuant to section 2A(b)(1)(B) of the Act during their term of office, except that:

(a) The references in § 932.18(d)(1) of this chapter to a member shall mean any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of any Bank;

(b) The reference in § 932.18(d)(1)(i) of this chapter to the Bank shall mean any Bank; and

(c) The reference in § 932.18(d)(2)(v) of this chapter to this part shall mean this part 922.

§ 922.6 Duty to report.

If an appointed Board director knows or suspects at any time that he or she does not meet any of the requirements for appointment set forth in sections 2A(b)(1)(B) and 2A(b)(2)(C) of the Act or this part, the appointed Board director shall report the specific factual basis for the known or suspected noncompliance in writing to the Board's designated agency ethics official within 30 days of the date noncompliance did or may have occurred.

[60 FR 49199, Sept. 22, 1995]

PART 924—PRACTICE BEFORE THE BOARD OF DIRECTORS [RESERVED]

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 931—DEFINITIONS

Sec.
931.1 Act.
931.2 Bank.
931.3 Board.
931.4 Creditor liabilities.
931.5 Deposits in banks or trust companies.
931.6–10 [Reserved]
931.11 Obligations of the United States.
931.12 Paid-in value of stock in a bank.
931.13 State.
931.14 Affiliate.
931.15 Community interest director.
931.16 Company.
931.17 Consumer or community organization.
931.18 Control.
931.19 Diversified holding company.
931.20 Financial interest.
931.21 Holding company.
931.22 [Reserved]
931.23 Person.
931.24 Principal place of business.
931.25 Subsidiary.
931.26 Appropriate regulatory agency.
931.30 Financial relationship.
931.32 Immediate family member.
931.34 Income.
931.36 Insured depository institution.
931.38 Loss.
931.40 Related interest.

AUTHORITY: 12 U.S.C. 1422a, 1422b, 1427, and 1431(g).

SOURCE: 43 FR 46836, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, unless otherwise noted.

§931.1 Act.

The Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

§931.2 Bank.

A Federal Home Loan Bank.

§931.3 Board.

The Federal Housing Finance Board or any official duly authorized to act in its behalf.

[55 FR 2229, Jan. 23, 1990]

§931.4 Creditor liabilities.

Obligations, secured or unsecured, of a member.

§931.5 Deposits in banks or trust companies.

Include:

(a) A deposit in another Bank;

(b) A demand account in a Federal Reserve Bank; and

(c) A deposit in, or a sale of federal funds to:

(1) An insured depository institution, as defined in section 2(12)(A) of the Act (12 U.S.C. 1422(12)(A)), that is designated by the Bank's board of directors; or

(2) A trust company that is a member of the Federal Reserve System or insured by the Federal Deposit Insurance Corporation, and is designated by the Bank's board of directors.

[61 FR 40313, Aug. 2, 1996]

§931.6–10 [Reserved]

§931.11 Obligations of the United States.

All evidences of indebtedness issued, or fully guaranteed as to principal and interest, by the United States.

§931.12 Paid-in value of stock in a bank.

Aggregate payments on the par value of stock.

§931.13 State.

Except as defined in §522.29 of this subchapter, a State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

§931.14 Affiliate.

Any person or company which controls, is controlled by, or is under common control with, a member, including any holding company, any subsidiary, or any service corporation of a member.

[56 FR 55219, Oct. 25, 1991]

§931.15 Community interest director.

A director who:

(a) Is appointed by the Board;

(b) Is subject to all of the requirements of appointive directors as set forth in section 7(a) of the Act and part 932 of this chapter;

(c) Is a director, officer, employee or member in good standing of a consumer or community organization

operating within the district of the Bank the director will be serving;

(d) Possesses more than two (2) years of recent experience representing consumer and community interests in banking services, credit needs, housing or financial consumer protections; and

(e) Is actively involved in representing consumer or community interests in banking services, credit needs, housing or financial consumer protections at the time of his or her appointment as a community interest director.

[56 FR 55219, Oct. 25, 1991]

§ 931.16 Company.

Any corporation, partnership, trust (business or otherwise), joint-stock company, joint venture, pool syndicate, sole proprietorship, unincorporated organization, or similar organization, or any other form of business entity not specifically listed in this section.

[56 FR 55219, Oct. 25, 1991]

§ 931.17 Consumer or community organization.

Any organization (or local chapter or similar entity thereof in the case of a national organization) which for a period of more than two (2) years has represented consumer or community interests in banking services, credit needs, housing or financial consumer protections.

[56 FR 55219, Oct. 25, 1991]

§ 931.18 Control.

To own, control, or hold with the power to vote, or hold proxies representing, ten (10) percent or more of the voting shares or rights of a company.

[56 FR 55219, Oct. 25, 1991]

§ 931.19 Diversified holding company.

A holding company whose member subsidiary and related activities, as specified in 12 U.S.C. 1467a(c)(2), represented on either an actual or *pro forma* basis less than fifty (50) percent of both its consolidated net worth and its consolidated net earnings at the close of its preceding fiscal year. For purposes of the foregoing, consolidated net worth and consolidated net earnings shall be determined in accordance with generally accepted accounting principles.

[56 FR 55219, Oct. 25, 1991]

§ 931.20 Financial interest.

A financial interest of a director or director candidate means the ownership or control, directly or indirectly, by the director or director candidate, his or her immediate family members and related interests, and the immediate family members' related interests, of:

(a) Any shares of common or preferred capital stock;

(b) Any other equity security;

(c) Any debt security or obligation (except deposit or savings accounts), including subordinated debt.

[56 FR 55219, Oct. 25, 1991]

§ 931.21 Holding company.

Any company that directly or indirectly controls a member, but does not include:

(a) Any company by virtue of its direct or indirect ownership or control of voting stock of a member or a holding company acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the appropriate regulatory agency) as will permit the sale thereof on a reasonable basis; or

(b) Any trust (other than a pension, profit-sharing, stockholders', voting or business trust) which directly or indirectly controls a member if such trust by its terms must terminate within twenty-five (25) years or not later than twenty-one (21) years and ten (10) months after the death of individuals living on the effective date of the trust, and:

(1) Was in existence and was directly or indirectly in control of a member on June 26, 1967; or

(2) Is a testamentary trust.

[56 FR 55219, Oct. 25, 1991]

§ 931.22 [Reserved]

§ 931.23 Person.

An individual or a company.

[56 FR 55219, Oct. 25, 1991]

§931.24 Principal place of business.

The principal place of business of a member is the state in which the member maintains its home office established as such in conformity with the laws under which the member is organized.

[55 FR 1398, Jan. 16, 1990]

§931.25 Subsidiary.

Any company which is owned or controlled directly or indirectly by a person, and includes any service corporation owned in whole or in part by a member, or a subsidiary of such service corporation.

[55 FR 1398, Jan. 16, 1990]

§931.26 Appropriate regulatory agency.

The appropriate federal banking agency as defined in section 2[3] of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(q)), or other appropriate regulatory agency for institutions not governed by such section.

[56 FR 55219, Oct. 25, 1991]

§931.30 Financial relationship.

A financial relationship of a director, director candidate or director nominee means any of the following relationships or activities of the director, director candidate or director nominee, his or her immediate family members and related interests, and the immediate family members' related interests:

(a) Any type of deposit or savings account;

(b) Any other contractual right to the payment of money, whether contingent or fixed, in the previous calendar year or the current calendar year;

(c) Any type of loan or extension of credit.

[56 FR 55220, Oct. 25, 1991]

§931.32 Immediate family member.

Any spouse, minor child, or dependent of a person, or any other individual related by blood, marriage or adoption residing in the person's household.

[56 FR 55220, Oct. 25, 1991]

§931.34 Income.

The director's adjusted gross income as reported on his or her most recent federal income tax return.

[56 FR 55220, Oct. 25, 1991]

§931.36 Insured depository institution.

An insured depository institution as defined in 12 U.S.C. 1422(12).

[56 FR 55220, Oct. 25, 1991]

§931.38 Loss.

(a) An obligation as to which there is a continuing legal claim that is owed that is twelve (12) months or more delinquent as to principal or interest; or

(b) An obligation to pay an outstanding, unsatisfied, final judgment based on any legal theory.

[56 FR 55220, Oct. 25, 1991]

§931.40 Related interest.

A company that is controlled by a person.

[56 FR 55220, Oct. 25, 1991]

PART 932—ORGANIZATION OF THE BANKS

Sec.

932.1 Charter.
932.2 [Reserved]
932.3 Dividends.
932.4—932.7 [Reserved]
932.8 General.
932.9 Director representing Puerto Rico.
932.10 Definition of member.
932.11 Location of member.
932.12 Report of stock investment.
932.13 Designation and nomination of elective directorship.
932.14 Election of directors.
932.15 Prohibition of actions influencing votes.
932.16 Definition of State.
932.17 [Reserved]
932.18 Appointive director eligibility.
932.19 Community interest director eligibility.
932.20 Minimum number of elective directorships.
932.21 Elective director eligibility.
932.22 Vacancies in directorships.
932.23 Certification and disclosure forms.
932.24—932.25 [Reserved]
932.26 Site of board of directors and committee meetings.
932.27 Compensation and expenses of bank directors.
932.28 Duties.

932.29 Responsibility of bank directors.
932.30—932.39 [Reserved]
932.40 Selection.
932.41 Compensation.
932.42 [Reserved]
932.43 Restrictions as to former employees.
932.44—932.49 [Reserved]
932.50 General.
932.51 President.
932.52—932.59 [Reserved]
932.60 General.
932.61 Functions and duties of Office of Neighborhood Reinvestment.
932.62 Budget and expenses.

AUTHORITY: 12 U.S.C. 1422a, 1422b, 1426, 1427, 1464; 18 U.S.C. 207; 42 U.S.C. 8101 *et seq.*

§ 932.1 Charter.

A Bank's organization certificate.

[43 FR 46936, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989]

§ 932.2 [Reserved]

§ 932.3 Dividends.

The board of directors of each Bank may, with the approval of the Board, declare and pay a dividend from net earnings, including previously retained earnings, on the paid-in value of capital stock held during the dividend period. The divided period may be quarterly, semiannually, or annually ending on March 31, June 30, September 30, or December 31. Dividends on such stock shall be computed without preference and only for the period such stock was outstanding during the dividend period. Dividends may be paid in cash or in the form of stock.

[57 FR 6190, Feb. 21, 1992]

§ 932.4—932.7 [Reserved]

§ 932.8 General.

Directors shall be appointed and elected as prescribed in section 7 of the Act.

[54 FR 38591, Sept. 19, 1989]

§ 932.9 Director representing Puerto Rico.

Under section 7(e) of the Act, the Federal Home Loan Bank of New York shall have an additional elective director to represent members in Puerto Rico.

[54 FR 38591, Sept. 19, 1989]

§ 932.10 Definition of member.

For purposes of this part, the word ''member'' means an institution which was a member of such bank at the end of the calendar year preceding the election.

[54 FR 38591, Sept. 19, 1989]

§ 932.11 Location of member.

(a) Under section 7(c) of the Act, a member shall be considered located in the State in which it has its principal place of business. If a member's principal place of business is not in a State, the Board will designate a State in which such member shall be considered located, and may in its discretion change such designation from time to time.

(b) Members whose principal place of business is located in the Virgin Islands shall be considered to be located in Puerto Rico for the purpose of this part.

[54 FR 38591, Sept. 19, 1989]

§ 932.12 Report of stock investment.

Each bank shall, by April 15 of each year, report to the Board, on prescribed forms, the number of shares of bank stock each of its members was required to hold at the end of the preceding calendar year. Such number shall be conclusive for purposes of election of directors.

[54 FR 38591, Sept. 19, 1989]

§ 932.13 Designation and nomination of elective directorship.

(a) By June 15 of each year, the Board will:

(1) Notify each member of the number of elective directorships designated for the state in which the member is located; and

(2) Notify each member in each state for which an elective directorship is to be filled of its right to nominate an eligible person(s) therefore, and provide each such member the following:

(i) A list of members located in its state;

(ii) A current list of directors of the bank of which it is a member, containing the name of each director, the

name and address of the member institution with which he is affiliated, and the expiration date of his term; and

(iii) The nominating certificate.

(b) Each member in each state entitled under these regulations to participate in the election of directors may by resolution of its governing body nominate or authorize one of its directors or officers to nominate a qualified person for each directorship to be filled in its state. The nominating certificate must be received in the Federal Housing Finance Board by July 15.

(c) A letter will be sent to each nominee by August 5 informing him of his nomination. However, a nominee shall be ineligible to seek election pursuant to §932.14 of this part and shall not be sent such letter if:

(1) He is then serving as an elective director whose term does not expire until after the close of the calendar year during which the election is being held.

(2) He is holding an appointive directorship unless the Federal Housing Finance Board has received from him, before July 15, notice of his intention to be a candidate for a directorship; or

(3) His institution does not meet any applicable minimum regulatory capital requirements as set forth by a member institution's appropriate regulatory agency.

With such letter will be sent a list of nominees and a copy of Form E–1. Each nominee must certify to the Board on Form E–1 by August 20 that such nominee meets all applicable eligibility qualifications for his election set forth in section 7 of the Act and this part. A nominee shall be eligible for election only if his name is so placed on the ballot.

(d) Notwithstanding other provisions of this section, if at any time when nominations are required, the members of a bank hold less than $1 million of the capital stock of the bank, the Board will, in accordance with section 7(h) of the Act, appoint a director(s) to fill the place(s) for which nominations are required.

(e) In any Federal home loan bank district that comprises five or more states, the Board may increase the elective directorships to a number not exceeding thirteen. The designations and nomination of all elective directorships shall be undertaken in the manner set forth in this section.

[54 FR 38591, Sept. 19, 1989, as amended at 58 FR 31901, June 7, 1993]

§932.14 Election of directors.

(a) By September 25, the Board will mail to each member in each state for which an elective directorship is to be filled a set of ballot materials in a form prescribed by the Board. The ballot will contain in alphabetical order the name of each candidate eligible to represent the members located in such state having complied with the provisions of §932.13 of this part, the name and address of the member institution with which each candidate is affiliated, the candidate's title in the member institution, and the number of votes the member may cast, as determined under the provisions of paragraph (b) of this section.

(b) The number of votes each member may cast shall equal the number of shares of stock in the bank required by the Act to be held by such member at the end of the calendar year preceding the election, except that:

(1) A member that is the result of a merger or consolidation, occurring in the year of election, of two or more member institutions within the same state and Federal home loan bank district, may cast votes equal to the total number of shares of stock that the merged or consolidated institutions comprising it were required to hold as of the end of the calendar year preceding the election, and

(2) No member may cast votes in excess of the average number of such shares required by the Act to be held at the end of such calendar year by members in such state.

(c) Each member entitled to receive a ballot may, by resolution of its governing body, cast its votes or authorize one of its directors or officers to cast its votes for each of as many candidates as there are directorships to be filled. The ballot materials shall be sent to the Federal Housing Finance Board and must be received by October 25. No ballot may be changed after it is delivered to the Federal Housing Finance Board, which will preserve all

ballots until the end of the next calendar year. Election ballots will not be opened until after 5 p.m., e.s.t., October 25. Only ballots executed on forms supplied by the Board will be considered.

(d) By December 31, the Board shall declare elected the candidate receiving the highest number of votes cast, and where two or more directorships are to be filled from the ballot, the Board shall declare elected each candidate receiving the next succeeding highest number of votes until the number of candidates declared elected equals the number of directorships to be filled. If required by a tied vote, the Board will declare elected one of the candidates whose votes are tied. No candidate who represents a member institution that fails to meet any applicable minimum regulatory capital requirements as set forth by the member institution's appropriate regulatory agency shall be declared elected by the Board. If the candidate receiving the highest number of votes cast is ineligible to be declared elected, the Board shall declare elected the candidate receiving the next succeeding highest number of votes who is eligible to be declared elected.

(e) The Board will record the results of the election in its minutes and notify the directors elected. The Board will furnish each member such results, including the name and address of the institution with which he is affiliated and his title therein, the number of votes he received, the number of members eligible to cast votes for the directorship(s), and the total eligible votes all such members were entitled to cast.

(f) In any date specified in §§ 932.12 through 932.14 of this part occurs on a Saturday, Sunday, or holiday, the next business day shall be included in the time allowed. No nominating certificate, questionnaire, or ballot shall be considered unless received in the Federal Housing Finance Board by the date specified.

[54 FR 38591, Sept. 19, 1989, as amended at 55 FR 1398, Jan. 16, 1990; 58 FR 31901, June 7, 1993]

§ 932.15 Prohibition of actions influencing votes.

No officer, attorney, employee, or agent of the Board or a Bank may individually or collectively take any action tending to influence votes for a directorship in a bank, and no person shall include in any letter, literature, or other paraphernalia, language or any presentation indicating, directly or indirectly, that the Board, or any officer, attorney, employee, or agent of the Board or a Bank supports the candidacy of any person for an elective directorship. The Board, after hearing, may consider any such action grounds for dismissal from a directorship or may declare vacant the directorship involved, or both.

[54 FR 38592, Sept. 19, 1989]

§ 932.16 Definition of State.

As used in §§ 932.11, 932.13, and 932.14, the word *State* means State, the District of Columbia, or Puerto Rico.

[54 FR 38592, Sept. 19, 1989]

§ 932.17 [Reserved]

§ 932.18 Appointive director eligibility.

(a) *Qualifications.* Each appointive director shall:

(1) Be a citizen of the United States;

(2) Be a bona fide resident of the district served by the Bank for which he of she is a director; and

(3) Comply with all requirements of the Act, and the regulations and policies of the Board and of the Bank presently in effect or to be established by the Board or the Bank's board of directors.

(b) *Prohibited service, financial interests and financial relationships.* (1) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, serve as an officer of any Bank.

(2) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, serve as a director or an officer of, or have a financial interest in, any member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves, except as provided in paragraph (c) of this section.

(3) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office,

have a financial relationship with a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves, that:

(i) Is not, to the director's knowledge, transacted in the ordinary course of business of the member (or such subsidiary, holding company or affiliate) and on substantially the same terms, including fees, interest rates and collateral, where applicable, as those prevailing at the time for comparable transactions by the member (or such subsidiary, holding company or affiliate) with other persons; and

(ii) In the case of a loan or extension of credit by a member (or such subsidiary, holding company or affiliate), does not, to the director's knowledge, involve more than the normal risk of repayment or contain other unusual terms and conditions that increase the risk of loss to the member (or such subsidiary, holding company or affiliate).

(4) No director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, in the Board's discretion, serve as an appointive director if such director:

(i) Has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than ninety (90) days past due; or

(ii) Has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company), or to federal deposit insurance funds, the Federal Savings and Loan Insurance Corporation (''FSLIC''), or the Resolution Trust Corporation (''RTC''), within the past three (3) years.

(c) *Permitted financial interests—mutual funds.* An appointive director may have an interest in securities or other financial interests of a member of any Bank that arises solely through ownership of shares or other investment units of one or more diversified mutual funds (as defined in section 5 (a) and (b)(1) of the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–5(a), (b)(1)) that have invested in the member, except that where the member is within the district of the Bank on whose board the director serves, the director may not contribute to investment decisions of the fund.

(d) *Prohibited acceptance of things of monetary value.* (1) Except as provided in paragraph (d)(2) of this section, no director who is appointed pursuant to section 7(a) of the Act may, during such director's term of office, solicit or knowingly accept, directly or indirectly, any gift, gratuity, favor, honorarium, entertainment or any other thing of monetary value, from a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director serves, or from a person who:

(i) Has, or is seeking to obtain, contractual or other business or financial relationships with the Bank on whose board the director serves;

(ii) Has interests that may be substantially affected by the performance or non-performance of the director's official duties; or

(iii) Is an officer, director, controlling shareholder, employee, or agent of a member (or such subsidiary, holding company or affiliate) of the Bank on whose board the director serves, of a company that is a controlling shareholder of a member (or such subsidiary, holding company or affiliate) of the Bank on whose board the director serves, or of a trade organization comprised of members (or such subsidiaries, holding companies or affiliates) that represents financial services, credit needs, housing or financial consumer protections.

(2) Paragraph (d)(1) of this section shall not apply provided:

(i) The acceptance of such things of monetary value is motivated by obvious family or personal relationships rather than the business of the persons concerned;

(ii) The things of monetary value accepted are unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, seasonal gifts of nominal value or other similar things of nominal value;

(iii) The things of monetary value accepted are food and accompanying entertainment of nominal value accepted

on infrequent occasions in the ordinary course of a conference, meeting or other working session where such things are incidental to the activity performed;

(iv) The things of monetary value accepted are non-cash honoraria of nominal value where the gifts are intended as tokens of appreciation for the director's willingness to speak before the group; or

(v) The things of monetary value accepted are financial interests or financial relationships not otherwise prohibited under this part.

(e) *Effect of ineligibility*. (1) If an appointive director shall cease to have any of the qualifications set forth in section 7(a) of the Act or this part, such directorship shall become vacant subject to the cure option in paragraph (g) of this section, but such person may continue to serve as an appointive director until his or her successor assumes the vacated office or the term of such office expires, whichever occurs first.

(2) Any vote by an appointive director during a period when such director has ceased to have any of the qualifications set forth in section 7(a) of the Act or this part shall not be deemed to render void or invalid any action taken by the board of directors during such period.

(f) *Certification and reporting*. (1) Prior to the initial appointment and prior to any reappointment, each director candidate for appointive director shall certify in writing to the Board on Form A–1 that he or she meets all applicable eligibility qualifications for his or her appointment set forth in section 7(a) of the Act and this part. By March 1 of each year during the term of the directorship, each appointive director shall certify in writing to the Board on Form A–2 that he or she meets all applicable eligibility qualifications for his or her appointment set forth in section 7(a) of the Act and this part, except that any appointive director who submitted Form A–1 to the Board in October, November, or December of the year prior to the year in which his or her appointment or reappointment took effect is not required to submit Form A–2 by March 1 of the year in which the appointment or reappointment took effect.

(2) If an appointive director knows or suspects at any time that he or she is ineligible, the director shall report the factual basis for the known or suspected ineligibility, with specificity, in writing to the Board on Form A–2 within thirty (30) days of: the date of the event that caused or may have caused his or her ineligibility, the date the director knew or should have known of the ineligibility, or November 25, 1991, whichever is later.

(3) Prior to the initial appointment and prior to any reappointment, each director candidate for appointive director shall fully disclose in writing to the Board on Form A–1 the financial relationships (as defined in § 931.30 of this chapter) set forth in paragraphs (f)(3)(i), (ii), (iii), and (iv) of this section of such director candidate. By March 1 of each year during the term of directorship, each appointive director shall fully disclose in writing to the Board on Form A–2 the financial relationships (as defined in § 931.30 of this chapter) set forth in paragraphs (f)(3) (i), (ii), (iii), and (iv) of this section of such appointive director, except that any appointive director who submitted a Form A–1 to the Board in October, November, or December of the year prior to the year in which his or her appointment or reappointment took effect is not required to submit a Form A–2 by March 1 of the year in which the appointment or reappointment took effect.

(i) Any type of deposit or savings account in a member (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) of the Bank on whose board the director candidate or appointive director serves in excess of the limits of federal deposit insurance;

(ii) Any contractual right with a member (or such subsidiary, holding company or affiliate) of the Bank on whose board the director candidate or appointive director serves in excess of either $10,000 or 5 percent of the director candidate's or appointive director's total income, whichever is less, on an annual basis;

(iii) Any loan or extension of credit by a member (or such subsidiary, holding company or affiliate) of the Bank on whose board the director candidate or appointive director serves in excess of $50,000, except a loan or extension of credit for the purpose of purchasing or financing the director candidate's or appointive director's principal residence;

(iv) Any loan or extension of credit from any insured depository institution (or such subsidiary, holding company or affiliate) that:

(A) Is or has ever been, within the past three (3) years, more than ninety (90) days past due; or

(B) The director knows caused a loss to such institution (or such subsidiary, holding company or affiliate), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three (3) years.

(4) Failure to make any certifications or disclosures required under this paragraph (f) shall render the director candidate or appointive director ineligible under this part.

(g) *Opportunity to cure.* If an appointive director ceases for any reason occurring subsequent to appointment to satisfy the requisite eligibility qualifications set forth in section 7(a) of the Act or this part, the Board may, in its discretion, give such director a reasonable opportunity to eliminate the cause of the ineligibility provided:

(1) Such director reports the ineligibility, pursuant to paragraph (f)(2) of this section, and the proposed method of remedying the cause of ineligibility, with specificity, within thirty (30) days of: the date of the event that caused the ineligibility, the date the director knew or should have known of the ineligibility, or November 25, 1991, whichever is later; and

(2) Such director remedies the cause of the ineligibility within a reasonable period of time set by the Board, not to exceed ninety (90) days from: the date of the event that caused or may have caused the ineligibility, the date the director knew or should have known of the ineligibility, or November 25, 1991, whichever is later.

(Approved by the Office of Management and Budget under control number 3069–0002)

[56 FR 55220, Oct. 25, 1991, as amended at 56 FR 56929, Nov. 7, 1991; 56 FR 58964–58970, Nov. 22, 1991; 57 FR 81, Jan. 2, 1992; 58 FR 31901, June 7, 1993]

§932.19 Community interest director eligibility.

(a) *Appointment.* At least two (2) of the appointive directors for each Bank shall be community interest directors.

(b) *Selection process.* Each Bank shall forward to the Board a list of qualified candidates compiled after active solicitation of nominations from qualified consumer or community organizations within its district. The Board may on its own also solicit nominations of qualified candidates. Final selection shall be in the sole discretion of the Board.

(c) *Ineligibility.* A community interest director shall cease to have the qualifications to be a community interest director if such director:

(1) Ceases to meet the definition of *community interest director* as set forth in §931.15 of this chapter; or

(2) The organization which the community interest director serves:

(i) Ceases to represent consumer or community interests in banking services, credit needs, housing or financial consumer protections; or

(ii) Ceases to operate, is dissolved, or is declared insolvent.

[56 FR 55221, Oct. 25, 1991]

§932.20 Minimum number of elective directorships.

Under section 7(c) of the Act, the number of elective directorships allocated to members located in each state cannot be less than the number of directorships that were filled by the members from that state on December 31, 1960. The following list sets forth the number of elective directorships that were filled by members from each state on December 31, 1960:

Federal home loan bank—State	No. of elective directorships on December 31, 1960
Atlanta:	
Alabama	1
Dist. of Columbia	1
Florida	1
Georgia	1
Maryland	1
North Carolina	1
South Carolina	1
Virginia	1
Boston:	
Connecticut	1
Maine	1
Massachusetts	3
New Hampshire	1
Rhode Island	1
Vermont	1
Chicago:	
Illinois	4
Wisconsin	4
Cincinnati:	
Kentucky	2
Ohio	4
Tennessee	2
Dallas:	
Arkansas	1
Louisiana	2
Mississippi	1
New Mexico	1
Texas	3
Des Moines:	
Iowa	2
Minnesota	2
Missouri	2
North Dakota	1
South Dakota	1
Indianapolis:	
Indiana	5
Michigan	3
New York:	
New Jersey	4
New York	4
Puerto Rico and Virgin Islands.	0
Pittsburgh:	
Delaware	1
Pennsylvania	6
West Virginia	1
San Francisco:	
Arizona	1
California	3
Nevada	1
Seattle:	
Alaska	1
Hawaii and Guam	1
Idaho	1
Montana	1
Oregon	1
Utah	1
Washington	1
Wyoming	1
Topeka:	
Colorado	2
Kansas	3
Nebraska	1
Oklahoma	2

[55 FR 1399, Jan. 16, 1990, as amended at 56 FR 55221, Oct. 25, 1991]

§ 932.21 Elective director eligibility.

(a) *Qualifications.* Each elective director shall:

(1) Be a citizen of the United States;

(2) Be a bona fide resident of the district served by the Bank for which he or she is a director;

(3) Be an officer or a director of a member whose principal place of business is in the state the elective director represents; and

(4) Comply with all requirements of the Act, and regulations and policies of the Board and of the Bank presently in effect or to be established by the Board or the Bank's board of directors.

(b) *Prohibited service.* No director who is elected pursuant to section 7 of the Act may, during such director's term of office, in the Board's discretion, serve as an elective director if such director:

(1) Has any loan or extension of credit from any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company) that is more than ninety (90) days past due; or

(2) Has or has ever had any loan or extension of credit that caused a loss to any insured depository institution (or a subsidiary or non-diversified holding company thereof, or affiliate of such holding company), or to federal deposit insurance funds, the FSLIC, or the RTC, within the past three (3) years.

(c) *Prohibited acceptance of things of monetary value.* The provisions on soliciting or accepting things of monetary value set forth in § 932.18(d) of this part also shall apply to elective directors during their term of office.

(d) *Minimum capital requirements.* (1) No person who is an officer or a director of any member of the Bank on whose board the person serves that fails to meet any applicable minimum regulatory capital requirements of the member's appropriate regulatory agency, is eligible to hold the office of Bank elective director during the calendar year in which the failure occurred, regardless of any exemption or exception to such capital requirements granted by the appropriate regulatory agency.

(2) A person who is ineligible pursuant to paragraph (d)(1) of this section shall once again be eligible for election in the next succeeding calendar year in which the member(s) he or she serves

as an officer or director meet(s) the applicable minimum regulatory capital requirements throughout the entire calendar year. Such compliance with applicable minimum regulatory capital requirements shall not be satisfied by the granting of an exemption or exception to such capital requirements by the appropriate federal regulatory agency.

(e) *Ineligible director-elect.* A person declared elected pursuant to §932.14(d) of this part will not be eligible to take office or serve as a director if, as of the date such person would otherwise assume the directorship, he or she does not meet the eligibility requirements set forth in section 7 of the Act or this part.

(f) *Effect of ineligibility.* If an elective director shall cease to have any of the qualifications set forth in section 7 of the Act or this part, such directorship shall immediately become vacant and such person shall not continue to serve as a Bank director.

(g) *Certification and reporting.* (1) Prior to the ratification of the election results by the Board, each director nominee for elective director shall certify in writing to the Board on Form E–1 that he or she meets all applicable eligibility qualifications for his or her election set forth in section 7 of the Act and this part. By March 1 of each year during the term of directorship, each elective director who was not elected in the immediately preceding year shall certify in writing to the Board on Form E–2 that he or she meets all applicable eligibility qualifications for his or her election set forth in section 7 of the Act and this part.

(2) If an elective director knows or suspects at any time that he or she is ineligible, the director shall report the factual basis for the known or suspected ineligibility, with specificity, in writing to the Board on Form E–2 within thirty (30) days of: the date of the event that caused or may have caused his or her ineligibility, the date the director knew or should have known of the ineligibility, or November 25, 1991, whichever is later.

(3) Prior to the ratification of the election results by the Board, each director nominee for elective director shall fully disclose in writing to the Board on Form E–1 any financial relationships, (as defined in §931.30 of this chapter) set forth in §932.18(f)(3) of this part, of such director nominee. By March 1 of each year thereafter during the term of the directorship, each elective director who was not elected in the immediately preceding year shall fully disclose in writing to the Board on Form E–2 any financial relationships (as defined in §931.30 of this chapter), set forth in §932.18(f)(3) of this part, of such elective director.

(4) Failure to make any certifications or disclosures required under this paragraph (g) shall render the director nominee or elective director ineligible under this part.

(Approved by the Office of Management and Budget under control number 3069–0002)

[56 FR 55222, Oct. 25, 1991, as amended at 56 FR 56929, Nov. 7, 1991; 56 FR 58964–58970, Nov. 22, 1991; 57 FR 81, Jan. 2, 1992; 58 FR 31901, June 7, 1993]

§932.22 Vacancies in directorships.

(a) *Appointive director vacancy.* A vacancy in an appointive directorship shall be filled for the unexpired term through appointment by the Board as soon as practicable.

(b) *Elective director vacancy.* A vacancy in an elective directorship shall be filled for the unexpired term by an affirmative vote of a majority of the remaining Bank directors as soon as practicable, regardless of whether such remaining Bank directors constitute a quorum of the Bank's board of directors. The Board shall declare elected such person selected by the Bank directors only if the person satisfies all applicable eligibility qualifications to serve as an elective director set forth in section 7 of the Act and this part. Such vacancy shall be filled with a director from the state of the vacated director, unless there are no eligible candidates from such state, in which case the vacancy shall be filled by an eligible director from another state in the Bank's district.

[56 FR 55222, Oct. 25, 1991]

§ 932.23 Certification and disclosure forms.

The following forms shall be completed and submitted to the Board pursuant to the requirements of § 932.18 (f) and (g) and § 932.21(g) of this part:

Form A–1—Appointive Director Candidates—Personal Certification and Disclosure Form (Required by § 932.18(f) (1) and (3) of this part)

Form A–2—Appointive Directors—Personal Certification and Disclosure Form (Required by § 932.18(f) (1) through (3) and (g) of this part)

Form E–1—Elective Director Nominees—Personal Certification and Disclosure Form (Required by § 932.21(g) (1) and (3) of this part)

Form E–2—Elective Directors—Personal Certification and Disclosure Form (Required by § 932.21(g) (1) through (3) of this part)

(Approved by the Office of Management and Budget under control number 3069–0002)

[56 FR 55222, Oct. 25, 1991, as amended at 56 FR 56929, Nov. 7, 1991; 56 FR 58964–58970, Nov. 22, 1991; 57 FR 81, Jan. 2, 1992]

§§ 932.24—932.25 [Reserved]

§ 932.26 Site of board of directors and committee meetings.

Meetings of a Bank's board of directors and committees thereof usually should be held within the district served by the Bank. No meetings of a Bank's board of directors and committees thereof may be held in any location that is not within the United States, including its possessions and territories.

[61 FR 43154, Aug. 21, 1996]

§ 932.27 Compensation and expenses of bank directors.

(a) *Definitions.* As used in this section:

(1) *Compensation* means any payment of money or provision of any other thing of value (or the accrual of a right to receive money or a thing of value in a subsequent year) in consideration of a director's performance of official duties for the Bank, including, without limitation, retainer fees, daily meeting fees, incentive payments and fringe benefits.

(2) *Maximum compensation* means the maximum total compensation that would be paid to a director in a given year under the Bank's policy on director compensation if that director attended all meetings and fulfilled all duties assigned to or otherwise expected of him or her for that year.

(3) *Average compensation per director* (ACPD) means the sum of the maximum compensation for all directors serving on a Bank's board of directors, divided by the total number of directors designated by the Federal Housing Finance Board to serve on the Bank's board for that year.

(b) *Annual compensation.* For 1997 and each subsequent year, each Bank's board of directors shall adopt annually by resolution a written policy to provide for the payment to Bank directors of reasonable compensation for the performance of their duties as members of the Bank's board, subject to the requirements set forth in paragraph (c) of this section. At a minimum, such policy shall address the activities or functions for which attendance is necessary and appropriate and may be compensated, and shall explain and justify the methodology for determining the amount of compensation to be paid to directors.

(c) *Policy requirements.* Payment to directors under each Bank's policy on director compensation may be based upon factors that the Bank determines to be appropriate, but each Bank's policy shall conform to the following requirements:

(1) The annual ACPD for each Bank shall not exceed the amount calculated in accordance with paragraph (c)(2) of this section. Within this limit:

(i) The total actual compensation received by each director in a year shall reflect both the amount of time spent on official Bank business and the level of responsibility assumed by that director, such that greater or lesser attendance at board and committee meetings and greater or lesser responsibility assumed by a director during a given year will be reflected in the actual compensation received by the director for that year; and

(ii) The maximum compensation for the chair of each Bank's board of directors in a given year shall not be equaled or exceeded by the maximum compensation of any other director for that year and shall not be less than 125

percent of the Bank's ACPD for that year.

(2) The limit on ACPD for each Bank shall be $28,000 for 1997. For 1998 and subsequent years, the limit on ACPD shall be adjusted annually to reflect the preceding year's change in the Consumer Price Index (CPI) for all urban consumers, as published by the Bureau of Labor Statistics. Each year, as soon as practicable after the publication of the previous year's CPI, the Board shall publish notice, by FEDERAL REGISTER, distribution of a memorandum, or otherwise, of the CPI-adjusted limit on ACPD.

(d) *Expenses.* Each Bank may pay its directors for such necessary and reasonable travel, subsistence and other related expenses incurred in connection with the performance of their official duties as are payable to senior officers of the Bank under the Bank's travel policy, except that directors may not be paid for gift or entertainment expenses.

(e) *Disclosure.* Each Bank shall, in its annual report:

(1) State the sum of the total actual compensation paid to its directors in that year;

(2) State the sum of the total actual expenses paid to its directors in that year; and

(3) Summarize its policy on director compensation.

[61 FR 43154, Aug. 21, 1996]

§932.28 Duties.

Bank directors, individually and collectively, have the specific duty of seeing that the Bank complies with applicable provisions of the Act and these regulations. Directors shall hold meetings and perform duties as prescribed in the Bank's bylaws.

[43 FR 46837, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989]

§932.29 Responsibility of bank directors.

Except when otherwise designated by the Board in specific instances, and notwithstanding anything to the contrary contained in this chapter V, a director of a Bank shall have no responsibility for the activities of any person acting on behalf of the Board or Federal Savings and Loan Insurance Corporation in an agency capacity (pursuant to §501.10 or §501.11 of this part or otherwise), and a director of a Bank shall have no liability directly or indirectly to any person (including without limitation any member, employee of the Bank, officer or director of the Bank, or contractor with or supplier to the Bank) arising out of any act or omission by any person acting in such capacity. In specific circumstances the Board may, by order or otherwise, determine whether an activity is conducted on behalf of the Board or the Federal Savings and Loan Insurance Corporation.

[51 FR 28222, Aug. 6, 1986; 51 28690, Aug. 11, 1986. Redesignated at 54 FR 36759, Sept. 5, 1989]

§§932.30—932.39 [Reserved]

§932.40 Selection.

Officers, legal counsel, and employees of a Bank shall be elected or appointed in accordance with the Bank's bylaws. A full-time officer or employee of a Bank shall not act in any capacity for a member (other than the Federal Home Loan Mortgage Corporation) or institution insured by the Federal Savings and Loan Insurance Corporation under any understanding providing for continuous or repeated services, or act in any capacity for any such institution in any matter requiring action by the Bank or any of its directors, except when employed by, or with the consent of, the Insurance Corporation in cases involving payment of insurance, loans, purchases of assets or contributions by the Insurance Corporation under section 405 or 406 of the National Housing Act, as amended. These employment prohibitions shall apply to counsel and attorneys of any Bank, whether employed on a salary, fee, retainer, or other basis, except where such employment is with prior consent of the Board, and to the extent of such consent.

[43 FR 46837, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989]

§932.41 Compensation.

(a) The board of directors of each Bank shall annually adopt and submit

to the board for its approval an appropriate resolution showing the contemplated compensation of its President.

(b) The board of directors of each Bank may fix the compensation for each officer other than President within ranges established by the Board and the total limits for such compensation in the Bank's approved budget. Each Bank may establish the amount and form of compensation of all other employees (including legal counsel) within the limits set forth in its approved budget. A bank shall not pay any director, officer, employee, or other person a bonus.

[43 FR 46837, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989]

§ 932.42 [Reserved]

§ 932.43 Restrictions as to former employees.

(a) As used in this section, the term ''employee'' includes an officer, an agent, or an attorney.

(b) No former employee of a Bank shall appear before the Board as attorney or other representative of any party (other than the Board, the Federal Savings and Loan Insurance Corporation, or a Bank) in any particular matter involving that specific party (as defined in 5 CFR part 737):

(1) In which the former employee participated personally and substantially during the period of such employment; or

(2) For which the former employee was officially responsible during the period of such employment, unless one year has elapsed since the termination of such employment.

[46 FR 19220, Mar. 30, 1981. Redesignated at 54 FR 36759, Sept. 5, 1989]

§§ 932.44—932.49 [Reserved]

§ 932.50 General.

The President and other officers shall have the powers and duties prescribed in the Bank's bylaws and these regulations.

[43 FR 46838, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989]

§ 932.51 President.

The President of each Bank shall be its chief administrative officer and shall supervise each member's compliance with the act and these regulations. He shall request a member not so complying to do so, and if the member does not thereafter comply, shall report the matter, or cause it to be reported, to the Board.

[43 FR 46838, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989]

§§ 932.52—932.59 [Reserved]

§ 932.60 General.

(a) The Federal Home Loan Banks are hereby authorized to establish an Office of Neighborhood Reinvestment which shall be located in Washington, DC, and which shall perform the duties and functions set forth in § 932.86.

(b) The Office of Neighborhood Reinvestment shall be headed by a Director, who shall have responsibility for the performance of the functions of such Office. The Director shall be appointed, and his compensation shall be fixed, by the Federal Housing Finance Board. There may also be one or more Deputy Directors who shall be appointed and whose compensation shall be fixed in the same manner.

(c) Any function of the Office of Neighborhood Reinvestment now or hereafter exercisable by the Director may also be exercised by a Deputy Director, in accordance with such limitations, if any, as may be prescribed in writing by the Director.

[40 FR 57443, Dec. 10, 1975. Redesignated at 54 FR 36759, Sept. 5, 1989, and amended at 55 FR 2228, Jan. 23, 1990]

§ 932.61 Functions and duties of Office of Neighborhood Reinvestment.

(a) The Office of Neighborhood Reinvestment shall: (1) Provide staff support services for the Neighborhood Reinvestment Corporation; (2) assist the Board, the Banks, the members of the Federal Home Loan Bank System and other financial institutions in the development of programs and strategies to increase and stabilize urban residential lending; (3) provide assistance in the organization, development, and continued operations of ''Neighborhood

Housing Service'' programs; (4) provide assistance to other public or private urban preservation or improvement programs; (5) conduct evaluations of selected urban preservation or improvement programs; and (6) collect and disseminate information regarding urban preservation or improvement programs.

(b) The Office of Neighborhood Reinvestment may accept and administer such funds from any Federal, State or local government or governmental agency, or any private body, as may be offered in support of the programs of the Office: *Provided, however,* That all such receipts, whether by contract, grant or otherwise, in excess of $50,000 per year from any one source, or for an activity not authorized in the current budget for the Office, shall first be approved by the Board.

(c) The Office of Neighborhood Reinvestment shall perform other duties or functions which are related to those specified in paragraphs (a) and (b) of this section, as may be requested of such Office by a Federal Home Loan Bank or Banks or the Board.

[40 FR 57443, Dec. 10, 1975, as amended at 45 FR 81545, Dec. 11, 1980. Redesignated at 54 FR 36759, Sept. 5, 1989]

§932.62 Budget and expenses.

The Office of Neighborhood Reinvestment shall annually submit to the Board by September 1 a budget of its proposed expenditures for the following fiscal year beginning October 1 and ending September 30, except that the Office shall submit by December 1, 1980, a transition-year budget for the first nine months of Calendar Year 1981. The budget shall differentiate between receipts and expenditures provided for in §932.86(b) and those provided for hereunder. After such budget has been approved by the Board, the Director may authorize disbursements thereunder from the funds provided for in §932.81(b). Following approval by the Board, the Director shall transmit a copy of the budget to each of the Bank Presidents. The Director may, without further authority, make a transfer from an excess allotment, in the budget referred to, to an insufficient allotment. However, transfer to allotments for compensation or rent of office quarters, as well as any proposed changes which would increase the total of the approved budget, shall be submitted for approval in the same manner as the original budget was submitted.

[40 FR 57443, Dec. 10, 1975, as amended at 43 FR 46838, Oct. 11, 1978; 45 FR 81545, Dec. 11, 1980; 52 FR 7122, Mar. 9, 1987. Redesignated at 54 FR 36759, Sept. 5, 1989]

PART 933—MEMBERS OF THE BANKS

Subpart A—Definitions

Sec.
933.1 Definitions.

Subpart B—Membership Application Process

933.2 Membership application requirements.
933.3 Decision on application.
933.4 Automatic membership.
933.5 Appeals.

Subpart C—Eligibility Requirements

933.6 General eligibility requirements.
933.7 Duly organized requirement.
933.8 Subject to inspection and regulation requirement.
933.9 Makes long-term home mortgage loans requirement.
933.10 10 percent requirement for insured depository institution applicants.
933.11 Financial condition requirement for applicants other than insurance companies.
933.12 Character of management requirement.
933.13 Home financing policy requirement.
933.14 De novo insured depository institution applicants.
933.15 Recent merger or acquisition applicants.
933.16 Financial condition requirement for insurance company applicants.
933.17 Rebuttable presumptions.
933.18 Determination of appropriate Bank district for membership.

Subpart D—Stock Requirements

933.19 Par value and price of stock.
933.20 Stock purchase.
933.21 Issuance and form of stock.
933.22 Adjustments in stock holdings.
933.23 Purchase of excess stock.

Subpart E—Consolidations Involving Members

933.24 Consolidation of members.
933.25 Consolidations involving nonmembers.

Subpart F—Withdrawal and Removal From Membership

933.26 Procedure for withdrawal.
933.27 Procedure for removal.
933.28 Automatic termination of membership for institutions placed in receivership.

Subpart G—Orderly Liquidation of Advances and Redemption of Stock

933.29 Orderly liquidation of advances and redemption of stock.

Subpart H—Reacquisition of Membership

933.30 Reacquisition of membership.

Subpart I—Bank Access to Information

933.31 Reports and examinations.

Subpart J—Membership Insignia

933.32 Official membership insignia.

AUTHORITY: 12 U.S.C. 1422a, 1422b, 1424, 1426, 1430, 1442.

SOURCE: 58 FR 43542, Aug. 17, 1993, unless otherwise noted.

Subpart A—Definitions

§ 933.1 Definitions.

For purposes of this part:

(a) *Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

(b) *Adjusted net income* means net income, excluding extraordinary items such as income received from or expense incurred in sales of securities or fixed assets, reported on a regulatory financial report.

(c) *Aggregate unpaid loan principal* means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home-purchase contracts, and similar obligations.

(d) *Allowance for loan and lease losses* means a specified balance-sheet account held to fund potential losses on loans or leases, that is reported on a regulatory financial report.

(e) *Appropriate Federal banking agency* has the same meaning as used in 12 U.S.C. 1813(q) and, for federally insured credit unions, shall mean the National Credit Union Administration.

(f) *Appropriate state regulator* means any state officer, agency, supervisor or other entity that has regulatory authority over, or is empowered to institute enforcement action against, an applicant for Bank membership.

(g) *Bank* means a Federal Home Loan Bank established under the authority of the Act.

(h) *Board* means the Federal Housing Finance Board.

(i) *Combination business or farm property* means real property for which the total appraised value is attributable to residential, and business or farm uses.

(j) *Composite regulatory examination rating* means a composite rating assigned to an institution following the guidelines of the Uniform Financial Institutions Rating System (Issued by the Federal Financial Institutions Examination Council; for availability contact the Federal Housing Finance Board, FOIA Office, 1777 F Street, NW., Washington, DC 20006.), including a CAMEL rating, a MACRO rating, or other similar rating, contained in a written regulatory examination report.

(k) *Dwelling unit* means a single room or a unified combination of rooms designed for residential use.

(l) *Enforcement action* means any written notice, directive, order or agreement initiated by an applicant for Bank membership or by its primary regulator or appropriate state regulator to address any operational, financial, managerial or other deficiencies of the applicant identified by such regulator, but does not include a board of directors resolution adopted by the applicant in response to examination weaknesses identified by such regulator.

(m) *Funded residential construction loan* means the portion of a loan secured by real property made to finance the on-site construction of dwelling units on one-to-four family property or multifamily property disbursed to the borrower.

(n) *Home mortgage loan* means:

(1) A loan, whether or not fully amortizing, or an interest in such a loan, which is secured by a mortgage, deed of trust, or other security agreement that creates a first lien on one of the following interests in property:

(i) One-to-four family property or multifamily property, in fee simple;

(ii) A leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years that is renewable, or under a lease having a period of not less than 50 years to run from the date the mortgage was executed; or

(iii) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property; or

(2) A mortgage pass-through security that represents an undivided ownership interest in:

(i) Long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (n)(1) of this section; or

(ii) A security that represents an undivided ownership interest in long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (n)(1) of this section.

(o) *Institutions which are eligible to make application to become members* means, for purposes of 12 U.S.C. 1431(e)(2)(A), any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution, regardless of whether the institution applies for or would be approved for membership.

(p) *Insured depository institution* means an insured depository institution as defined in 12 U.S.C. 1422(12).

(q) *Long-term* means a term to maturity of five years or greater.

(r) *Manufactured housing* means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

(s) *Member* means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 or 933.25 of this part.

(t) *Multifamily property* means:

(1) Real property that is solely residential and includes five or more dwelling units; or

(2) Real property that includes five or more dwelling units combined with commercial units, provided that the property is primarily residential; or

(3) Nursing homes, dormitories, or homes for the elderly.

(u) *Nonperforming loans, leases and securities* means the sum of the following, reported on a regulatory financial report: loans, leases and debt securities that have been past due for 90 days (60 days in the case of credit union applicants) or longer but are still accruing; loans, leases and debt securities on a nonaccrual basis; and restructured loans and leases (not already reported as nonperforming).

(v) *Nonresidential real property* means real property that is not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institution buildings or facilities, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property.

(w) *One-to-four family property* means:

(1) Real property that is solely residential, including one-to-four family dwelling units or more than four family dwelling units if each dwelling unit is separated from the other dwelling units by dividing walls that extend from ground to roof, such as row houses, townhouses or similar types of property;

(2) Manufactured housing if applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property which includes one-to-four family dwelling units combined with commercial units, provided the property is primarily residential.

(x) *Performing loans, leases and securities* means loans, leases and debt securities, reported on a regulatory financial report, that do not meet the definition of ''nonperforming loans, leases and securities,'' as provided in paragraph (u) of this section.

(y) *Primary regulator* means the chartering authority for federally-chartered applicants, the insuring authority for federally-insured applicants

that are not federally-chartered, or the appropriate state regulator for all other applicants.

(z) *Regulatory examination report* means a written report of examination prepared by the applicant's primary regulator or appropriate state regulator, containing, in the case of insured depository institution applicants, a composite rating assigned to the institution following the guidelines of the Uniform Financial Institutions Rating System, including a CAMEL rating, a MACRO rating, or other similar rating.

(aa) *Regulatory financial report* means a financial report that an applicant is required to file with its primary regulator on a specific periodic basis, including the quarterly call report for commercial banks, thrift financial report for savings associations, quarterly or semi-annual call report for credit unions, the National Association of Insurance Commissioners' annual or quarterly report for insurance companies, or other similar report, including such report maintained by the primary regulator on a computer on-line database.

(bb) *Residential mortgage loan* means any one of the following types of loans, whether or not fully amortizing:

(1) Home mortgage loans;

(2) Funded residential construction loans;

(3) Loans secured by manufactured housing whether or not defined by state law as secured by an interest in real property;

(4) Loans secured by junior liens on one-to-four family property or multifamily property;

(5) Mortgage pass-through securities representing an undivided ownership interest in:

(i) Loans that meet the requirements of paragraphs (bb) (1) through (4) of this section at the time of issuance of the security;

(ii) Securities representing an undivided ownership interest in loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraphs (bb) (1) through (4) of this section; or

(iii) Mortgage debt securities as defined in paragraph (bb)(6) of this section;

(6) Mortgage debt securities secured by:

(i) Loans, provided that, at the time of issuance of the security, substantially all of the loans meet the requirements of paragraphs (bb) (1) through (4) of this section;

(ii) Securities that meet the requirements of paragraph (bb)(5) of this section; or

(iii) Securities secured by assets, provided that, at the time of issuance of the security, all of the assets meet the requirements of paragraphs (bb) (1) through (5) of this section; or

(7) Home mortgage loans secured by a leasehold interest, as defined in paragraph (n)(1)(ii) of this section, except that the period of the lease term may be for any duration.

(cc) *State* means a State of the United States, the District of Columbia, Guam, Puerto Rico or the U.S. Virgin Islands.

(dd) *Total assets* means the total assets reported on a regulatory financial report.

[61 FR 42542, Aug. 16, 1996]

Subpart B—Membership Application Process

SOURCE: 61 FR 42543 Aug. 16, 1996, unless otherwise noted.

§ 933.2 Membership application requirements.

(a) *Application.* An applicant for membership in a Bank shall submit to that Bank an application that satisfies the requirements of this part. The application shall include a written resolution or certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, of the following:

(1) *Applicant review.* Applicant has reviewed the requirements of this part and, as required by this part, has provided to the best of applicant's knowledge the most recent, accurate and complete information available; and

(2) *Duty to supplement.* Applicant will promptly supplement the application with any relevant information that comes to applicant's attention prior to

the Bank's decision on whether to approve or deny the application, and if the Bank's decision is appealed pursuant to §933.5 of this part, prior to resolution of any appeal by the Board.

(b) *Digest.* The Bank shall prepare a written digest for each applicant stating whether or not the applicant meets each of the requirements in §§933.6 to 933.18 of this part, the Bank's findings and the reasons therefor.

(c) *File.* The Bank shall maintain a membership file for each applicant for at least three years after the Bank decides whether to approve or deny membership and the resolution of any appeal to the Board. The membership file shall contain at a minimum:

(1) *Digest.* The digest required by paragraph (b) of this section.

(2) *Required documents.* All documents required by §§933.6 to 933.18 of this part, including those documents required to establish or rebut a presumption under this part, shall be described in and attached to the digest. The Bank may retain in the file only the relevant portions of the regulatory financial reports required by this part. If an applicant's primary regulator or appropriate state regulator requires return or destruction of a regulatory examination report, the date that the report is returned or destroyed shall be noted in the file.

(3) *Additional documents.* Any additional document submitted by the applicant, or otherwise obtained or generated by the Bank, concerning the applicant.

(4) *Decision resolution.* The decision resolution described in §933.3(b) of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§933.3 Decision on application.

(a) *Authority.* The Board authorizes the Banks to approve or deny all applications for membership, subject to the requirements of this part. The Bank may delegate the authority to approve membership applications only to a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development.

(b) *Decision resolution.* For each applicant, the Bank shall prepare a written resolution duly adopted by the Bank's board of directors, by a committee of the board of directors, or by an officer with delegated authority to approve membership applications. The decision resolution shall state:

(1) That the statements in the digest are accurate to the best of the Bank's knowledge, and are based on a diligent and comprehensive review of all available information identified in the digest; and

(2) The Bank's decision and the reasons therefor. Decisions to approve an application should state specifically that: the applicant is authorized under the laws of the United States and the laws of the appropriate state to become a member of, purchase stock in, do business with, and maintain deposits in, the Bank to which the applicant has applied; and the applicant meets all of the membership eligibility criteria of the Act and this part.

(c) *Action on applications.* The Bank shall act on an application within 60 calendar days of the date the Bank deems the application to be complete. An application is ''complete'' when a Bank has obtained all the information required by this part, and any other information the Bank deems necessary, to process the application. If an application that was deemed complete subsequently is deemed incomplete because the Bank determines during the review process that additional information is necessary to process the application, the Bank may stop the 60-day clock until the application again is deemed complete, and then resume the clock where it left off. The Bank shall notify an applicant when its application is deemed by the Bank to be complete. The Bank also shall notify an applicant if the 60-day clock is stopped, and when the clock is resumed. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and the Board's

Executive Secretary with a copy of the Bank's decision resolution.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§ 933.4 Automatic membership.

(a) *Automatic membership for mandatory members.* Any institution required by law to become a member of a Bank automatically shall become a member of the Bank of the district in which its principal place of business is located upon the purchase of stock in that Bank pursuant to § 933.20(b)(1) of this part.

(b) *Automatic membership for certain charter conversions.* An insured depository institution member that converts from one charter type to another automatically shall become a member of the Bank of which the converting institution was a member on the effective date of such conversion, provided that the converting institution continues to be an insured depository institution and the assets of the institution immediately before and immediately after the conversion are not materially different. In such case, all relationships existing between the member and the Bank at the time of such conversion may continue.

(c) *Automatic membership for transfers.* Any member whose membership is transferred pursuant to § 933.18(d) of this part automatically shall become a member of the Bank to which it transfers.

§ 933.5 Appeals.

(a) *Appeals by applicants*—(1) *Filing procedure.* Within 90 calendar days of the date of a Bank's decision to deny an application for membership, the applicant may file a written appeal of the decision with the Board.

(2) *Documents.* The applicant's appeal shall be addressed to the Executive Secretary, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, with a copy to the Bank, and shall include the following documents:

(i) *Bank's decision resolution.* A copy of the Bank's decision resolution; and

(ii) *Basis for appeal.* A statement of the basis for the appeal by the applicant with sufficient facts, information, analysis and explanation to rebut any applicable presumptions and otherwise support the applicant's position.

(b) *Record for appeal*—(1) *Copy of membership file.* Upon receiving a copy of an appeal, the Bank whose action has been appealed (appellee Bank) shall provide the Board with a copy of the applicant's complete membership file. Until the Board resolves the appeal, the appellee Bank shall supplement the materials provided to the Board as any new materials are received.

(2) *Additional information.* The Board may request additional information or further supporting arguments from the appellant, the appellee Bank or any other party that the Board deems appropriate.

(c) *Deciding appeals.* The Board shall consider the record for appeal described in paragraph (b) of this section and shall resolve the appeal based on the requirements of the Act and this part within 90 calendar days of the date the appeal is filed with the Board. In deciding the appeal, the Board shall apply the presumptions in this part, unless the appellant or appellee Bank presents evidence to rebut a presumption as provided in § 933.17 of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

Subpart C—Eligibility Requirements

SOURCE: 61 FR 42545, Aug. 16, 1996, unless otherwise noted.

§ 933.6 General eligibility requirements.

(a) *Requirements.* Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution, upon application satisfying all of the requirements of the Act and this part, shall be eligible to become a member of a Bank if:

(1) It is duly organized under the laws of any State or of the United States;

(2) It is subject to inspection and regulation under the banking laws, or

under similar laws, of any State or of the United States;

(3) It makes long-term home mortgage loans;

(4) Its financial condition is such that advances may be safely made to it;

(5) The character of its management is consistent with sound and economical home financing; and

(6) Its home financing policy is consistent with sound and economical home financing.

(b) *Additional eligibility requirement for insured depository institutions.* In order to be eligible to become a member of a Bank, an insured depository institution applicant also must have at least 10 percent of its total assets in residential mortgage loans.

(c) *Additional eligibility requirement for applicants that are not insured depository institutions.* In order to be eligible to become a member of a Bank, an applicant that is not an insured depository institution also must have mortgage-related assets that reflect a commitment to housing finance, as determined by the Bank in its discretion.

(d) *Ineligibility.* Except as otherwise provided in this part, if an applicant does not satisfy the requirements of this part, the applicant is ineligible for membership.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§933.7 Duly organized requirement.

An applicant shall be deemed to be duly organized as required by section 4(a)(1)(A) of the Act and §933.6(a)(1) of this part, if it is chartered by a state or federal agency as a building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank or insured depository institution.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§933.8 Subject to inspection and regulation requirement.

An applicant shall be deemed to be subject to inspection and regulation as required by section 4(a)(1)(B) of the Act and §933.6(a)(2) of this part, if, in the case of a depository institution applicant, it is subject to inspection and regulation by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, or other appropriate state regulator, and, in the case of an insurance company applicant, it is subject to inspection and regulation by an appropriate state regulator accredited by the National Association of Insurance Commissioners.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§933.9 Makes long-term home mortgage loans requirement.

An applicant shall be deemed to make long-term home mortgage loans as required by section 4(a)(1)(C) of the Act and §933.6(a)(3) of this part, if, based on the applicant's most recent regulatory financial report filed with its primary regulator, the applicant originates or purchases long-term home mortgage loans.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§933.10 10 percent requirement for insured depository institution applicants.

An insured depository institution applicant shall be deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Act and §933.6(b) of this part, if, based on the applicant's most recent regulatory financial report filed with its primary regulator, the applicant has at least 10 percent of its total assets in residential mortgage loans, except that any assets used to secure mortgage debt securities as described in §933.1(bb)(6) of this part shall not be used to meet this requirement.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§ 933.11 Financial condition requirement for applicants other than insurance companies.

(a) *Review requirement.* In determining whether an applicant other than an insurance company has complied with the financial condition requirement of section 4(a)(2)(B) of the Act and § 933.6(a)(4) of this part, the Bank shall obtain as a part of the membership application and review each of the following documents:

(1) *Regulatory financial reports.* The regulatory financial reports filed by the applicant with its primary regulator for the last six calendar quarters and three year-ends preceding the date the Bank receives the application;

(2) *Financial statement.* In order of preference: the most recent independent audit of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the applicant; the most recent independent audit of the applicant's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company but not on the applicant separately; the most recent Directors' examination of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm; the most recent Directors' examination of the applicant performed by other external auditors; the most recent review of the applicant's financial statements by external auditors; the most recent Compilation of the applicant's financial statements by external auditors; or the most recent audit of other procedures of the applicant;

(3) *Regulatory examination report.* The applicant's most recent available regulatory examination report prepared by its primary regulator or appropriate state regulator, a summary prepared by the Bank of the applicant's strengths and weaknesses as cited in the regulatory examination report, and a summary prepared by the Bank or applicant of actions taken by the applicant to respond to examination weaknesses;

(4) *Enforcement actions.* A description prepared by the Bank or applicant of any outstanding enforcement actions against the applicant, responses by the applicant, reports as required by the enforcement action, and verbal or written indications, if available, from the primary regulator or appropriate state regulator, whichever is applicable, of how the applicant is complying with the terms of the enforcement action; and

(5) *Additional information.* Any other relevant document or information concerning the applicant that comes to the Bank's attention in reviewing the applicant's financial condition.

(b) *Standards.* An applicant other than an insurance company shall be deemed to be in compliance with the financial condition requirement of section 4(a)(2)(B) of the Act and § 933.6(a)(4) of this part, if:

(1) *Recent composite regulatory examination rating.* The applicant has received a composite regulatory examination rating from its primary regulator or appropriate state regulator within two years preceding the date the Bank receives the application;

(2) *Capital requirement.* The applicant meets all of its minimum statutory and regulatory capital requirements as reported in its most recent quarter-end regulatory financial report filed with its primary regulator; and

(3) *Minimum performance standard.* (i) The applicant's most recent composite regulatory examination rating from its primary regulatory or appropriate state regulator within the past two years was ''1;'' or, was ''2'' or ''3'' and, based on the applicant's most recent regulatory financial report filed with its primary regulator, the applicant satisfied all of the following performance trend criteria:

(A) *Earnings.* The applicant's adjusted net income was positive in four of the six most recent calendar quarters;

(B) *Nonperforming assets.* The applicant's nonperforming loans, leases and securities plus foreclosed and repossessed real estate, did not exceed 10 percent of its performing loans, leases and securities plus foreclosed and repossessed real estate, in the most recent calendar quarter; and

(C) *Allowance for loan and lease losses.* The applicant's ratio of its allowance for loan and lease losses to nonperforming loans, leases and securities was 60 percent or greater during 4 of the 6 most recent calendar quarters.

(ii) For applicants that are not required to report financial data to their primary regulator on a quarterly basis, the information required in paragraph (b)(3)(i) of this section may be reported on a semiannual basis.

(c) *Eligible collateral not considered.* The availability of sufficient eligible collateral to secure advances to the applicant is presumed and shall not be considered in determining whether an applicant is in the financial condition required by section 4(a)(2)(B) of the Act and §933.6(a)(4) of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§933.12 Character of management requirement.

An applicant shall be deemed to be in compliance with the character of management requirement of section 4(a)(2)(C) of the Act and §933.6(a)(5) of this part, if the applicant provides to the Bank an unqualified written certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, that:

(a) *Enforcement actions.* Neither the applicant nor any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its primary regulator or appropriate state regulator;

(b) *Criminal, civil or administrative proceedings.* Neither the applicant nor any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report; and

(c) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* There are no known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, that are significant to the applicant's operations.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§933.13 Home financing policy requirement.

(a) *Standard.* An applicant shall be deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and §933.6(a)(6) of this part, if the applicant has received a Community Reinvestment Act (CRA) rating of ''Satisfactory'' or better on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation.

(b) *Written justification required.* An applicant that is not subject to the CRA shall file as part of its application for membership a written justification acceptable to the Bank of how and why the applicant's home financing policy is consistent with the Bank System's housing finance mission.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§933.14 De novo insured depository institution applicants.

(a) *Newly chartered applicants that have not commenced operations*—(1) *Duly organized, subject to inspection and regulation, financial condition and character of management requirements.* An insured depository institution applicant that is newly chartered and has not yet commenced operations, is deemed to meet the requirements of §§933.7, 933.8, 933.11 and 933.12 of this part.

(2) *Makes long-term home mortgage loans requirement.* The applicant shall be deemed to make long-term home mortgage loans as required by §933.9 of this part, if it has filed as part of its application for membership a written justification acceptable to the Bank of how its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans.

(3) *10 percent requirement.* The applicant shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 933.10 of this part.

(4) *Home financing policy requirement*—(i) *Conditional approval.* An applicant that has not received its first formal, or if unavailable, informal or preliminary, Community Reinvestment Act (CRA) performance evaluation, shall be conditionally deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(6) of this part, if the applicant has filed as part of its application for membership a written justification acceptable to the Bank of how and why its home financing credit policy and lending practices will meet the credit needs of its community. An applicant that receives such conditional membership approval is subject to the stock purchase requirements of § 933.20 of this part and the advances provisions of 12 CFR part 935.

(ii) *Approval.* The applicant shall be deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(6) of this part upon receipt by the Bank of evidence from the applicant that it received a CRA rating of ''Satisfactory'' or better on its first formal, or if unavailable, informal or preliminary, CRA performance evaluation.

(iii) *Conditional approval deemed null and void.* If the applicant's first such CRA rating is ''Needs to Improve'' or ''Substantial Non-Compliance,'' the applicant shall be deemed to be in noncompliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(6) of this part, subject to rebuttal by the applicant under § 933.17(f) of this part, and its conditional membership approval is deemed null and void.

(iv) *Treatment of outstanding advances and Bank stock.* If the applicant's conditional membership approval is deemed null and void pursuant to paragraph (a)(4)(iii) of this section, the liquidation of any outstanding indebtedness owed by the applicant to the Bank and redemption of stock of such Bank shall be carried out in accordance with § 933.29 of this part.

(b) *Newly chartered applicants that have recently commenced operations.* An insured depository institution applicant that is newly chartered and has commenced operations, is subject to the requirements of §§ 933.7 to 933.13 of this part except as provided in this paragraph (b).

(1) *10 percent requirement.* The applicant shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 933.10 of this part.

(2) *Financial condition requirement*—(i) *Regulatory financial reports.* For purposes of § 933.11(a)(1) of this part, if the applicant has not yet filed regulatory financial reports with its primary regulator for the last six calendar quarters and three year-ends preceding the date the Bank receives the application, the applicant shall provide any regulatory financial reports that it has filed with its primary regulator.

(ii) *Recent composite regulatory examination rating.* For purposes of § 933.11(b)(1) and (3) of this part, if the applicant has not yet received a composite regulatory examination rating from its primary regulator or appropriate state regulator, the applicant shall provide a preliminary or informal, written composite regulatory examination rating, if available, from its primary regulator or appropriate state regulator.

(iii) *Performance trend criteria.* If the applicant has not yet filed regulatory financial reports with its primary regulator for the last six calendar quarters preceding the date the Bank receives its application for membership, the applicant need not meet the performance trend criteria in § 933.11(b)(3)(i)(A) to (C) of this part, if:

(A) *Reports for three quarters.* The applicant has filed regulatory financial reports with its primary regulator for at least three calendar quarters of operation; and

(B) *Business plan compliance.* The Bank determines that the applicant is in substantial compliance with the terms of its regulatory business plan.

(3) *Home financing policy requirement.* For purposes of § 933.13 of this part, an applicant that has not received its first formal, or if unavailable, informal or

preliminary, CRA performance evaluation, is subject to the home financing policy requirements of paragraph (a)(4) of this section.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§933.15 Recent merger or acquisition applicants.

An applicant that merged with or acquired another institution prior to the date the Bank receives its application for membership is subject to the requirements of §§933.7 to 933.13 of this part except as provided in this section.

(a) *Financial condition requirement*—(i) *Regulatory financial reports.* For purposes of §933.11(a)(1) of this part, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed regulatory financial reports with its primary regulator for the last six calendar quarters and three year-ends preceding such date, shall provide any regulatory financial reports that the applicant has filed with its primary regulator.

(ii) *Performance trend criteria.* For purposes of §933.11(b)(3)(i)(A) to (C) of this part, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed combined regulatory financial reports with its primary regulator for the last six calendar quarters preceding such date, shall provide pro forma combined financial statements for those calendar quarters in which actual combined regulatory financial reports are unavailable.

(b) *Home financing policy requirement.* For purposes of §933.13 of this part, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not received its first formal, or if unavailable, informal or preliminary, Community Reinvestment Act performance evaluation, shall file as part of its application a written justification acceptable to the Bank of how and why the applicant's home financing credit policy and lending practices will meet the credit needs of its community.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§933.16 Financial condition requirement for insurance company applicants.

An insurance company applicant shall be deemed to meet the financial condition requirement of section 4(a)(2)(B) of the Act and §933.6(a)(4) of this part, if, based on the information contained in the applicant's most recent regulatory financial report filed with its primary regulator, the applicant meets all of its minimum statutory and regulatory capital requirements and the capital standards established by the National Association of Insurance Commissioners.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§933.17 Rebuttable presumptions.

(a) *Rebutting presumptive compliance.* The presumption that an applicant meeting the requirements of §§933.7 to 933.16 of this part is in compliance with section 4(a) of the Act and §933.6 (a) and (b) of this part, may be rebutted, and the Bank may deny membership to the applicant, if the Bank obtains substantial evidence to overcome the presumption of compliance.

(b) *Rebutting presumptive noncompliance.* The presumption that an applicant not meeting a particular requirement of §§933.8, 933.11, 933.12, 933.13, or 933.16 of this part is in noncompliance with section 4(a) of the Act and §933.6(a) (2), (4), (5) or (6) of this part, may be rebutted, and the applicant shall be deemed to meet such requirement, if the applicable requirements in this section are satisfied.

(c) *Presumptive noncompliance by insurance company applicant with ''subject to inspection and regulation'' requirement of §933.8.* If an insurance company applicant is not subject to inspection and regulation by an appropriate state regulator accredited by the National Association of Insurance Commissioners (NAIC), as required by §933.8 of this

part, the applicant or the Bank shall prepare a written justification that provides substantial evidence acceptable to the Bank that the applicant is subject to inspection and regulation as required by § 933.6(a)(2) of this part, notwithstanding the lack of NAIC accreditation.

(d) *Presumptive noncompliance with financial condition requirements of §§ 933.11 and 933.16*—(1) *Applicants other than insurance companies.* For applicants other than insurance companies, in the case of an applicant's lack of a composite regulatory examination rating within the two-year period required by § 933.11(b)(1) of this part, a variance from the rating required by § 933.11(b)(3)(i) of this part, or a variance from a performance trend criterion required by § 933.11(b)(3)(i) of this part, the applicant or the Bank shall prepare a written justification pertaining to such requirement that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 933.6(a)(4) of this part, notwithstanding the lack of rating or variance.

(2) *Insurance company applicants.* In the case of an insurance company applicant's variance from a capital requirement or standard of § 933.16 of this part, the applicant or the Bank shall prepare a written justification pertaining to such requirement or standard that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 933.6(a)(4) of this part, notwithstanding the variance.

(e) *Presumptive noncompliance with character of management requirement of § 933.12*—(1) *Enforcement actions.* If an applicant or any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its primary regulator or appropriate state regulator, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's primary regulator or appropriate state regulator, whichever is applicable, that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action. The written analysis shall state each action the applicant or its directors or senior officers are required to take by the enforcement action, the actions actually taken by the applicant or its directors or senior officers, and whether the applicant regards this as substantial compliance with all aspects of the enforcement action.

(2) *Criminal, civil or administrative proceedings.* If an applicant or any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's primary regulator or appropriate state regulator that the proceedings will not likely result in enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the proceedings will not likely result in enforcement action. The written analysis shall state the severity of the charges, and any mitigating action taken by the applicant or its directors or senior officers.

(3) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* If there are any known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, that are significant to the applicant's operations, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's primary regulator or appropriate state regulator that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§ 933.11(b)(2) and 933.16 of this part; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in §§ 933.11(b)(2) and 933.16 of this part. The written analysis shall state the likelihood of the applicant or its directors or senior officers prevailing, and the financial consequences if the applicant or its directors or senior officers do not prevail.

(f) *Presumptive noncompliance with home financing policy requirements of §§ 933.13, 933.14(a)(4), and 933.14(b)(3).* If an applicant received a ''Substantial Non-Compliance'' rating on its most recent formal, or if unavailable, informal or preliminary, Community Reinvestment Act (CRA) performance evaluation, or a ''Needs to Improve'' CRA rating on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation and a CRA rating of ''Needs to Improve'' or better on any immediately preceding CRA performance evaluation, the applicant shall provide or the Bank shall obtain:

(1) *Regulator confirmation.* Written or verbal confirmation from the applicant's primary regulator of the applicant's recent satisfactory CRA performance, including any corrective action that substantially improved upon the deficiencies cited in the most recent CRA performance evaluation(s); or

(2) *Written analysis.* A written analysis acceptable to the Bank demonstrating that the CRA rating is unrelated to home financing, and providing substantial evidence of how and why the applicant's home financing credit policy and lending practices meet the credit needs of its community.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

§ 933.18 Determination of appropriate Bank district for membership.

(a) *Eligibility.* (1) An institution eligible to become a member of a Bank under the Act and this part may become a member only of the Bank of the district in which the institution's principal place of business is located, except as provided in paragraph (a)(2) of this section.

(2) An institution eligible to become a member of a Bank under the Act and this part may become a member of the Bank of a district adjoining the district in which the institution's principal place of business is located, if demanded by convenience and then only with the approval of the Board.

(b) *Principal place of business.* Except as otherwise designated in accordance with this section, the principal place of business of an institution is the state in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized.

(c) *Designation of principal place of business.* (1) A member or an applicant for membership may request in writing to the Bank in the district where the institution maintains its home office that a state other than the state in which it maintains its home office be designated as its principal place of business. Within 90 calendar days of receipt of such written request, the board of directors of the Bank in the district where the institution maintains its home office shall designate a state other than the state where the institution maintains its home office as the institution's principal place of business, provided all of the following criteria are satisfied:

(i) At least 80 percent of the institution's accounting books, records and ledgers are maintained, located or held in such designated state;

(ii) A majority of meetings of the institution's board of directors and constituent committees are conducted in such designated state; and

(iii) A majority of the institution's five highest paid officers have their place of employment located in such designated state.

(2) Written notice of a designation made pursuant to paragraph (c)(1) of this section shall be sent to the Bank in the district containing the designated state, the Board and the institution.

(3) The notice of designation made pursuant to paragraph (c)(1) of this section shall include the state designated as the principal place of business and

the resulting Bank to which membership will be transferred.

(4) If the board of directors of the Bank in the district where the institution maintains its home office fails to make the designation requested by the member or applicant pursuant to paragraph (c)(1) of this section, then the member or applicant may request in writing that the Board make the designation.

(d) *Transfer of membership.* (1) No transfer of membership from one Bank to another Bank shall take effect until the Banks involved reach agreement on a method of orderly transfer.

(2) In the event that the Banks involved fail to agree on a method of orderly transfer, the Board shall determine the conditions under which the transfer shall take place.

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes including directorial representation under section 7(c) of the Act, 12 U.S.C. 1427(c), and § 932.11 of this chapter, but shall not be subject to the provisions on termination of membership set forth in section 6 of the Act, 12 U.S.C. 1426, or §§ 933.26, 933.27 and 933.29 of this part, including the restriction on reacquiring Bank membership set forth in § 933.30 of this part.

(The information collection requirements contained in this section have been approved by the Office of Management and Budget under control number 3069–0004)

Subpart D—Stock Requirements

SOURCE: 58 FR 43542, Aug. 17, 1993, unless otherwise noted. Redesignated at 61 FR 42542, Aug. 16, 1996.

§ 933.19 Par value and price of stock.

The capital stock of each Bank shall be sold at par, unless the Board has fixed a higher price.

§ 933.20 Stock purchase.

(a) *Minimum stock purchase.* (1) Each member shall purchase stock in the Bank in which it is a member in an amount equal to one percent of the member's aggregate unpaid loan principal, but not less than $500.

(2) If a member has less than 30 percent of its total assets in home mortgage loans, it shall purchase stock in an amount that would be required under paragraph (a)(1) of this section if at least 30 percent of such member's total assets were home mortgage loans.

(b) *Timing of minimum stock purchase.* (1) Within 60 calendar days after an institution is approved for membership in a Bank pursuant to § 933.3 of this part, or an institution is automatically approved for membership pursuant to § 933.4(a) of this part, the institution shall purchase its minimum stock requirement as set forth in paragraph (a) of this section.

(2) At the election of an institution approved for membership, including those automatically approved under § 933.4(a) of this part, the institution may purchase its minimum stock requirement in installments, provided that not less than one-fourth of the total amount shall be purchased within 60 calendar days of the date of approval of membership, and that a further sum of not less than one-fourth of such total shall be purchased at the end of each succeeding period of four months from the date of approval of membership.

(c) *Commencement of membership.* An institution that has been approved for membership shall become a member at the time it purchases its minimum stock requirement or the first installment thereof pursuant to this section.

(d) *Failure to purchase minimum stock requirement.* If an institution that has submitted an application and been approved for membership fails to purchase its minimum stock requirement or its first installment within 60 calendar days of the date of its approval for membership, such approval shall be null and void and the institution, if it wants to be a member, shall be required to submit a new application for membership.

(e) *Reports.* The Bank shall make monthly reports to the Board setting forth purchases by institutions approved for membership of their minimum stock requirement pursuant to this section.

[58 FR 43542, Aug. 17, 1993; 58 FR 47181, Sept. 7, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

§933.21 Issuance and form of stock.

(a) A Bank shall issue to each new member, as of the effective date of membership, stock in the member's name for the amount of stock purchased and paid for in full.

(b) If the member purchases stock in installments, the stock shall be issued in installments with the appropriate number of shares issued after each payment is made.

(c) Stock may be issued in certificated or uncertificated form at the discretion of the Bank.

(d) A Bank may convert all outstanding certificated stock to uncertificated form at its discretion.

§933.22 Adjustments in stock holdings.

(a) *Adjustment in general.* A Bank may from time to time increase or decrease the amount of stock any member is required to hold.

(b)(1) *Annual adjustment.* A Bank shall calculate annually, in the manner set forth in §933.20(a) of this part, each member's required minimum holdings of stock in the Bank in which it is a member using calendar year-end financial data provided by the member to the Bank, pursuant to §933.31(d) of this part, and shall notify each member of the adjustment.

(2) *Redemption of excess shares.* If, after the annual adjustment required by paragraph (b)(1) of this section is made, the amount of stock that a member is required to hold is decreased, the Bank may, in its discretion and upon proper application of the member, retire such excess stock, and the Bank shall pay for each share upon surrender of the stock an amount equal to the par value thereof (except that if at any time the Board finds that the paid-in capital of a Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held, the Bank shall on the order of the Board withhold from the amount to be paid in retirement of the stock a *pro rata* share of the amount of such impairment as determined by the Board) or, at its election, the Bank may credit any part of such payment against the member's debt to the Bank.

(c) A member's stock holdings shall not be reduced under this section to an amount less than required by sections 6(b), 10(c) and 10(e) of the Act, 12 U.S.C. 1426(b), 1430(c), 1430(e).

(The information collection requirements contained in this section have been approved where applicable by the Office of Management and Budget under control number 3069–0004)

[58 FR 43542, Aug. 17, 1993, as amended at 58 FR 50837, Sept. 29, 1993; 58 FR 53023, Oct. 13, 1993; 58 FR 58231, Oct. 29, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

§933.23 Purchase of excess stock.

A member may purchase stock in excess of the minimum amount required by §933.20(a) of this part as long as such purchase is approved by the member's Bank and the laws under which the member operates permit such purchase.

[58 FR 43542, Aug. 17, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

Subpart E—Consolidations Involving Members

SOURCE: 58 FR 43542, Aug. 17, 1993, unless otherwise noted. Redesignated at 61 FR 42542, Aug. 16, 1996.

§933.24 Consolidations of members.

(a) *Consolidation of members in same district*—(1) Upon consolidation of two or more member institutions which are all members of the same Bank district into one institution operating under the charter of one of the consolidating institutions, the transfer of the Bank stock held by the disappearing institution(s) to the consolidated institution shall be deemed approved by the Board pursuant to section 6(f) of the Act, 12 U.S.C. 1426(f).

(2) The stock of the disappearing institution(s) held by a consolidated institution under this section may be redeemed, provided that the consolidated institution holds the minimum amount of stock calculated in the manner set forth in §933.20(a) of this part based on the consolidated institution's total assets and the consolidated institution's stock holdings are not reduced to an amount less than required by sections 6(b), 10(c) and 10(e) of the Act, 12 U.S.C. 1426(b), 1430(c), 1430(e).

(b) *Consolidation of members in different districts*—(1) *Termination of membership*. Upon consolidation of two member institutions which are members of different Banks into one institution operating under the charter of one of the consolidating institutions, the disappearing institution's membership terminates upon cancellation of its charter, except that if more than 80 percent of the assets of the consolidated institution are derived from the assets of the disappearing institution, then the consolidated institution shall continue to be a member of the Bank of which the disappearing institution was a member prior to the consolidation and the membership of the other institution terminates upon consummation of the consolidation.

(2) *Treatment of outstanding advances and Bank stock*. The liquidation of any outstanding indebtedness owed to the disappearing institution's Bank and redemption of stock of such Bank shall be carried out in accordance with § 933.29 of this part.

(3) *Dividends on acquired Bank stock*. The consolidated institution is entitled to receive dividends on outstanding Bank stock acquired in the consolidation from the disappearing institution in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of this chapter.

(4) *No voting rights*. The consolidated institution may not vote the Bank stock acquired in the consolidation from the disappearing institution.

[58 FR 43542, Aug. 17, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

§ 933.25 Consolidations involving nonmembers.

(a) *Termination of membership*. If a member is consolidated into an institution that is not a member, its membership in the Bank terminates upon cancellation of its charter.

(b) *Notification of decision to seek membership*. When a consolidated institution resulting from a consolidation described in paragraph (a) of this section has its principal place of business in a state in the same Bank district as the disappearing institution, the consolidated institution shall have 60 calendar days after the cancellation of the charter of the disappearing institution to notify the disappearing institution's Bank that it intends to apply for membership in such Bank.

(c) *Application for membership*. If the consolidated institution has provided notification pursuant to paragraph (b) of this section, it must apply for membership pursuant to subpart B of this part within 60 calendar days of the notification.

(d) *Treatment of outstanding advances, Bank stock and minimum stock requirements*—(1) *Prior to membership approval*. The disappearing institution's Bank may permit the consolidated institution to continue to hold any outstanding Bank advances and stock, and the consolidated institution shall have the limited rights associated with such stock in accordance with paragraphs (e) and (f) of this section: (i) During the initial 60-day notification period; (ii) for 60 calendar days after receipt of notification that the consolidated institution intends to apply for membership; and (iii) during the processing of an application for membership.

(2) *Upon membership approval*. (i) If the application of the consolidated institution for membership is approved, the transfer of the Bank stock held by the disappearing institution to the consolidated institution shall be deemed approved by the Board pursuant to section 6(f) of the Act, 12 U.S.C. 1426(f).

(ii) If the application of the consolidated institution for membership is approved:

(A) The consolidated institution shall purchase any additional amount of stock required to meet the minimum stock requirement of § 933.20(a) of this part, based on the consolidated institution's total assets, within 60 calendar days of the date of approval of membership; or

(B) At the election of the consolidated institution, the amount of stock required to be purchased to meet the requirement of § 933.20(a) of this part may be purchased in installments, provided that not less than one-fourth of such total additional amount shall be purchased within 60 calendar days of the date of approval of membership, and that a further sum of not less than one-fourth of such total additional amount shall be purchased at the end of each succeeding period of four

months from the date of approval of membership.

(iii) A consolidated institution that has been approved for membership shall become a member at the time it purchases the additional amount of stock required to meet the minimum stock requirement of §933.20(a) of this part or the first installment thereof.

(3) *Upon failure to apply for or be approved for membership.* If the consolidated institution does not apply for membership, or if its application for membership is denied, then the liquidation of any outstanding indebtedness owed to the disappearing institution's Bank and redemption of stock of such Bank shall be carried out in accordance with §933.29 of this part, and the consolidated institution shall have the limited rights associated with such stock in accordance with paragraphs (e) and (f) of this section.

(e) *Dividends on acquired Bank stock.* The consolidated institution is entitled to receive dividends on outstanding Bank stock acquired in the consolidation from the disappearing institution in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and §932.3 of this chapter.

(f) *No voting rights on acquired Bank stock.* The consolidated institution may not vote the Bank stock acquired in the consolidation from the disappearing institution unless and until the consolidated institution is a Bank member.

(The information collection requirements contained in this section have been approved where applicable by the Office of Management and Budget under control number 3069–0004)

[58 FR 43542, Aug. 17, 1993, as amended at 58 FR 50837, Sept. 29, 1993. Rdesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

Subpart F—Withdrawal and Removal From Membership

SOURCE: 58 FR 43542, Aug. 17, 1993, unless otherwise noted. Redesignated at 61 FR 42542, Aug. 16, 1996.

§933.26 Procedure for withdrawal.

(a) *Notice of withdrawal.* Any member that is eligible under applicable law to withdraw from Bank membership may do so after providing the Board and its Bank at least six months written notice of the member's intention to withdraw from membership.

(b) *Cancellation of notice of withdrawal.* A member may cancel its notice of withdrawal by providing both the Board and its Bank written notice of cancellation any time before the effective date of the withdrawal.

(c) *Treatment of outstanding advances and Bank stock.* The liquidation of any outstanding indebtedness owed to the Bank in which membership has been terminated and redemption of stock of such Bank shall be carried out in accordance with §933.29 of this part.

(d) *Dividends on Bank stock.* An institution that has withdrawn from Bank membership pursuant to this section is entitled to receive dividends on outstanding stock of the Bank in which membership has been terminated in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and §932.3 of this chapter.

(e) *No voting rights on Bank stock.* An institution that has withdrawn from Bank membership pursuant to this section may not vote the Bank stock.

(The information collection requirements contained in this section have been approved where applicable by the Office of Management and Budget under control number 3069–0004)

[58 FR 43542, Aug. 17, 1993, as amended at 58 FR 50837, Sept. 29, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

§933.27 Procedure for removal.

(a) *Bank request for removal.* If a Bank believes that any of the grounds for removal of a member from membership contained in paragraph (b) of this section exists, the Bank may submit a written request to the Board stating the grounds for removal and recommending removal of the member from membership.

(b) *Grounds.* The following are grounds for removing a member from membership in a Bank:

(1) Failure by the member to comply with any provision of the Act or any regulation of the Board adopted under the Act;

(2) Insolvency of the member. A member is deemed insolvent if its assets are less than its liabilities;

(3) The member's management or home-financing policies are inconsistent with sound and economical home financing or with the purposes of the Act; or

(4) Any other condition exists with respect to the member that the Board believes would jeopardize the safety and soundness of the member's Bank.

(c) *Procedure.* (1) If the Board believes that any of the grounds for removal contained in paragraph (b) of this section exist, and it believes that the member should be removed from membership, it shall provide the member with at least 30 calendar days written notice of its intention to remove the member from membership.

(2) Such notice shall be served as determined by the Board and shall state the grounds for such removal action and the time and place of a hearing at which the member may be heard.

(3) A hearing on such removal action shall be conducted in accordance with procedures established by the Board.

(d) *Removal by Board.* If the Board determines, in its sole discretion and after complying with the requirements of paragraph (c) of this section, that any of the grounds for removal of a member contained in paragraph (b) of this section exists, it may remove the member from membership.

(e) *Treatment of outstanding advances and Bank stock.* The liquidation of any outstanding indebtedness owed to the Bank in which membership has been terminated and redemption of stock of such Bank shall be carried out in accordance with § 933.29 of this part.

(f) *Dividends on Bank stock.* An institution that has been removed from Bank membership pursuant to this section is entitled to receive dividends on outstanding stock of the Bank in which membership has been terminated in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of this chapter.

(g) *No voting rights on Bank stock.* An institution that has been removed from Bank membership pursuant to this section may not vote the Bank stock.

[58 FR 43542, Aug. 17, 1993; 58 FR 47181, Sept. 7, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

§ 933.28 Automatic termination of membership for institutions placed in receivership.

(a) *Automatic termination.* As of the effective date of being placed in receivership, an institution's Bank membership automatically terminates.

(b) *Treatment of outstanding advances and Bank stock.* The liquidation of any outstanding indebtedness owed to the Bank in which membership has been terminated and redemption of stock of such Bank shall be carried out in accordance with § 933.29 of this part.

(c) *Dividends on Bank stock.* The receiver is entitled to receive dividends on outstanding Bank stock of the institution placed in receivership in accordance with section 6(g) of the Act, 12 U.S.C. 1426(g), and § 932.3 of this chapter.

(d) *No voting rights on Bank stock.* The receiver may not vote the Bank stock.

[58 FR 43542, Aug. 17, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

Subpart G—Orderly Liquidation of Advances and Redemption of Stock

§ 933.29 Orderly liquidation of advances and redemption of stock.

(a)(1) If an institution ceases to be a member of a Bank pursuant to §§ 933.26, 933.27 or 933.28 of this part, the institution, or its receiver under § 933.28 of this part, may continue to hold the stock of the Bank of which such institution is no longer a member so long as the Bank requires that the stock be held as collateral for any outstanding indebtedness owed to the Bank. If an institution ceases to be a member of a Bank pursuant to §§ 933.24(b) or 933.25(d)(3) of this part, the consolidated institution may continue to hold the stock of the disappearing institution's Bank so long as such Bank requires that the stock be held as collateral for any outstanding indebtedness owed to the Bank.

(2) The indebtedness of the institution that has ceased to be a member of a Bank owed to such Bank shall be liquidated in an orderly manner as determined by the Bank in accordance with

§935.19 of this chapter, and upon completion of such liquidation, such institution's remaining stock in the Bank shall be surrendered and canceled.

(b) If an institution that has ceased to be a member of a Bank has no outstanding indebtedness owed to the Bank, such institution's stock in the Bank shall be surrendered and canceled.

(c) An institution that has ceased to be a member shall receive for stock redeemed under paragraphs (a)(2) or (b) of this section a sum equal to the original amount paid for the stock redeemed, except that if at any time the Board finds that the paid-in capital of the Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held by the Bank, the Bank shall on the order of the Board withhold from the amount to be paid in retirement of the stock a *pro rata* share of the amount of such impairment as determined by the Board.

[58 FR 43542, Aug. 17, 1993; 58 FR 53023, Oct. 13, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

Subpart H—Reacquisition of Membership

§933.30 Reacquisition of membership.

An institution which withdraws from membership pursuant to §933.26 of this part may acquire membership in a Bank only after the expiration of a period of 10 years thereafter, except:

(a) Such institution may acquire membership in a Bank if such withdrawal is a consequence of a transfer of membership on a non-interrupted basis between Banks pursuant to §933.18 of this part; or

(b) Such institution shall acquire membership in a Bank in connection with obtaining a charter as a federally chartered savings association (as defined in 12 U.S.C. 1813), or if otherwise required by law to become a member of a Bank, which institution is automatically approved for Bank membership pursuant to §933.4(a) of this part.

[58 FR 43542, Aug. 17, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

Subpart I—Bank Access to Information

§933.31 Reports and examinations.

As a condition precedent to Bank membership, each member:

(a) Consents to such examinations as the Bank or the Board may require for purposes of the Act;

(b) Agrees that reports of examinations by local, state or federal agencies or institutions may be furnished by such authorities to the Bank or the Board upon request;

(c) Agrees to give the Bank or the appropriate Federal banking agency, upon request, such information as the Bank or the appropriate Federal banking agency may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of Bank members;

(d) Agrees to provide the Bank with calendar year-end financial data each year, for purposes of making the calculation described in §933.22(b)(1) of this part; and

(e) Agrees to provide the Bank with copies of reports of condition and operations required to be filed with the member's appropriate Federal banking agency, if applicable, within 20 calendar days of filing, as well as copies of any annual report of condition and operations required to be filed.

(The information collection requirements contained in this section have been approved where applicable by the Office of Management and Budget under control number 3069–0004)

[58 FR 43542, Aug. 17, 1993; 58 FR 50837, Sept. 29, 1993; 58 FR 53023, Oct. 13, 1993. Redesignated and amended at 61 FR 42542, 42549, Aug. 16, 1996]

Subpart J—Membership Insignia

§933.32 Official membership insignia.

Members may display the approved insignia of membership on their documents, advertising and quarters, and likewise use the words ''Member Federal Home Loan Bank System.''

[58 FR 43542, Aug. 17, 1993. Redesignated at 61 FR 42542, Aug. 16, 1996]

PART 934—OPERATIONS OF THE BANKS

Sec.
934.1 Investments.
934.2 Loans guaranteed under the Foreign Assistance Act of 1961.
934.3 Transfer of funds between Banks.
934.4 Deposits from members.
934.5 Trustee powers.
934.6 Budget preparation and reporting requirements.
934.7 Surety bonds.
934.8 Insurance.
934.9 Safe-keeping accounts.
934.10 Securities held in trust or as collateral.
934.11 Accounting.
934.12 Gold and gold-related transactions.
934.13 Office of Thrift Supervision Assessments.
934.14 Bank requests for information.

AUTHORITY: 12 U.S.C. 1422a, 1422b, 1432, 1442.

SOURCE: 43 FR 46841, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, unless otherwise noted.

§ 934.1 Investments.

(a) Banks may acquire or dispose of securities with prior approval of the Board or its designated representative or in conformity with:

(1) Authorizations of the Board or such representative or (2) stated Board policy. A Bank's board of directors may authorize Bank officer(s) to acquire or dispose of securities qualifying as liquidity for deposits under the investment policy of the Board as in the judgment of the officer(s) is necessary in the operation of the Bank. Any other acquisition or disposition must be authorized in advance by a majority of the board of directors, executive committee, or investment committee consisting of three or more persons a majority of whom are directors of the Bank. Single acquisitions or dispositions may be so authorized, or acquisitions and/or dispositions of securities of a stated amount maturing within specified dates as in the judgment of the officer(s) designated in the authorization are necessary in the operation of the Bank, may be so authorized, for periods of 90 days or less.

(b) Compliance with sections 11 and 16 of the act shall be determined based on the principal amount of obligations of the United States.

(c) Secured advances to members maturing within five years are investments in compliance with section 11(g) of the Act.

(d) Cash reserves may be held temporarily, awaiting investment opportunity, without violating section 16 of the Act.

[43 FR 46841, Oct. 11, 1978, as amended at 49 FR 34198, Aug. 29, 1984. Redesignated at 54 FR 36759, Sept. 5, 1989]

§ 934.2 Loans guaranteed under the Foreign Assistance Act of 1961.

With prior approval of the Board, a Bank's board of directors may authorize it to acquire, hold, or dispose of any of the following loans, or interests therein, primarily to facilitate acquisition of participation interests in such loans by members authorized to make such investment:

(a) Housing project loans with any guaranty under section 221 of the Foreign Assistance Act of 1961, as in effect before December 30, 1969;

(b) Loans with any guaranty under section 224 of such Act, as in effect before December 30, 1969; or

(c) Loans with any guaranty under section 221 or 222 of such Act, as in effect after December 29, 1969.

Prior approval of the Board is not required to repurchase a participation interest previously sold to a member.

§ 934.3 Transfer of funds between Banks.

Interbank borrowing shall be through unsecured deposits bearing interest at rates negotiated between Banks. If agreement on terms cannot be reached, the Board may establish terms.

[43 FR 46841, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, and amended at 55 FR 2229, Jan. 23, 1990]

§ 934.4 Deposits from members.

Banks may accept demand and time deposits from members, reserving the right to require notice of intention to withdraw any part of time deposits. Rates of interest paid on all deposits shall be set by the Bank's board of directors (or, between regular meetings thereof, by a committee of directors selected by the board) or by the Bank President, if so authorized by the

board. Unless otherwise specified by the board, a Bank President may delegate to any officer or employee of the Bank any authority he possesses under this section.

[46 FR 49107, Oct. 6, 1981. Redesignated at 54 FR 36759, Sept. 5, 1989]

§934.5 Trustee powers.

A Bank may act, and make reasonable charges for doing so, as trustee of any trust affecting the business of any member or any institution or group applying for membership or for insurance of accounts, or any group applying for a charter for a Federal Savings Association, if:

(a) Such trust is created or arises for the benefit of the institution or its savers, investors, or borrowers, or for promotion of sound and economical home financing; and

(b) In the case of applicants, the Bank ceases to act as trustee if the application is withdrawn or rejected.

[43 FR 46841, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, and amended at 55 FR 2229, Jan. 23, 1990]

§934.6 Budget preparation and reporting requirements.

(a) *Adoption of annual Bank budgets.* (1) Each Bank's board of directors shall be responsible for the adoption of an annual operating expense budget and a capital expenditures budget for the Bank, and any subsequent amendments thereto, consistent with the requirements of the Act, this section, other regulations and policies of the Board, and with the Bank's responsibility to protect both its members and the public interest by keeping its costs to an efficient and effective minimum.

(2) Pursuant to the requirement of section 12(a) of the Act (12 U.S.C. 1432(a)), a Bank must obtain prior approval of the Board before purchasing or erecting, or leasing for a term of more than 10 years, a building to house the Bank.

(3) A Bank's board of directors may not delegate the authority to approve the Bank's annual budgets, or any subsequent amendments thereto, to Bank officers or other Bank employees.

(4) A Bank's annual budgets shall be prepared based upon an interest rate scenario as determined by the Bank.

(5) A Bank may not exceed its total annual operating expense budget or its total annual capital expenditures budget without prior approval by the Bank's board of directors of an amendment to such budget.

(b) *Budget reports.* Each Bank shall submit to the Board, by January 31 of each year, in a format and as further prescribed by the Board, such Bank budgets and other financial information as the Board shall require, including the following:

(1) Balance sheet projections;

(2) Income statement projections, including operating expense budget data and staffing levels;

(3) Capital expenditures budget data;

(4) Management discussion of expected financial performance;

(5) Strategic or business plan;

(6) Interest rate assumptions; and

(7) A copy of the FHLBank's board of directors resolution adopting the FHLBank's annual operating expense budget and capital expenditures budget.

(c) *Report on amendments to total annual budgets.* A Bank shall submit promptly to the Board a copy of the Bank's board of directors resolution adopting any amendment increasing a Bank's total annual operating expense budget or total annual capital expenditures budget above originally approved budget limits.

(d) *Mid-year reforecasting report.* Each Bank shall submit to the Board, by July 31 of each year, in a format and as further prescribed by the Board, a report containing a balance sheet and income statement setting forth reforecasted projections for the year relative to the budget projections for that year as originally approved or amended, including a management discussion explaining any significant changes in the reforecasted projections from the budget projections as originally approved or amended.

(e) *Annual actual performance results report.* Each Bank shall submit to the Board, by January 31 of each year, in a format and as further prescribed by the Board, a report containing a balance sheet and income statement setting forth the actual performance results

for the prior year relative to the budget projections for that year as originally approved or amended, including a management discussion explaining any significant changes in the actual performance results from the budget projections as originally approved or amended.

[61 FR 55880, Oct. 30, 1996]

§ 934.7 Surety bonds.

Each Bank shall maintain surety bonds covering all officers, employees, attorneys, or agents having control over, or access to, monies or securities owned by the Bank or in its possession.

[49 FR 34198, Aug. 29, 1984, as amended at 54 FR 6113, Feb. 7, 1989. Redesignated at 54 FR 36759, Sept. 5, 1989]

§ 934.8 Insurance.

Each bank shall maintain insurance required by law, and may maintain any additional insurance its board of directors considers necessary for its protection.

§ 934.9 Safe-keeping accounts.

Securities owned by each Bank shall be held at any Federal Reserve Bank or, with prior Board approval, at any depository commercial bank that is a member of a Federal Reserve Bank.

[45 FR 31046, May 12, 1980. Redesignated at 54 FR 36759, Sept. 5, 1989]

§ 934.10 Securities held in trust or as collateral.

Bonds and negotiable securities held by a Bank as collateral or in trust shall be placed in the custody of a Federal Reserve Bank or branch thereof, a financial institution which is a member of the Federal Reserve System or of the Federal Deposit Insurance Corporation, or under such other arrangement approved by the Board. However this section shall not apply to bonds and negotiable securities held in custody under the plan for holding security transactions of member institutions approved August 13, 1943.

§ 934.11 Accounting.

Each Bank's accounting system is subject to approval by the Board, and its accounting forms are subject to approval by the Board or its designee.

[43 FR 46841, Oct. 11, 1978. Redesignated at 54 FR 36759, Sept. 5, 1989, and amended at 55 FR 2229, Jan. 23, 1990. Redesignated at 60 FR 65516, Dec. 20, 1995]

§ 934.12 Gold and gold-related transactions.

No Bank may engage in any capacity or manner in any transaction or activity involving gold (including gold coin) or gold related instruments or securities, except for purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Pub. L. 99–185, 99 Stat. 1177 (1985), and activities reasonably incident thereto.

[51 FR 34951, Oct. 1, 1986. Redesignated at 54 FR 36759, Sept. 5, 1989. Redesignated at 60 FR 65516, Dec. 20, 1995]

§ 934.13 Office of Thrift Supervision assessments.

At the request of, and in accordance with the instructions of, the Director of the Office of Thrift Supervision, the Federal home loan banks shall remit funds made available by their members to satisfy Office of Thrift Supervision assessments.

[54 FR 36760, Sept. 5, 1989. Redesignated at 60 FR 65516, Dec. 20, 1995]

§ 934.14 Bank requests for information.

This section governs the procedure by which a Federal Home Loan Bank will request and receive Confidential Information, as defined in paragraph (a)(4) of this section, pursuant to section 22 of the Federal Home Loan Bank Act.

(a) *Definitions.* As used in this section:

(1) *Board* means the Federal Housing Finance Board.

(2) *Bank* means a Federal Home Loan Bank, including its directors, officers, employees or agents.

(3) *Financial Regulatory Agency* means any of the following:

(i) The Department of the Treasury, including either the Office of the Comptroller of the Currency or the Office of Thrift Supervision;

(ii) The Board of Governors of the Federal Reserve System;

(iii) The National Credit Union Administration; or

(iv) The Federal Deposit Insurance Corporation.

(4) *Confidential Information* means any record, data, or report, including but not limited to examination reports, or any part thereof, that is non-public, privileged or otherwise not intended for public disclosure which is in the possession or control of a Financial Regulatory Agency and which contains information regarding members of a Bank or financial institutions with which a Bank has had or contemplates having transactions under the Bank Act.

(5) *Third party* means any person or entity except a director, officer, employee or agent of either:

(i) A Bank in possession of any particular confidential information; or

(ii) The Financial Regulatory Agency that supplied the particular confidential information to such Bank.

(b) *Request for confidential information.* A bank shall make all requests for confidential information to a Financial Regulatory Agency, or to a regional office of such Agency if mutually agreeable, in accordance with the procedures contained in this section as well as any procedures of general applicability for requesting information promulgated by such Financial Regulatory Agency. This section and its procedures may be supplemented by a confidentiality agreement between a Bank and a Financial Regulatory Agency.

(c) *Form of Request.* A request by a Bank to a Financial Regulatory Agency for confidential information shall be made in writing or by such other means as may be agreed upon between the Bank and the Financial Regulatory Agency. The request shall reference section 22 of the Bank Act, as amended, and this regulation, and shall describe the confidential information requested and identify its intended use pursuant to the Bank Act. The request shall be signed or otherwise made by any duly authorized Bank officer or employee.

(d) *Storage of Confidential Information.* Each Bank will store all identified confidential information in secure storage areas or filing cabinets or other secured facilities generally used by such Bank and limit access thereto in the same manner as it maintains the confidentiality of its own members' privileged or non-public information. Each Bank shall have in place a written set of procedures and policies designed to insure the confidentiality of confidential information in its possession, and shall establish an internal review of its procedures for storing confidential information and maintaining its confidentiality, as a part of its internal audit process.

(e) *Access to Confidential Information.* A Bank will insure that access to the Confidential Information stored at its facility is limited to those with a need to know such information and that employees with access maintain the confidentiality of the confidential information in accordance with the Bank's own procedures for maintaining the confidentiality of its members' privileged or non-public information.

(f) *Third party requests for Confidential Information*—(1) *In general.* In the event a Bank receives a request for confidential information in its possession from any third party, the Bank shall forward such requests to the Financial Regulatory Agency from which the confidential information was obtained.

(2) *By subpoena.* In the event a Bank receives a subpoena for confidential information issued by a Federal, state or local government department, agency, court or bureau, the Bank shall give timely written notice of such subpoena to the Financial Regulatory Agency from which the confidential information was obtained, unless such notice is prohibited by applicable law.

Except as limited herein, the Bank may disclose confidential information pursuant to the subpoena, after giving timely written notice, when:

(i) The Financial Regulatory Agency gives written approval to the disclosure; or

(ii) A binding order to produce the confidential information has become final with all rights of appeal either exhausted or lapsed.

(3) *Nondisclosure to third parties.* Except as provided in paragraph (f)(2) of this section, a Bank shall not disclose confidential information to any third party. A Bank shall refer all third party requests for such confidential information to the Financial Regulatory

Agency that released the confidential information to the Bank.

(4) *Disclosure to Board.* (i) Neither this section nor any confidentiality agreement executed between a Bank and a Financial Regulatory Agency shall prevent a Bank from disclosing confidential information in its possession to the Board whenever disclosure is necessary to accomplish the Board's supervision of Bank membership applications or Bank director eligibility issues, or disclosing any confidential information in its possession if such disclosure is made pursuant to an audit conducted pursuant to paragraph (d) of this section or section 20 of the Bank Act.

(ii) The Board shall keep all confidential information received under paragraph (f)(4) of this section in strict confidence.

(g) *Computer data.* This section shall not preclude a bank from arranging with any Financial Regulatory Agency to transmit or allow access to confidential information with the consent of such agency by means of an electronic computer system. Any such arrangement shall insure the security of the computerized data stored in a bank's computer and restrict access to such data in order to preserve confidentiality in a manner agreed upon by the bank and the Financial Regulatory Agency.

[55 FR 50545, Dec. 7, 1990. Redesignated at 60 FR 65516, Dec. 20, 1995]

PART 935—ADVANCES

Subpart A—Advances to Members

Sec.
935.1 Definitions.
935.2 Bank credit mission.
935.3 Bank advances policy.
935.4 Authorization and application for advances; obligation to repay advances.
935.5 Limitations on access to advances.
935.6 Terms and conditions for advances.
935.7 Interest rates on Community Investment Program advances.
935.8 Fees.
935.9 Collateral.
935.10 Banks as secured creditors.
935.11 Pledged collateral; verification.
935.12 Collateral valuation; appraisals.
935.13 Restrictions on advances to members that are not qualified thrift lenders.
935.14 Limitations on long-term advances.
935.15 Capital stock requirements; unilateral redemption of excess stock.
935.16 Advance participations.
935.17 Intradistrict transfer of advances.
935.18 Special advances to savings associations.
935.19 Liquidation of advances upon termination of membership.

Subpart B—Advances to Nonmembers

935.20 Scope.
935.21 Advances to the Savings Association Insurance Fund.
935.22 Advances to nonmember mortgagees.

AUTHORITY: 12 U.S.C. 1422b(a)(1), 1426, 1429, 1430, 1430b, 1431.

SOURCE: 58 FR 29469, May 20, 1993, unless otherwise noted.

Subpart A—Advances to Members

§ 935.1 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.).*

Actual thrift investment percentage or *ATIP* has the same meaning as used in section 10(m)(4) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(4)) and in the implementing regulations of the OTS at 12 CFR 563.51, except that the ATIP will be calculated and applied for purposes of this part to all members of the Banks, whether or not they are savings associations.

Advance means a loan from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Act and this part.

Affordable Housing Program or *AHP* means the program described in section 10(j) of the Act (12 U.S.C. 1430(j)) and part 960 of the Board's regulations.

Appropriate Federal banking agency. The term *appropriate Federal banking agency* has the same meaning as used in 12 U.S.C. 1813(q) and for federally insured credit unions shall mean the National Credit Union Administration.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Board means the Federal Housing Finance Board established under the authority of the Act, its governing Board of Directors, or an official duly authorized to act on its behalf.

Capital deficient member means a member that fails to meet its minimum regulatory capital requirements as defined or otherwise required by the member's appropriate federal banking agency, insurer or, in the case of members that are not federally insured depository institutions, state regulator.

Combination business or farm property means real property for which the total appraised value is attributable to the combination of residential, and business or farm uses.

Community Investment Program or *CIP* means the program described in section 10(i) of the Act or a program established pursuant to section 10(j)(10) of the Act (12 U.S.C. 1430(i), (j)(10)).

Depository institution means a bank or savings association, as defined in 12 U.S.C. 1813, or a credit union, as defined in 12 U.S.C. 1752.

Dwelling unit means, for purposes of this part, a single room or a unified combination of rooms designed for residential use by one household.

FDIC means the Federal Deposit Insurance Corporation.

GAAP means Generally Accepted Accounting Principles.

HUD means the Department of Housing and Urban Development.

Improved residential real property means residential real property excluding real property to be improved, or in the process of being improved, by the construction of dwelling units.

Insurer means the Federal Deposit Insurance Corporation for ''insured depository institutions'' as defined in 12 U.S.C. 1813(c)(2) and the National Credit Union Administration for federally insured credit unions.

Long-term advance means, for the purposes of this part, an advance with an original term to maturity greater than five years.

Manufactured housing means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

Member means an institution that has been admitted to membership in a Bank and, pursuant to requirements established by the Board, has purchased capital stock in the Bank.

Mortgage-backed security means, for purposes of this part:

(1) An equity security representing an ownership interest in:

(i) Fully disbursed, whole first mortgage loans on improved residential real property; or

(ii) Mortgage pass-through or participation securities which are themselves backed entirely by fully disbursed, whole first mortgage loans on improved residential real property; or

(2) A collateralized mortgage obligation, mortgage-backed bond or other debt security backed entirely by the assets described in paragraph (1)(i) or (ii) of this section.

Multifamily property means, for purposes of this part:

(1)(i) Real property that is solely residential and which includes five or more dwelling units; or

(ii) Real property which includes five or more dwelling units with commercial units combined, provided the property is primarily residential.

(2) Multifamily property as defined in this section includes nursing homes, dormitories and homes for the elderly.

Non-Qualified Thrift Lender member means any member that does not meet the Qualified Thrift Lender test as defined in this part.

Nonresidential real property means, for purposes of this part, real property not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institutions, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property, except as otherwise determined by the Board in its discretion.

OCC means the Office of the Comptroller of the Currency.

One-to-four family property means any of the following:

(1) Real property containing:

(i) One-to-four dwelling units; or

(ii) More than four dwelling units if each unit is separated from the other units by dividing walls that extend from ground to roof, including row

houses, townhouses or similar types of property;

(2) Manufactured housing if:

(i) Applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property; and

(ii) The loan to purchase the manufactured housing is secured by that manufactured housing;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property containing one-to-four dwelling units with commercial units combined, provided the property is primarily residential.

OTS means the Office of Thrift Supervision.

Qualified Thrift Lender or *QTL* means the term as defined in section 10(m)(1) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)(1)) and in the implementing regulations of the OTS (12 CFR 563.50). A non-savings association member which meets the QTL test as applied by the Banks will be treated as a QTL for purposes of this part.

Qualified Thrift Lender test or *QTL test* means the asset test described in section 10(m) of the Home Owners' Loan Act (12 U.S.C. 1467a(m)) and in the implementing regulations of the OTS (12 CFR 563.50), except that the QTL test will be applied for purposes of this part to all members of the Banks, whether or not they are savings associations.

Residential housing finance assets means any of the following:

(1) Loans secured by residential real property;

(2) Mortgage-backed securities;

(3) Participations in loans secured by residential real property;

(4) Loans financed by CIP advances;

(5) Loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property; or

(6) Any loans or investments which the Board, in its discretion, otherwise determines to be residential housing finance assets.

Residential real property means:

(1) Any of the following:

(i) One-to-four family property;

(ii) Multifamily property;

(iii) Real property to be improved by the construction of dwelling units;

(iv) Real property in the process of being improved by the construction of dwelling units;

(v) Combination business or farm property, provided that at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property.

(2) The term residential real property does not include nonresidential real property as defined in this section.

Savings association means a savings association as defined in section 3(b) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(b)).

State means a state of the United States, the District of Columbia, Guam, Puerto Rico or the U.S. Virgin Islands.

State housing finance agency or *SHFA* means a public agency, authority or publicly sponsored corporation that:

(1) Serves as an instrumentality of any state or any political subdivision of any state; and

(2) Functions as a source of residential mortgage loan financing in that state.

State regulator means a state insurance commissioner or state regulatory entity with primary responsibility for supervising a member borrower that is not a federally insured depository institution.

Tangible capital means:

(1) Capital, calculated according to GAAP, less ''intangible assets'' except for purchased mortgage servicing rights to the extent such assets are included in a member's core or Tier 1 capital, as reported in the member's Thrift Financial Report for members whose primary federal regulator is the OTS, or as reported in the Report of Condition and Income for members whose primary federal regulator is the FDIC, the OCC, or the Board of Governors of the Federal Reserve System.

(2) Capital calculated according to GAAP, less intangible assets, as defined by a Bank for members which are not regulated by the OTS, the FDIC, the OCC, or the Board of Governors of the Federal Reserve System; provided that a Bank shall include a member's purchased mortgage servicing rights to

the extent such assets are included for the purpose of meeting regulatory capital requirements.

[58 FR 29469, May 20, 1993, as amended at 58 FR 29477, May 20, 1993; 59 FR 2949, Jan. 20, 1994]

§935.2 Bank credit mission.

(a) The primary credit mission of the Banks shall be to enhance the availability of residential mortgage credit.

(b) Each Bank shall fulfill its primary credit mission by:

(1) Providing a readily available, economical and affordable source of funds in the form of advances to its members; and

(2) Offering such advances products and programs that satisfy the credit needs of its members.

(c) Notwithstanding paragraph (b) of this section, each Bank shall place such limitations on the making of advances to its members as shall:

(1) Be specifically prescribed by statute, regulation or policy;

(2) Protect the financial integrity of the Bank and accommodate the practical constraints associated with the Bank's ability to raise funds; or

(3) Be required by the Board.

§935.3 Bank advances policy.

(a) Each Bank's board of directors shall adopt, and review at least semiannually, a policy on advances to members consistent with the requirements of the Act, this part, and policy guidelines of the Board. Each Bank shall provide a copy of its advances policy, and any revisions thereto, to the Board.

(b) A Bank's board of directors may designate officers authorized to extend or deny credit and take other action consistent with the Bank's advances policy.

(c) A Bank may make exceptions to its advances policy only with the approval of its board of directors, a committee thereof, or officers specifically authorized by the board of directors to approve such exceptions, provided that any such exceptions shall comply with the Act, this part and policy guidelines of the Board.

(d) A Bank's board of directors shall:

(1) Require the officers designated pursuant to paragraph (b) of this section to report promptly to it, or a designated committee of the board, all actions taken under this section; and

(2) Review such actions for compliance with this section.

§935.4 Authorization and application for advances; obligation to repay advances.

(a) *Application for advances.* A Bank may accept oral or written applications for advances from its members.

(b) *Obligation to repay advances.* (1) A Bank shall require any member to which an advance is made to enter into a primary and unconditional obligation to repay such advance and all other indebtedness to the Bank, together with interest and any unpaid costs and expenses in connection therewith, according to the terms under which such advance was made or other indebtedness incurred.

(2) Such obligations shall be evidenced by a written advances agreement that shall be reviewed by the Bank's legal counsel to ensure such agreement is in compliance with applicable law.

(c) *Secured advances.* (1) Each Bank shall make only fully secured advances to its members as set forth in the Act, the provisions of this part and policy guidelines established by the Board.

(2) The Bank shall execute a written security agreement with each borrowing member which establishes the Bank's security interest in collateral securing advances.

(3) Such written security agreement shall, at a minimum, describe the type of collateral securing the advances and give the Bank a perfectible security interest in the collateral.

(d) *Approval*—(1) *By the Bank's board of directors.* Applications for advances, advances agreements and security agreements shall be in substantially such form as approved by the Bank's board of directors, or a committee thereof specifically authorized by the board of directors to approve such forms.

(2) *By the Board.* Each Bank's forms for all advances applications, advances agreements and security agreements are deemed approved by the Board if such forms are consistent with the requirements of this part. Each Bank

shall provide copies of its current forms for all advances agreements and security agreements, and any substantive revisions thereto, to the Board.

§ 935.5 Limitations on access to advances.

(a) *Credit underwriting.* A Bank, in its discretion, may:

(1) Limit or deny a member's application for an advance if, in the Bank's judgment, such member:

(i) Is engaging or has engaged in any unsafe or unsound banking practices;

(ii) Has inadequate capital;

(iii) Is sustaining operating losses;

(iv) Has financial or managerial deficiencies, as determined by the Bank, that bear upon the member's creditworthiness; or

(v) Has any other deficiencies, as determined by the Bank; or

(2) Approve a member's application for an advance subject to such additional terms as the Bank may prescribe, pursuant to the provisions of the Act, this part and any policy guidelines of the Board; and

(3) Make advances and renewals only if the Bank determines that it may safely make such advance or renewal to the member, including advances and renewals made pursuant to this section.

(b) *New advances to members without positive tangible capital.* (1) A Bank shall not make a new advance to a member without positive tangible capital unless the member's appropriate federal banking agency or insurer requests in writing that the Bank make such advance. The Bank shall promptly provide the Finance Board with a copy of any such request.

(2) A Bank shall use the most recently available Thrift Financial Report, Report of Condition, and Income or other regulatory report of financial condition to determine whether a member has positive tangible capital.

(c) *Renewals of advances to members without positive tangible capital*—(1) *Renewal for 30-day terms.* A Bank may renew outstanding advances, for successive terms of up to 30 days each, to a member without positive tangible capital; provided, however, that a Bank shall honor any written request of the appropriate federal banking agency or insurer that the Bank not renew such advances.

(2) *Renewal for longer than 30-day terms.* A Bank may renew outstanding advances to a member without positive tangible capital for a term greater than 30 days at the written request of the appropriate federal banking agency or insurer.

(d) *Advances to capital deficient but solvent members.* (1) Except as provided in paragraph (d)(2)(i) of this section, a Bank may make a new advance or renew an outstanding advance to a capital deficient member that has positive tangible capital.

(2)(i) A Bank shall not lend to a capital deficient member that has positive tangible capital if it receives written notice from the appropriate federal banking agency or insurer that the member's use of Bank advances has been prohibited. The Bank shall promptly provide the Finance Board with a copy of any such notice.

(ii) A Bank may resume lending to such a capital deficient member if the Bank receives a written statement from the appropriate federal banking agency or insurer which re-establishes the member's ability to use advances.

(e) *Reporting.* (1) Each Bank shall provide the Finance Board with a monthly report of the advances and commitments outstanding to each of its members.

(2) Such monthly report shall be in a format or on a form prescribed by the Finance Board.

(3) Each Bank shall, upon written request from a member's appropriate federal banking agency or insurer, provide to such entity information on advances and commitments outstanding to the member.

(f) *Members without federal regulators.* In the case of members that are not federally insured depository institutions, the references in paragraphs (b), (c), (d) and (e) of this section to ''appropriate federal banking agency or insurer'' shall mean the member's state regulator acting in a capacity similar to an appropriate federal banking agency or insurer.

(g) *Advance commitments.* (1) In the event that a member's access to advances from a Bank is restricted pursuant to this section, the Bank shall not fund outstanding commitments for advances not exercised prior to the imposition of the restriction. This requirement shall apply to all advance commitments made by a Bank after August 25, 1993.

(2) Each Bank shall include the stipulation contained in paragraph (g)(1) of this section as a clause in either:

(i) The written advances agreement required by §935.4(b)(2) of this part; or

(ii) The written advances application required by §935.4(a) of this part.

[58 FR 29469, May 20, 1993, as amended at 59 FR 2949, Jan. 20, 1994]

§935.6 Terms and conditions for advances.

(a) *Advance maturities.* Each Bank shall offer advances with maturities of up to ten years, and may offer advances with longer maturities consistent with the safe and sound operation of the Bank.

(b) *Advance pricing*—(1) *General.* Each Bank shall price its advances to members taking into account the following factors:

(i) The marginal cost to the Bank of raising matching maturity funds in the marketplace; and

(ii) The administrative and operating costs associated with making such advances to members.

(2) *Differential pricing.* (i) Each Bank may, in pricing its advances, distinguish among members based upon its assessment of:

(A) The credit and other risks to the Bank of lending to any particular member; or

(B) Other reasonable criteria that may be applied equally to all members.

(ii) Each Bank shall include in the advances policy required by §935.3(a) of this part, standards and criteria for such differential pricing and shall apply such standards and criteria consistently and without discrimination to all members applying for advances.

(3) *Affordable Housing Program advances.* The advance pricing policies and procedures contained in paragraph (b)(1) of this section shall not apply in the case of a Bank's AHP advances made pursuant to part 960 of this chapter.

(c) *Authorization for pricing advances.* (1) A Bank's board of directors, a committee thereof, or the Bank's president, if so authorized by the Bank's board of directors, shall set the rates of interest on advances consistent with paragraph (b) of this section.

(2) A Bank president authorized to set interest rates on advances pursuant to this paragraph (c) may delegate any part of such authority to any officer or employee of the Bank.

(d) *Putable advances*—(1) *Disclosure.* A Bank that offers a putable advance to a member shall disclose in writing to such member the type and nature of the risks associated with putable advance funding. The disclosure should include detail sufficient to describe such risks.

(2) *Replacement funding.* If a Bank terminates a putable advance prior to the stated maturity date of such advance, the Bank shall offer to provide replacement funding to the member.

(i) *Term to maturity.* At the option of the member, a Bank shall offer replacement funding:

(A) For the remaining term to maturity of the putable advance; or

(B) For a term to maturity agreed upon between the Bank and the member.

(ii) *Interest rate.* At the option of the member, a Bank shall price replacement funding:

(A) At the market rate of interest; or

(B) At a predetermined rate of interest agreed upon between the Bank and the member.

(iii) *Conversion.* For purposes of this part, replacement funding shall be considered the conversion of an outstanding advance, and shall not be considered the renewal of an existing advance or the extension of a new advance.

(3) *Definition.* For purposes of this paragraph (d), the term *putable advance* means an advance that a Bank may, at its discretion, terminate and require the member to repay prior to the stated maturity date of the advance.

[58 FR 29469, May 20, 1993, as amended at 61 FR 52687, Oct. 8, 1996]

§ 935.7 Interest rates on Community Investment Program advances.

Each Bank shall price its CIP advances as provided in § 935.6 of this part, provided that the cost of such CIP advances shall not exceed the Bank's cost of issuing consolidated obligations of comparable maturity, taking into account reasonable administrative costs.

§ 935.8 Fees.

(a) *Fees in advances policy.* All fees charged by each Bank and any schedules or formulas pertaining to such fees shall be included in the Bank's advances policy required by § 935.3(a) of this part. Any such fee schedules or formulas shall be applied consistently and without discrimination to all members.

(b) *Prepayment fees.* (1) Each Bank shall establish and charge a prepayment fee pursuant to a specified formula which sufficiently compensates the Bank for providing a prepayment option on an advance, and which acts to make the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date.

(2) Prepayment fees are not required for:

(i) Advances with original terms to maturity or repricing periods of six months or less;

(ii) Advances funded by callable debt; or

(iii) Advances which are otherwise appropriately hedged so that the Bank is financially indifferent to their prepayment.

(3) The board of directors of each Bank, a designated committee thereof, or officers specifically authorized by the board of directors, may waive a prepayment fee only if such prepayment will not result in an economic loss to the Bank. Any such waiver must subsequently be ratified by the board of directors.

(4) A Bank, in determining whether or not to waive a prepayment fee, shall apply consistent standards to all of its members.

(c) *Commitment fees.* Each Bank may charge a fee for its commitment to fund an advance.

(d) *Other fees.* Each Bank is authorized to charge other fees as it deems necessary and appropriate.

§ 935.9 Collateral.

(a) *Eligible security for advances.* At the time of origination or renewal of an advance, each Bank shall obtain, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

(1) *Mortgage loans and privately issued securities.* (i) Fully disbursed, whole first mortgage loans on improved residential real property not more than 90 days delinquent; or

(ii) Privately issued mortgage-backed securities, excluding the following:

(A) Securities which represent a share of only the interest payments or only the principal payments from the underlying mortgage loans;

(B) Securities which represent a subordinate interest in the cash flows from the underlying mortgage loans;

(C) Securities which represent an interest in any residual payments from the underlying pool of mortgage loans; or

(D) Such other high-risk securities as the Board in its discretion may determine.

(2) *Agency securities.* Securities issued, insured or guaranteed by the United States Government, or any agency thereof, including without limitation mortgage-backed securities, as defined in § 935.1 of this part, issued or guaranteed by:

(i) The Federal Home Loan Mortgage Corporation;

(ii) The Federal National Mortgage Association; or

(iii) The Government National Mortgage Association.

(3) *Deposits.* Deposits in a Bank.

(4) *Other collateral.* (i) Except as provided in paragraph (a)(4)(iii) of this section, other real estate-related collateral acceptable to the Bank if:

(A) Such collateral has a readily ascertainable value; and

(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Privately issued mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;

(B) Second mortgage loans, including home equity loans;

(C) Commercial real estate loans; and

(D) Mortgage loan participations.

(iii) A Bank shall not permit the aggregate amount of outstanding advances to any one member, secured by such other real estate-related collateral, to exceed 30 percent of such member's capital, as calculated according to GAAP, at the time the advance is issued or renewed.

(b) *Bank restrictions on eligible collateral.* A Bank at its discretion may further restrict the types of eligible collateral acceptable to the Bank as security for an advance, based upon the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria.

(c) *Additional collateral.* The provisions of paragraph (a) of this section shall not affect the ability of any Bank to take such steps as it deems necessary to protect its secured position on outstanding advances, including requiring additional collateral, whether or not such additional collateral conforms to the requirements for eligible collateral in paragraph (a) of this section or section 10 of the Act (12 U.S.C. 1430).

(d) *Bank stock as collateral.* (1) Pursuant to section 10(c) of the Act (12 U.S.C. 1430(c)), a Bank shall have a lien upon, and shall hold, the stock of a member in the Bank as further collateral security for all indebtedness of the member to the Bank.

(2) The written security agreement used by the Bank shall provide that the borrowing member's Bank stock is assigned as additional security by the member to the Bank.

(3) The security interest of the Bank in such member's Bank stock shall be entitled to the priority provided for in section 10(f) of the Act (12 U.S.C. 1430(f)).

(e) *Collateral security requiring formal approval.* No home mortgage loan otherwise eligible to be accepted as collateral for an advance by a Bank under this section shall be accepted as collateral for an advance if any director, officer, employee, attorney or agent of the Bank or of the borrowing member is personally liable thereon, unless the board of directors of the Bank has specifically approved such acceptance by formal resolution, and the Board has endorsed such resolution.

§935.10 Banks as secured creditors.

(a) Except as provided in paragraph (b) of this section, notwithstanding any other provision of law, any security interest granted to a Bank by a member, or by an affiliate of such member, shall be entitled to priority over the claims and rights of any party, including any receiver, conservator, trustee or similar party having rights of a lien creditor, to such collateral.

(b) A Bank's security interest as described in paragraph (a) of this section shall not be entitled to priority over the claims and rights of a party that:

(1) Would be entitled to priority under otherwise applicable law; and

(2) Is an actual bona fide purchaser for value of such collateral or is an actual secured party whose security interest in such collateral is perfected in accordance with applicable state law.

§935.11 Pledged collateral; verification.

(a) *Collateral safekeeping.* (1) A Bank may permit a member that is a depository institution to retain documents evidencing collateral pledged to the Bank, provided that the Bank and such member have executed a written security agreement pursuant to §935.4(c) of this part whereby such collateral is retained solely for the Bank's benefit and subject to the Bank's control and direction.

(2) A Bank shall take any steps necessary to ensure that its security interest in all collateral pledged by non-depository institutions for an advance is as secure as its security interest in collateral pledged by depository institutions.

(3) A Bank may at any time perfect its security interest in collateral securing an advance to a member.

(b) *Collateral verification.* Each Bank shall establish written procedures, with standards similar to those established by the Auditing Standards Board of the American Institute of Certified

Public Accountants, for verifying the existence of collateral securing the Bank's advances, and shall regularly verify the existence of the collateral securing its advances in accordance with such procedures.

§ 935.12 Collateral valuation; appraisals.

(a) Each Bank shall establish written procedures for determining the value of the collateral securing the Bank's advances, and shall determine the value of such collateral in accordance with such procedures.

(b) Each Bank shall apply the valuation procedures consistently and fairly to all borrowing members, and the valuation ascribed to any item of collateral by the Bank shall be conclusive as between the Bank and the member.

(c) A Bank may require a member to obtain an appraisal of any item of collateral, and to perform such other investigations of collateral as the Bank deems necessary and proper.

§ 935.13 Restrictions on advances to members that are not qualified thrift lenders.

(a) *Restrictions on advances to non-QTL members.* (1) Except as provided in paragraphs (a)(4) and (a)(5) of this section, a Bank may make or renew an advance to a non-QTL member only under the following conditions:

(i) The advance is for the purpose of purchasing or funding new or existing residential housing finance assets, as determined pursuant to paragraph (a)(2) of this section;

(ii) The member holds Bank stock at the time it receives the advance in an amount equal to at least five percent of the outstanding principal amount of the member's total advances, divided by such member's ATIP, calculated pursuant to paragraph (a)(3) of this section; and

(iii) Making the advance will not cause the aggregate amount of advances issued by the twelve Banks to non-QTL members to exceed 30 percent of the aggregate amount of the twelve Banks' total outstanding advances.

(2) Prior to approving an application for an advance by a non-QTL member, a Bank shall determine that the principal amount of all advances outstanding to the member at the time the advance is requested does not exceed the total book value of residential housing finance assets held by such member, which shall be determined using the most recent Report of Condition and Income or financial statement made available by the member.

(3) A Bank shall calculate each non-savings association member's ATIP at least annually, between January 1 and April 15, based upon financial data as of December 31 of the prior calendar year. The Bank may, in its discretion, calculate a member's ATIP more frequently than annually.

(4) The requirements of paragraphs (a) (1), (2), and (3) of this section shall not apply to:

(i) A savings bank, as defined in section 3(g) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(g)); or

(ii) A Federal savings association in existence as such on August 9, 1989 that:

(A) Was a state chartered savings bank or cooperative bank before October 15, 1982; or

(B) Acquired its principal assets from an institution that was a state chartered savings bank or cooperative bank before October 15, 1982.

(5) The requirements of paragraph (a)(2) of this section shall not apply to applications from non-savings association members for AHP or CIP advances.

(b) *Priority for QTL members.* (1) Except as provided in paragraph (b)(3) of this section, if a Bank is unable to meet the aggregate advance demand of all of its members, the Bank shall give priority to applications for advances from its QTL members, subject to the following considerations:

(i) The effect of making the advances on the financial integrity of the Bank;

(ii) The member's creditworthiness;

(iii) The availability of funding with maturities compatible with advances applications; and

(iv) Any other factors that the Bank determines to be relevant.

(2) The institutions identified in paragraph (a)(4) of this section shall be treated as QTLs for purposes of this paragraph (b).

(3) The requirement of paragraph (b)(1) of this section shall not apply to a Bank's special, or otherwise limited, advance offerings.

(c) *Additional restrictions on advances to non-QTL savings associations.* (1) Either the Bank's written advances agreement required by §935.4(b)(2) of this part or the written advances application authorized in §935.4(a) of this part shall require that each savings association member, which pursuant to the QTL requirements of the OTS becomes ineligible for Bank advances, immediately provide its Bank with written notification of its ineligibility.

(2) Except as requested in writing by the OTS, or as authorized in §935.18(c) of this part, a Bank shall not make an advance to a savings association member after receiving written notification from such member or from the OTS that such member is ineligible for advances pursuant to the QTL requirements of the OTS.

(d) *Repayment of advances by non-QTL savings association members.* (1) Each Bank, if informed by a savings association member or the OTS that the member has failed to regain its QTL status and is required to repay said member's advances prior to maturity, shall, in conjunction with the non-QTL savings association member, develop a schedule for the prompt and prudent repayment of any outstanding advances held by that member, consistent with the member's and the Bank's safe and sound operations.

(2) The schedule agreed to under paragraph (d)(1) of this section shall be provided promptly by the Bank to the Board and the OTS.

(e) *Advance commitments.* Either the Bank's written advances agreement required by §935.4(b)(2) of this part or the written advances application authorized in §935.4(a) of this part shall stipulate that the Bank shall not honor advance commitments previously made to members whose access to advances is subsequently restricted pursuant to paragraphs (a) or (c) of this section.

§935.14 Limitations on long-term advances.

(a) A Bank shall make long-term advances only for the purpose of enabling a member to purchase or fund new or existing residential housing finance assets.

(b) (1) Prior to approving an application for a long-term advance, a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of residential housing finance assets held by such member. The Bank shall determine the total book value of such residential housing finance assets, using the most recent Thrift Financial Report, Report of Condition and Income, or financial statement made available by the member.

(2) Applications for AHP and CIP advances are exempt from the requirements of this section.

§935.15 Capital stock requirements; unilateral redemption of excess stock.

(a) *Capital stock requirement for advances.* (1) At no time shall the aggregate amount of outstanding advances made by a Bank to a member exceed 20 times the amount paid in by such member for capital stock in the Bank.

(2) A non-QTL member shall hold stock in the Bank at the time it receives an advance in an amount equal to at least the amount of stock required to be held pursuant to §935.13(a)(1)(ii) of this part.

(b) *Unilateral redemption of excess stock.* A Bank, after providing 15 calendar days advance written notice to a member, may unilaterally redeem that amount of the member's Bank stock that exceeds the stock requirements set forth in paragraph (a) of this section or, in the case of a non-QTL member, the stock requirements set forth in §935.13(a)(1)(ii) of this part, provided the minimum amount required in sections 6(b)(1) and 10(e)(3) of the Act is maintained. The Banks shall have the discretion to determine the timing of such unilateral redemption, provided that the Bank's redemption policy is consistent with the requirement of section 7(j) of the Act (12 U.S.C. 1427(j)) which provides for fair and impartial treatment of all members.

§935.16 Advance participations.

A Bank may allow any other Bank to purchase a participation interest in

any advance, and any other Bank may accept a participation interest therein, together with an appropriate assignment of security therefor, subject to the approval of the boards of directors of the relevant Banks.

§ 935.17 Intradistrict transfer of advances.

(a) *Advances held by members.* A Bank may allow one of its members to assume an advance extended by the Bank to another of its members, provided the assumption complies with the requirements of this part governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer.

(b) *Advances held by nonmembers.* A Bank may allow one of its members to assume an advance held by a nonmember, provided the advance was originated by the Bank and provided the assumption complies with the requirements of this part governing the issuance of new advances. A Bank may charge an appropriate fee for processing the transfer.

[59 FR 2950, Jan. 20, 1994]

§ 935.18 Special advances to savings associations.

(a) *Eligible institutions.* (1) A Bank, upon receipt of a written request from the Director of the OTS, may make short-term advances to a savings association member.

(2) Such request must certify that the member:

(i) Is solvent but presents a supervisory concern to the OTS because of the member's financial condition; and

(ii) Has reasonable and demonstrable prospects of returning to a satisfactory financial condition.

(b) *Terms and conditions.* Advances made by a Bank to a member savings association under this section shall:

(1) Be subject to all applicable collateral requirements of the Bank, this part and section 10(a) of the Act (12 U.S.C. 1430(a)); and

(2) Be at the interest rate applicable to advances of similar type and maturity that are made available to other members that do not pose such a supervisory concern.

§ 935.19 Liquidation of advances upon termination of membership.

If an institution's membership in a Bank is terminated, the Bank shall determine an orderly schedule for liquidating any indebtedness of such member to the Bank; this section shall not require a Bank to call any such indebtedness prior to maturity of the advance. The Bank shall deem any such liquidation a prepayment of the member's indebtedness, and the member shall be subject to any fees applicable to such prepayment.

Subpart B—Advances to Nonmembers

§ 935.20 Scope.

The requirements of subpart A of this part apply to this subpart, except as otherwise provided in § 935.21 and § 935.22 of this subpart.

[58 FR 29477, May 20, 1993]

§ 935.21 Advances to the Savings Association Insurance Fund.

(a) A Bank may, upon receipt of a written request from the FDIC, make advances to the FDIC for the use of the Savings Association Insurance Fund. The Bank shall provide a copy of such request to the Board.

(b) Such advances shall:

(1) Bear a rate of interest not less than the Bank's marginal cost of funds, taking into account the maturities involved and reasonable administrative costs;

(2) Be for a maturity acceptable to the Bank;

(3) Be subject to any prepayment, commitment or other appropriate fees of the Bank; and

(4) Be adequately secured by collateral acceptable to the Bank.

§ 935.22 Advances to nonmember mortgagees.

(a) *Authority.* Subject to the provisions of the Act and this part, a Bank may make advances to an entity that is not a member of the Bank if the entity qualifies as a nonmember mortgagee pursuant to section 10b(a) of the Act, as amended (12 U.S.C. 1430b(a)), and paragraph (b) of this section. A Bank may lend only to a nonmember

mortgagee whose principal place of business, as defined in part 933 of this chapter, is located in the Bank's district.

(b) *Eligible nonmember mortgagee.* To qualify for an advance as a nonmember mortgagee, an entity must meet the following requirements:

(1) *Charter.* It must be chartered under law and have succession. A corporation, another entity that has rights, characteristics and powers under applicable law similar to those granted a corporation, or a government agency, meets this requirement;

(2) *Regulation.* It must be subject, pursuant to statute or regulation, to the inspection and supervision of a Federal, state or local government agency;

(3) *Housing finance activity.* (i) The entity's principal activity in the mortgage field must consist of lending its own funds, which may include appropriated funds in the case of a Federal, state or local government agency;

(ii) An entity meets the requirement in paragraph (b)(3)(i) of this section, notwithstanding that the majority of its total operations are unrelated to mortgage lending, if the majority of its mortgage activity conforms to this requirement;

(iii) An entity that acts principally as a broker for others making mortgage loans, or whose principal activity is to make mortgage loans for the account of others, does not meet the requirement in paragraph (b)(3)(i) of this section; and

(4) *HUD approval.* The entity must be approved by the Department of Housing and Urban Development (HUD) as a ''mortgagee'' pursuant to HUD regulations (24 CFR part 202), under title II of the National Housing Act (12 U.S.C. 1707 through 1715z-20).

(c) *Determination of nonmember mortgagee and SHFA eliqibility.* (1) To qualify for advances under section 10b of the Act (12 U.S.C. 1430b), an applicant must be certified as an eligible nonmember mortgagee by the Board or its designee.

(2) A nonmember seeking access to advances under section 10b of the Act shall submit to the appropriate Bank:

(i) Documentation evidencing that it meets all of the requirements in § 935.22(b) of this part; and

(ii) Financial or other information, as required by the Bank, that will enable the Bank to determine that advances may be safely made to the nonmember.

(3) A nonmember seeking access to advances as a SHFA under section 10b(b) of the Act (12 U.S.C. 1430b(b)) shall submit to the appropriate Bank documentation evidencing that it is a SHFA as defined in § 935.1 of this part.

(4) The appropriate Bank shall be the Bank whose district includes the state where the nonmember's principal place of business, as defined in part 933 of this chapter, is located.

(5) The documentation submitted to the Bank by the nonmember, and the Bank's evaluation of the nonmember's financial condition, shall be forwarded by the Bank to the Board for review and approval.

(6) The Board will notify the Bank of the Board's determination regarding the nonmember's eligibility to receive advances under section 10b(a) and (b) of the Act.

(d) *Eligible collateral for advances to nonmember mortgagees*—(1) *General.* A Bank may grant an advance to a nonmember mortgagee pursuant to this section on the security of the following collateral:

(i) Mortgage loans insured by the Federal Housing Administration of HUD, pursuant to title II of the National Housing Act (12 U.S.C. 1707 through 1715z-20); or

(ii) Securities representing an interest in the principal and interest payments due on a pool of mortgage loans, all of which mortgage loans meet the requirements of paragraph (d)(1)(i) of this section. A Bank shall require a nonmember mortgagee using collateral as described in this paragraph (d)(1)(ii) to provide evidence that such securities are backed solely by mortgages of the type described in paragraph (d)(1)(i) of this section.

(2) *Additional eligible collateral for special advances to SHFAs*—(i) *Eligible collateral.* Advances made to SHFAs for the purpose of facilitating mortgage lending that benefits individuals or

families meeting the income requirements set forth in 26 U.S.C. 142(d) or 143(f) may also be secured by:

(A) Collateral described in § 935.9(a)(1) or (2) of this part; or

(B) Other real estate-related collateral, eligible under § 935.9(a)(4) of this part, provided such collateral is comprised of mortgage loans on one-to-four family or multifamily property and the acceptance of such collateral will not increase the total amount of advances to such SHFA secured by such collateral beyond 30 percent of the SHFA's GAAP capital, as computed by the Bank.

(ii) *Use of funds.* Prior to making an advance pursuant to this paragraph (d)(2), a Bank shall obtain written certification from the SHFA that the advance proceeds shall be used for the purpose described in paragraph (d)(2)(i) of this section.

(e) *Terms and conditions*—(1) *General.* A Bank, in its discretion, shall determine whether, and on what terms, it will make advances to eligible nonmember mortgagees, subject to the provisions of this paragraph (e).

(2) *Advance pricing*—(i) *Costs.* Each Bank making an advance to a nonmember mortgagee:

(A) Shall price such advance to cover the funding, operating and administrative costs associated with making the advance; and

(B) May price such advance to reflect the credit risk of lending to the nonmember mortgagee, and may apply other reasonable differential pricing criteria associated with such lending, provided each Bank applies such pricing criteria equally to all of its nonmember mortgagee borrowers.

(ii) *Compensation for lack of capital investment.* (A) The price of an advance to a nonmember mortgagee shall compensate the Bank for the lack of a capital stock investment by the nonmember mortgagee in the Bank.

(B) A Bank may satisfy this requirement by requiring the nonmember mortgagee to maintain with the Bank a compensating balance. At the discretion of the Bank, such compensating balance may bear interest.

(3) *Limits on advances.* The principal amount of any advance made to a nonmember mortgagee may not exceed 90 percent of the unpaid principal of the mortgage loans or securities described in paragraph (d)(1) of this section that are pledged as security for the advance. This requirement does not apply to collateral pledged by SHFAs to secure special advances as described in § 935.22(d)(2) of this part.

(f) *Loss of eligibility.* (1) A Bank shall require each nonmember mortgagee that applies for an advance under this section to agree in writing to inform the Bank promptly of any change in its status as a nonmember mortgagee.

(2) If a nonmember mortgagee borrower ceases to fulfill the eligibility requirements for a nonmember mortgagee pursuant to paragraph (b) of this section, a Bank may not extend a new advance or renew an existing advance to such entity, until the entity has satisfied the Board that the entity again fulfills the requirements for a nonmember mortgagee contained in this section.

(g) *Verification of nonmember mortgagee requirements.* A Bank may, from time to time, require a nonmember mortgagee borrower to provide evidence that such institution continues to satisfy all of the qualifications and requirements contained in this section.

[58 FR 29477, May 20, 1993]

PART 936—COMMUNITY SUPPORT REQUIREMENTS

Sec.
936.1 Definitions.
936.2 Purpose.
936.3 Community Support Statements.
936.4 Review of Community Support Statements.
936.5 Community Support Action Plans.
936.6 Review of Community Support Action Plans.
936.7 Restrictions on access to long-term advances.
936.8 Bank Community Support Programs.
936.9 Reports.

AUTHORITY: 12 U.S.C. 1422a, 1422b, 1429, 1430(a), (g), (i), and (j), and 1432(a).

SOURCE: 56 FR 58647, Nov. 21, 1991, unless otherwise noted.

§ 936.1 Definitions.

(a) *Advance* means a loan, provided pursuant to a formal agreement supported by a promissory note and fully

secured, from a Bank to one of its members.

(b) *Advisory Council* means the advisory council established by a Bank as required by section 10(j)(11) of the Federal Home Loan Bank Act, 12 U.S.C. 1430(j)(11), and the implementing regulations in 12 CFR part 960.

(c) *Affordable Housing Program* means the program required by section 10(j) of the Federal Home Loan Bank Act, 12 U.S.C. 1430(j), and the implementing regulations in 12 CFR part 960.

(d) *Area* means a metropolitan statistical area, a county, or a non-metropolitan area, as established by the Office of Management and Budget.

(e) *Bank* means a Federal Home Loan Bank established under the authority of the Federal Home Loan Bank Act.

(f) *Board* means the Federal Housing Finance Board or an official duly authorized to act on its behalf.

(g) *Community Investment Program* means the program(s) established by the Banks as required by section 10(i) of the Federal Home Loan Bank Act, 12 U.S.C. 1430(i).

(h) *CRA Evaluation* means the public disclosure portion of a Community Reinvestment Act Performance Evaluation, given to a member by its primary federal regulator pursuant to a compliance examination. The CRA Evaluation uses the four-tier descriptive rating system described in the Uniform Interagency Community Reinvestment Act Final Guidelines For Disclosure of Written Evaluations and Revised Assessment Rating System, approved on April 25, 1990, and effective July 1, 1990, as they may be amended. These guidelines are available from federal financial regulatory agencies or the Federal Housing Finance Board, Housing Finance Directorate, 1777 F Street, NW., Washington, DC 20006.

(i) *Community Support* means: (1) Extensions of credit for purchase, construction, or rehabilitation of owner-occupied and rental housing for households whose incomes do not exceed 115 percent of the median income for the area, with demonstrable efforts to finance housing for households whose incomes do not exceed 80 percent of the area median income and for households whose incomes do not exceed 50 percent of the area median income;

(2) Extensions of credit to finance commercial and economic development activities that benefit very low-, low- or moderate-income neighborhoods, including very low-, low-, and moderate-income minority neighborhoods and rural communities;

(3) Development and extension of other loan products, financial services and programs to address community credit needs, including those described in Comprehensive Housing Affordability Strategy Plans, 24 CFR part 91, or as identified by FHLBank Advisory Councils;

(4) Marketing plans and related outreach activities targeted to households in minority, very low-, low-, or moderate-income, or rural communities, including first-time homebuyers;

(5) Active participation in loan consortia, regional lending activities, and similar efforts that benefit very low-income and low- or moderate-income households or which further the activities described in paragraphs (i) (1) through (4) of this section, both within and outside a member's usual market areas and communities;

(6) Any additional loan products, financial services programs or activities that further the items described in paragraphs (i) (1) through (5) of this section; and

(7) In the case of institutions not covered by CRA, such as credit unions, loan products, financial services, programs or activities that further the items described in paragraphs (i) (1) through (5) of this section.

(j) *Community Support Action Plan* means a written report containing the information described in § 936.5 that a member may be required to furnish to the Board.

(k) *Community Support Statement* means a written statement containing the information described in § 936.3 that a member must furnish to the Board.

(l) *Displaced Homemaker* means an individual who is an adult; has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(m) *First-time Homebuyer* means an individual or an individual and his or her spouse who have not owned a home during the three-year period prior to the purchase of a home, except that:

(1) Any individual who is a displaced homemaker may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse; and

(2) Any individual who is a single parent may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

(n) *Long-term Advances* means advances with a term to maturity of greater than five years. However, for purposes of this part 936 only, long-term advances are deemed to be advances with a term to maturity of greater than one year.

(o) *Low- or Moderate-income Household* means a household whose income does not exceed 80 percent of the median income for the area, with adjustments for household size, as determined by the U.S. Department of Housing and Urban Development.

(p) *Median Income* means the median household income for an area, with adjustments for household size, as determined by the Department of Housing and Urban Development. Data is available from HUD USER, P.O. Box 6091, Rockville, MD 20850.

(q) *Member* means a financial institution admitted to membership and owning capital stock in a Bank.

(r) *Minority* means any black American, Native American, Hispanic American, or Asian American.

(s) *Primary Federal Regulator* means the federal financial supervisory agency responsible for conducting CRA compliance examinations of members and generally has the same meaning as *appropriate Federal financial supervisory agency* used in the codification of the Community Reinvestment Act at 12 U.S.C. 2902(1). As specifically applied to CRA compliance, these are:

(1) The Comptroller of the Currency with respect to national banks;

(2) The Board of Governors of the Federal Reserve System with respect to State chartered banks which are members of the Federal Reserve System and bank holding companies;

(3) The Federal Deposit Insurance Corporation (''FDIC'') with respect to State chartered banks and savings banks which are not members of the Federal Reserve System and the deposits of which are insured by the FDIC; and

(4) The Office of Thrift Supervision in the case of a savings association (the deposits of which are insured by the FDIC) and a savings and loan holding company.

(t) *Rural* means any open country, or any place, town, village, or city which is not part of or associated with an urban area and which: Has a population not in excess of 2,500 inhabitants, or has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or has a population in excess of 20,000 and is not contained within a standard metropolitan statistical area and has a serious lack of mortgage credit for low- or moderate-income households, as determined by the Secretary of Agriculture and the Secretary of Housing and Urban Development. Any area classified as rural as a result of data received from or after the 1990 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2000, if such area has a population in excess of 20,000 but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for low- or moderate-income households.

(u) *Very Low-income Household* means a household whose income does not exceed 50 percent of the median income for the area, with adjustments for household size, as determined and published by the Department of Housing and Urban Development.

§ 936.2 Purpose.

In this part 936, the Board is promulgating Community Support requirements and procedures pursuant to section 710(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73, 103 Stat. 183,

418–419. Section 710(c) added a new section 10(g) to the Federal Home Loan Bank Act of 1932, 12 U.S.C. 1430(g), which provides that the Board shall establish standards of community investment or service for members of Banks to maintain continued access to long-term advances.

§936.3 Community Support Statements.

(a) A Community Support Statement shall be submitted by each member to its Bank on a schedule established by the Board as described in §936.4. A member who is subject to the Community Reinvestment Act but does not have a CRA Evaluation, as defined in this part, will not be reviewed until the member receives a CRA Evaluation. However, if within two years from the effective date of these regulations, substantially all members have not received CRA Evaluations, the Board intends to develop separate Community Support Standards for purposes of this part.

(b) A Community Support Statement shall include:

(1) In the case of a member with a CRA Evaluation of ''Outstanding'' or ''Satisfactory,'' the CRA Evaluation;

(2) In the case of a member with a CRA Evaluation of ''Needs to improve'' or ''Substantial non-compliance,'' the CRA Evaluation and an explanation of how the member has corrected or proposes to correct the deficiencies identified in the CRA Evaluation;

(3) In the case of credit unions and other members who are not subject to the Community Reinvestment Act, a detailed description of the member's Community Support activities;

(4) In all cases, evidence of assistance to first-time homebuyers, such as:

(i) A description of special credit products benefiting first-time homebuyers by providing flexible underwriting or qualifying criteria;

(ii) Evidence of participation in governmental homeownership or other programs of benefit to first-time homebuyers;

(iii) A description of any special counseling programs or other such activities for first-time homebuyers;

(iv) Marketing plans to reach first-time homebuyers;

(v) Expanded collection of loan distribution data to include loan origination to first-time homebuyers; or

(vi) Any other tangible evidence of support for first-time homebuyers;

(5) In all cases, identification and documentation of any final administrative or judicial ruling against the member, within the two years prior to the due date of submission of a Community Support Statement, based on violations of the Fair Housing Act (42 U.S.C. 3601 *et seq.*), the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), or any similar state or local law prohibiting discrimination in lending, including a statement of the violation, finding, or verdict and an explanation of the steps taken by the member to remedy the violation or prevent a recurrence; and

(6) In all cases, any additional evidence of Community Support that the member wishes to submit, such as:

(i) Mortgage and loan origination to minority households, very low-, low- or moderate-income households, rural communities, or first-time homebuyers;

(ii) Marketing plans or activities specifically aimed at minority households, very low-, low- or moderate-income households, rural communities, and first-time homebuyers; and

(iii) Other indications of the member's responsiveness to the credit needs of minority households, very low-, low- or moderate-income households, rural communities, and first-time homebuyers.

(c) A member that chooses not to submit a Community Support Statement shall be subject to restrictions on access to long-term advances as provided in §936.7.

§936.4 Review of Community Support Statements.

(a) The Board shall begin review of selected members' Community Support Statements in March 1992. Review of members' Community Support Statements shall occur on a quarterly basis so that each member will be reviewed approximately every two years.

(b) The Board shall notify the Banks of the members in their districts who

have been selected for review and immediately publish in the FEDERAL REGISTER:

(1) The name and address of those members selected for review;

(2) The closing date by which members chosen for review must submit their Community Support Statement to their Banks for transmittal to the Board and by which public comments must be submitted to the Banks for transmittal to the Board, provided that this date shall not be less than 45 days from the date of the FEDERAL REGISTER publication by the Finance Board announcing the quarterly review of the Community Support activities of members.

(c) Within 15 days of the FEDERAL REGISTER publication, each Bank shall, in writing:

(1) Notify members selected for review that their Community Support Statements are to be submitted to their Bank by the date designated in the FEDERAL REGISTER; and

(2) Notify their respective Advisory Councils, and community groups and individuals that are on the mailing list maintained in accordance with § 936.8(e), of the members selected for Community Support review and of the closing date designated in the FEDERAL REGISTER for the Bank's receipt of written public comments.

(d) Within 15 days after the due date for receipt of Community Support Statements from those members undergoing review and public comments, each Bank shall:

(1) Review each member's Community Support Statement for completeness pursuant to the requirements of § 936.3(b);

(2) Notify any member whose Statement is incomplete and offer assistance in promptly completing the Statement;

(3) Forward to the Board:

(i) All Community Support Statements;

(ii) All written public comments received during the comment period; and

(iii) A list of members selected who failed to submit a Community Support Statement in accordance with § 936.3(b).

(e) Within 60 days after receiving the Community Support Statements and comment letters from each Bank, the Board shall:

(1) Review the Community Support Statements for approval or disapproval pursuant to paragraph (f) of this section;

(2) Forward all comments received to the member's primary federal regulator; and

(3) Notify the Bank and the member, in writing, whether or not a member's Community Support Statement is approved. If a member's Community Support Statement is not approved, the Board shall furnish the member with specific reasons for its decision and provide an additional 45 days for the member to develop and submit a modified Community Support Action Plan for Board review and approval, in accordance with §§ 936.5 and 936.6.

(f) In reviewing the Community Support Statements, the Board shall consider the following:

(1) The CRA Evaluation and any deficiencies cited by the primary federal regulator concerning residential lending activities or other assessment factors in the CRA Evaluation directly related to Community Support;

(2) Policies, programs, and activities to assist first-time homebuyers as described in § 936.3(b)(4);

(3) Information submitted by the member pursuant to § 936.3(b)(5);

(4) Any other evidence of Community Support activities submitted by the member pursuant to § 936.3(b)(6);

(5) Public comments received; and

(6) Evidence of Community Support loan volume commensurate with the member's financial condition and size, legal impediments, and local economic conditions.

§ 936.5 Community Support Action Plans.

(a) The Board shall require a Community Support Action Plan from any member whose Community Support Statement has been disapproved.

(b) A Community Support Action Plan shall be submitted by the member to the Bank within 45 days of the Board's notice to the member and the Bank that an Action Plan is required. The Action Plan shall include:

(1) A statement of how the member has addressed or will address those deficiencies cited by the Board in its review of the member's Community Support Statement;

(2) A statement of Community Support activities and goals to be pursued during the next 12 months; and

(3) Details of how the goals included in the Action Plan will be measurable.

§936.6 Review of Community Support Action Plans.

(a) Within 15 days after receiving a Community Support Action Plan from a member, the Bank shall:

(1) Review the Action Plan for completeness pursuant to §936.5(b);

(2) Notify the member if an Action Plan appears to be incomplete; and

(3) Forward a copy of the Action Plan to the Board.

(b) Within 30 days of receiving the Action Plan, the Board shall review the Action Plan pursuant to the criteria in §936.6(d), and shall notify the member and the Bank in writing as to whether the Action Plan has been approved. If the Action Plan is not approved, this notice shall include the reasons for disapproval.

(c) The Board's initial decision to disapprove a Community Support Action Plan shall not be effective for 30 days from the date of mailing written notice of disapproval to the member. During this 30-day period, the member may submit an amended Action Plan addressing the reasons given by the Board for disapproval of its initial Action Plan. Within 15 days of receipt of the amended Action Plan, the Board shall notify the member in writing of the board's decision approving or disapproving the amended Action Plan; this decision shall be effective immediately upon mailing of a written notice to the member.

(d) In reviewing a Community Support Action Plan, the Board shall consider the following:

(1) The extent to which the Action Plan addresses Board-indentified deficiencies and sets appropriate and realistic goals to correct these deficiencies; and

(2) The extent to which the member's goals meet Community Support standards and are responsive to the credit needs in that member's community. In making these assessments, the Board will take into account such factors as a member's financial condition and size, and local economic conditions.

(e) One year from the date of the Board's approval of the Action Plan, the Board will review the member's implementation of the Action Plan to determine whether or not the goals outlined in the Action Plan have been met. In the month preceding the one-year anniversary of Board approval of a member's original or amended Action Plan, the Board shall request in writing, and the member shall submit, a report to the Board on the member's progress toward meeting the goals of the Action Plan. The member may consult with its Bank or directly with the board in preparing this report.

(f) Upon review of the member's performance, the Board may terminate, modify, or extend the Action Plan. If the Board finds that the member has not substantially met the goals of its Action Plan, the Board shall restrict the member's access to long-term advances pursuant to §936.7.

§936.7 Restrictions on access to long-term advances.

(a) A member's access to long-term advances will be restricted only if the member:

(1) Refuses to comply with the procedures of this part;

(2) Submits a Community Support Action Plan that does not receive Board approval; or

(3) Fails to substantially meet the goals stated in its Action Plan within one year.

(b) The Board's decision to restrict a member's access to long-term advances shall not be effective for 30 days. During this 30-day period the member may submit additional information regarding its achievement of the goals of the Action Plan. The Board shall notify the member of its decision following review of the additional material and the Board's decision shall be effective immediately upon mailing of the notice to the member.

(c) A member with a CRA Evaluation of ''Outstanding'' or ''Satisfactory'' shall have unrestricted access to long-term advances unless the Board finds

that its Community Support Statement does not adequately establish a reasonable commitment to residential lending and Community Support, and these deficiencies are not corrected in an Action Plan as specified in § 936.5(b), or if the member, after an adjudication of violations of fair housing or equal credit opportunity laws, fails to correct its lending practices as appropriate.

(d) Under no circumstances will any member be restricted from access to advances under either the Affordable Housing or Community Investment Programs.

(e) Within 15 days of the date on which the Board determines the existence of one or more of the conditions in paragraph (b) of this section, the Board shall notify the member and its Bank that the member's access to new long-term advances, as used in this section, has been suspended. Upon receipt of the notice, the Bank shall make no new advances or extensions of advances for a term of longer than one year to the member.

(f) Any restrictions on a member's access to long-term advances may be waived by the Board where such restriction may, in the Board's judgment, undermine the member's safety and soundness. A request for a waiver shall be submitted directly to the Board, shall be in writing, and shall contain a clear and concise statement of the basis for the waiver.

(g) The Board will decide when to remove restrictions on a member's access to long-term advances. In making this decision, the Board will be guided by the member's performance in meeting the goals established under its Action Plan. A member may petition the Board for termination of restrictions after 180 days from the imposition of such restrictions. Such a petition shall state with specificity how the member has substantially met or exceeded the goals in its Community Support Action Plan. The Board will review any petition and given written notice to the member of its decision within 30 days of receipt of the petition. If the Board decides to lift restrictions to long-term advances, that decision will be effective immediately upon mailing of notice to the member.

§ 936.8 Bank Community Support Programs.

(a) Each Bank shall establish and maintain, subject to Board approval, a Community Support Program for members, consistent with the safety and soundness of the Bank. Such programs should:

(1) Provide technical assistance to individual members in developing Community Support Statements and Community Support Action Plans;

(2) Promote and expand the use of advances, both special and regular, for Community Support lending and affordable housing finance;

(3) Identify opportunities for members to expand financial and credit services in neighborhoods and communities that are underserved, particularly minority households, very low-, low- or moderate-income urban, and rural communities; and

(4) Provide incentives to members of a monetary or nonmonetary nature; such incentives may include discounts and/or preferred terms on advances to members with outstanding records of Community Support and may also include awards and technical assistance to nonprofit housing developers and community groups with outstanding records of public/private partnerships in Community Support with members of the Bank.

(b) Each Bank shall consult with its Advisory Council in developing and implementing initiatives to increase the use of advances for Community Support.

(c) Each Bank shall provide notice to all members and interested parties of activities of the Bank's Affordable Housing Program, Community Investment Program, and other Bank programs to help members meet their Community Support and affordable housing finance needs.

(d) Each Bank shall provide, twice a year, to all members:

(1) A summary of Community Support lending and affordable housing finance projects being undertaken by members within the Bank's district; and

(2) Any additional information concerning affordable housing finance activities of nonmembers of the Bank that may be of use to members.

(e) Each Bank shall maintain a mailing list of community groups and interested parties to be notified of the quarterly selection of members for review pursuant to the procedures specified in §936.4.

§936.9 Reports.

Pursuant to 12 U.S.C. 1430(j)(12) and 12 CFR 960.14, the Finance Board provides an annual report to Congress presenting evaluations by the Advisory Councils of their Bank's performance of affordable housing activities during the preceding year. Beginning with reports filed in 1993 and each year thereafter, each Advisory Council will be encouraged to include an analysis of its Bank's Community Support activities in its report to the Finance Board. Beginning in 1993 and continuing each year thereafter, the Finance Board's annual report to Congress shall include an analysis of Bank and Board activities pursuant to this part.

PARTS 937–940—[RESERVED]

PART 941—OPERATIONS OF THE OFFICE OF FINANCE

Sec.
941.1 Definitions.
941.2 General.
941.3 Federal Housing Finance Board oversight.
941.4 Office of Finance.
941.5 Functions of the Office of Finance.
941.6 Director of the Office of Finance.
941.7 Office of Finance Board of Directors.
941.8 Powers of the Office of Finance Board of Directors.
941.9 Duties of the Office of Finance Board of Directors.
941.10 Meetings of the Office of Finance Board of Directors.
941.11 Budget, funding and expenses.
941.12 Savings clause.

AUTHORITY: 12 U.S.C. 1422b, 1431.

SOURCE: 57 FR 2834, Jan. 24, 1992, unless otherwise noted.

§941.1 Definitions.

In this part, the following terms mean:

Bank. A Federal Home Loan Bank.

Bank Act. The Federal Home Loan Bank Act.

Bank System. The Federal Home Loan Bank System, consisting of the twelve Federal Home Loan Banks and including the Office of Finance as a joint office of the Federal Home Loan Banks.

Chair. The Chairperson of the Office of Finance Board of Directors.

Consolidated obligation. A Federal Home Loan Bank consolidated debenture, bond or note issued under authority of section 11 of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1431).

Director. The Director of the Office of Finance.

Finance Board. The Federal Housing Finance Board.

OF Board of Directors. The three member administrative body responsible for management of the Office of Finance.

§941.2 General.

This part reorganizes the Office of Finance, a joint office of the Bank System, establishes the OF Board of Directors as the body responsible for the management and operations of the Office of Finance, and defines their respective duties and responsibilities.

§941.3 Federal Housing Finance Board oversight.

(a) Section 12(a) of the Bank Act (12 U.S.C. 1432(a)) provides that all activities of a Bank are subject to the approval of the Finance Board. The Finance Board retains the same oversight authority over the Office of Finance and the OF Board of Directors as it has over a Bank and its respective board of directors.

(b) Pursuant to section 20 of the Bank Act (12 U.S.C. 1440), the Finance Board shall audit and examine the Office of Finance, the OF Board of Directors and the Office of Finance Operations Imprest Fund.

§941.4 Office of Finance.

(a) *Establishment*. An Office of Finance is hereby established which shall have the responsibilities, duties and functions described herein.

(b) *Status*. The Office of Finance is recognized as a joint office of the Bank System.

(c) *Mission*. The Office of Finance shall:

(1) Issue the consolidated obligations pursuant to section 11 of the Bank Act, as amended (12 U.S.C. 1431);

(2) Perform all other necessary and proper functions in relation to the consolidated obligations, as fiscal agent on behalf of the Banks; and

(3) Undertake any other activities expressly approved by the Finance Board.

§ 941.5 Functions of the Office of Finance.

Subject to limitations set by the OF Board of Directors, the Office of Finance shall have the following duties and functions:

(a) Conduct all negotiations relating to the public or private offering and sale of consolidated obligations, and perform such other related functions as may be authorized by resolution of the Finance Board;

(b) Perform such functions for the Financing Corporation and/or the Resolution Funding Corporation, on behalf of the Banks, as may be requested by each such entity; and

(c) Make timely payments on behalf of the Banks of principal and interest due on all consolidated obligations issued pursuant hereto.

§ 941.6 Director of the Office of Finance.

(a) The Office of Finance shall be headed by a Director who shall be responsible for the overall daily management of the Office of Finance functions and organization, including:

(1) Implementation of the OF Board of Directors' plans and policies for the administration of the Office of Finance;

(2) Organization and development of the personnel structure of the Office of Finance;

(3) Employment and management of personnel;

(4) Preparation of the budget for presentation to the OF Board of Directors pursuant to § 941.11; and

(5) Performance of any duty assigned by the OF Board of Directors, including providing it any records, reports or other data in the possession of the Office of Finance whenever requested to do so.

(b) The Director shall perform the duties described herein and the functions of the Office of Finance subject to the policies adopted by the OF Board of Directors.

(c) The Director shall be:

(1) The Fiscal Agent of the Federal Home Loan Banks;

(2) A member of the Directorate of the Financing Corporation, pursuant to section 21(b)(1)(A) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1441(b)(1)(A)); and

(3) A member of the Directorate of the Resolution Funding Corporation, pursuant to section 21B(c)(1)(A) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1441b(c)(1)(A)).

[57 FR 2834, Jan. 24, 1992, as amended at 57 FR 11429, Apr. 3, 1992]

§ 941.7 Office of Finance Board of Directors.

(a) *Establishment.* The Office of Finance Board of Directors is hereby created.

(b) *Use of facilities or personnel.* The OF Board of Directors may utilize the facilities or personnel of the Office of Finance or any Bank in order to perform its functions.

(c) *Membership.* The OF Board of Directors shall consist of three part-time members appointed by the Finance Board as follows:

(1) *Bank System.* Two Bank Presidents; and

(2) *Private Citizen.* A citizen of the United States with a demonstrated expertise in financial markets. Such appointee may not be an officer, director or employee of a Bank or Bank System member, hold shares, or any other financial interest in, any member of a Bank, or be affiliated with any FHLBank consolidated obligation selling or dealer group member under contract with the Office of Finance.

(d) *Terms*—(1) *Length.* Except is provided in paragraphs (d)(3) and (4) of this section, the OF Board of Directors shall serve at the pleasure of the Finance Board or for terms, which shall be staggered, of three years beginning on April 1.

(2) *Vacancy.* The Finance Board shall fill any vacancy occurring on the OF Board of Directors. An appointment to fill a vacancy shall be only for the remainder of the term during which the vacancy occurred.

(3) *Holdover.* At the direction of the Finance Board, any member of the OF Board of Directors is authorized to continue to serve on the OF Board of Directors after the expiration of the member's term until a successor has been appointed by the Finance Board.

(4) *Initial terms.* Notwithstanding paragraph (d)(1) herein, the terms of the members of the first OF Board of Directors convened pursuant to this part shall be as follows:

(i) One of the Bank President members shall serve from the date of appointment until March 31, 1993 or at the pleasure of the Finance Board and the other shall serve from the date of appointment until March 31, 1994 or at the pleasure of the Finance Board.

(ii) The Private Citizen member shall serve from the date of appointment until March 31, 1995 or at the pleasure of the Finance Board.

(e) *Chair.* (1) The Finance Board shall designate one member of the OF Board of Directors as the Chair, and another member as the Vice Chair.

(2) The Chair shall preside over the meetings of the OF Board of Directors. In the absence of the Chair, the Vice Chair shall preside.

(3) The Chair shall be responsible for ensuring that the directives and resolutions of the OF Board of Directors are drafted and maintained and for keeping the minutes of all meetings.

(f) *Compensation*—(1) *Bank System members.* (i) The Bank President members shall not receive any additional compensation or reimbursement as a result of their service on the OF Board of Directors.

(ii) Each Bank is authorized to continue to pay its President a salary during attendance at the OF Board of Directors meetings and to pay in accordance with the travel and expense reimbursement policies in effect at such President's Bank such President's travel and *per diem* expenses for attendance at OF Board of Directors meetings.

(iii) Each Bank shall be entitled to be reimbursed by the Office of Finance for its expenditure of travel and *per diem* expenses associated with its Bank President's attendance at OF Board of Directors meetings as a member thereof.

(2) *Private Citizen member.* The Office of Finance shall pay compensation and expenses to the Private Citizen member of the OF board of directors in accordance with the requirements for payment of compensation and expenses to Bank directors set forth in section 932.27 of this chapter, except that, for these purposes:

(i) The Office of Finance policy on director compensation must be approved by the board of directors of the Finance Board;

(ii) Section 932.27(a)(3) and (c)(1)(ii) of this chapter shall not apply; and

(iii) The terms ''average compensation per director'' and ''ACPD,'' as used in §932.27 of this chapter, shall mean ''maximum compensation of the Private Citizen member''.

[57 FR 2834, Jan. 24, 1992, as amended at 57 FR 11429, Apr. 3, 1992; 61 FR 43155, Aug. 21, 1996]

§941.8 Powers of the Office of Finance Board of Directors.

(a) *General.* The OF Board of Directors shall enjoy such incidental powers under section 12(a) of the Bank Act (12 U.S.C. 1432(a)), as are necessary, convenient and proper to accomplish the efficient operation and management of the Office of Finance pursuant to this part.

(b) *Agent.* Subject to any limitations set by the Finance Board, the OF Board of Directors, in the performance of its duties, shall have the power to act:

(1) On behalf of the Finance Board in the issuing of consolidated obligations; and

(2) On behalf of the Banks in the paying of principal and interest due on the consolidated obligations.

(c) *Delegation.* The OF Board of Directors shall be empowered to delegate any of its powers to any employee of the Office of Finance in order to enable the Office of Finance to carry out its functions.

(d) *Indemnification.* (1) The OF Board of Directors is empowered to determine the terms and conditions under which its members, the Director, and other officers and employees of the Office of Finance will be indemnified by the Office of Finance, provided: that such

terms and conditions will not be inconsistent with terms and conditions of indemnification of directors, officers and employees of the Bank System, generally.

(2) Such indemnification procedures, when duly adopted, may be supplemented by a contract of insurance, and all expenses incident to indemnification will be treated as an expense of the Office of Finance.

[57 FR 2834, Jan. 24, 1992, as amended at 57 FR 11429, Apr. 3, 1992]

§ 941.9 Duties of the Office of Finance Board of Directors.

(a) *General*—(1) *Bylaws*. The OF Board of Directors shall adopt bylaws governing its operations and issue such guidance or instructions as will promote the efficient operation of the Office of Finance.

(2) *Conduct of Business*. The OF Board of Directors shall conduct its business by majority vote of its members convened at a meeting in accordance with its bylaws.

(b) *Oversight*. The OF Board of Directors shall:

(1) Have overall responsibility for the performance of the duties and functions of the Office of Finance pursuant hereto and for its efficient and effective operation;

(2) Set policies for the Office of Finance;

(3) Approve a strategic business plan for the Office of Finance and monitor the progress of its operations under such plan;

(4) Subject to Finance Board approval, review, adopt and monitor the annual operating budget of the Office of Finance including any supplemental expenditure thereto;

(5) Develop and implement the pricing mechanism by which the Office of Finance will make private or public offerings of consolidated obligations, in consultation with the Finance Board or its designee;

(6) Subject to Finance Board approval, select and employ the Director under an annual contract of employment;

(7) Review and approve all contracts of the Office of Finance; and

(8) Assume any other responsibilities that may from time to time be delegated to it by the Finance Board.

§ 941.10 Meetings of the Office of Finance Board of Directors.

(a) *Meetings*. (1) The OF Board of Directors shall adopt procedures for holding meetings which shall be set forth in the bylaws and such meetings shall be held not less than once each quarter of each year.

(2) Due notice shall be given to the Finance Board by the Chair prior to each meeting.

(b) *Quorum*. A quorum for purposes of OF Board of Directors meetings shall be at least two members.

[57 FR 2834, Jan. 24, 1992, as amended at 57 FR 11429, Apr. 3, 1992]

§ 941.11 Budget, funding and expenses.

(a) *General*. The budget of the Office of Finance shall be calculated on a calendar year basis.

(b) *Initial review*. The OF Board of Directors shall be responsible for initially reviewing and approving the budget of the Office of Finance, which shall include the budget for the OF Board of Directors.

(c) *Agency review*. After its approval of the budget, pursuant to paragraph (b) herein, the OF Board of Directors annually shall submit the Office of Finance budget to the Finance Board for its review and approval. Upon approval by the Finance Board, the OF Board of Directors shall transmit a copy of the budget to each of the Bank Presidents.

(d) *Expenses*. Upon the approval of the budget by the Finance Board in accordance with paragraph (c) herein, the OF Board of Directors may authorize the Director to make payments pursuant to the budget as necessary.

(e) *Imprest fund*—(1) *Checking account*. The Office of Finance shall establish a checking account in a financial depository institution approved by the OF Board of Directors, to be called the ''Office of Finance Operations Imprest Fund.'' The Director shall maintain an amount therein approved by the OF Board of Directors.

(2) *Use*. The funds in such checking account shall be:

(i) Available for expenses of the Office of Finance and the OF Board of Directors, according to their approved budgets; and

(ii) Subject to withdrawal by check or draft signed by the Director or other person designated by the OF Board of Directors.

(f) *Funding*—(1) *General.* The Bank System is responsible for funding the expenses of the Office of Finance and the OF Board of Directors.

(2) *Method.* (i) The Banks shall jointly fund the Office of Finance by periodically reimbursing the Office of Finance Operations Imprest Fund in order to maintain in such Fund the amount approved in paragraph (e)(1) herein.

(ii) Each Bank's respective *pro rata* share of the reimbursement described in paragraph (f)(2)(i) herein shall be based on the ratio of the total paid-in value of its capital stock relative to the total paid-in value of all capital stock in the Bank System.

(iii) Notwithstanding the formula devised herein, the OF Board of Directors may devise an alternative formula for determining each Bank's respective share of Office of Finance expenses. Upon approval by the Finance Board, such alternative formula shall supersede the formula devised herein.

(3) *Payment.* Each Bank from time to time shall promptly forward funds to the Office of Finance in an amount representing its share of the reimbursement described in paragraph (f)(2)(i) herein when directed to do so by the Director pursuant to procedures of the OF Board of Directors.

(4) *Receipt.* All Bank funds received by the Office of Finance pursuant to this section shall be promptly deposited into the checking account described in paragraph (e)(1) herein and disbursed according to this part.

(5) *Procedures.* The OF Board of Directors shall adopt procedures governing the payment or reimbursement of expenses of the Office of Finance and the OF Board of Directors.

§941.12 Savings clause.

(a) The Office of Finance Operations Imprest Fund is available to pay for all expenses of the Office of Finance existing prior to the adoption of this part.

(b) All actions taken by the Office of Finance as it existed prior to the adoption of this part continue to be valid as regards the Finance Board and the Bank System.

(c) Notwithstanding any provision of this part, the Office of Finance or its Director may continue to exercise any powers delegated to it by the Finance Board or the former Federal Home Loan Bank Board, which they exercise on the date of the adoption of this part, until the first meeting of the OF Board of Directors created pursuant hereto.

PART 942—[RESERVED]

PART 943—COLLECTION, SETTLEMENT, AND PROCESSING OF PAYMENT INSTRUMENTS

Sec.
943.1 Authority and scope.
943.2 Definitions.
943.3 General provisions.
943.4 Incidental powers.
943.5 Operations.
943.6 Pricing of services.
943.7 Rights, powers, responsibilities, duties, and liabilities.

AUTHORITY: 12 U.S.C. 1430, 1431.

SOURCE: 45 FR 64164, Sept. 29, 1980, unless otherwise noted. Redesignated at 54 FR 36759, Sept. 5, 1989.

§943.1 Authority and scope.

(a) Pursuant to section 11(e)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1431(e)(2)) (Bank Act), the Board has promulgated this part governing the collection, processing, and settlement, and services incidental thereto, of drafts, checks, and other negotiable and nonnegotiable items and instruments by Federal Home Loan Banks. Settlement, collection, and processing include the following activities as defined in this part: Account processing, data processing, data communication, issuance of forms, transportation of items, and storage services.

(b) Any activity authorized by section 11(e)(2) of the Bank Act shall be governed by the provisions of this part.

§943.2 Definitions.

(a) Unless otherwise defined in this part, the terms used in this part shall conform, in the following order, to:

Regulations of the Board, the Uniform Commercial Code, regulations of the Federal Reserve System, and general banking usage.

(b) The term *account processing* includes charging, crediting, and settling of member or eligible institution accounts, excluding individual customer accounts.

(c) As used in this part, the term *assets* includes furniture and equipment, leasehold improvements, and capitalized start-up costs.

(d) The term *data processing* includes capture, storage, and assembling of, and computation of, data from payment instruments received from Federal Reserve offices, Federal Home Loan Banks, clearinghouse associations, depository institutions, and other direct sending entities.

(e) The term *data communication* means transmitting and receiving of data to or from Federal Home Loan Banks, Federal Reserve offices, clearinghouse associations, depository institutions or their service bureaus, and other direct sending entities, arrangement for delivery of information; and telephone inquiry service.

(f) The term *eligible institution* means any institution eligible to make application to become a member of a Federal Home Loan Bank under section 4 of the Bank Act (12 U.S.C. 1424).

(g) The term *issuance of forms* means the designation and distribution of standardized forms for use in collection, processing, and settlement services.

(h) The term *presentment* means a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder, and may involve the use of electronic transmission of an instrument or item or transmission of data from the instrument or item by electronic or mechanical means.

(i) The term *statement packaging* includes receiving statement information from members or eligible institutions or their service bureaus on respective customer cycle dates; printing statements; matching customer account statements; packaging the statements with appropriate items and informational materials, as authorized by individual members and eligible institutions, for distribution to their customers; sending the packages to the members or eligible institutions or mailing the packages directly to their customers.

(j) The term *storage services* includes filing, storage, and truncation of items.

(k) The term *transportation of items* includes transporting items from Federal Reserve offices, other Federal Home Loan Banks clearinghouse associations, depository institutions, and other direct sending entities to a Federal Home Loan Bank; forwarding items to financial institutions after sorting and forwarding cash items or return items to Federal Reserve offices and other sending entities.

§ 943.3 General provisions.

The Federal Home Loan Banks are authorized (a) to engage in, be agents or intermediaries for, or otherwise participate or assist in, the processing, collection, and settlement of checks, drafts, or any other negotiable or nonnegotiable items and instruments of payment drawn on eligible institutions or Bank members; and (b) to be drawees of checks, drafts, and other negotiable and nonnegotiable items and instruments issued by eligible institutions or Bank members.

§ 943.4 Incidental powers.

In connection with the collection, processing, and settlement of items and instruments drawn on or issued by eligible institutions or Bank members, a Federal Home Loan Bank may also perform the following services, as defined in § 943.2:

(a) Statement packaging; and

(b) Any other activity that the Board shall, from time to time, after notice and comment, find necessary for the exercise of the authority of this part.

[45 FR 64164, Sept. 29, 1980, as amended at 55 FR 2231, Jan. 23, 1990]

§ 943.5 Operations.

A Federal Home Loan Bank may utilize the services of a Federal Reserve Bank and may become a member or use the services of a clearinghouse, public or private financial institution, or agency in the exercise of any powers or functions under this part.

§943.6 Pricing of services.

(a) *General.* Federal Home Loan Banks shall charge for services authorized in this part in a manner consistent with the principles of section 11(A)(c) of the Federal Reserve Act (12 U.S.C. 248a(c)), as interpreted by this part.

(b) *Payment instrument account services.* (1) In determining the fees for services provided under this part, a Federal Home Loan Bank must take into account all direct and indirect costs of providing the services.

(2) Prices must reflect the imputed rate of return that would have been earned and the taxes that would have been paid if the Bank were a private corporation, by using a cost of capital adjustment factor applied to those assets used in providing services authorized under this part.

(c) *Review and publication.* The Finance Board shall from time to time and at least annually review the cost of capital adjustment factor and review prices for services authorized in this part for compliance with the principles set forth in paragraphs (a) and (b) of this section. All prices for Bank services authorized in this part will be published annually in the FEDERAL REGISTER.

(12 U.S.C. 1431(e); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

[45 FR 64164, Sept. 29, 1980, as amended at 46 FR 38900, July 30, 1981. Redesignated at 54 FR 36759, Sept. 5, 1989, and amended at 58 FR 59936, Nov. 12, 1993; 60 FR 57682, Nov. 17, 1995]

§943.7 Rights, powers, responsibilities, duties, and liabilities.

To the extent it is not inconsistent with other provisions of this part, the Uniform Commercial Code governs the rights, powers, responsibilities, duties, and liabilities of Federal Home Loan Banks in the exercise of their authority under this part. For purposes of this paragraph, the term ''bank,'' as used in the Uniform Commercial Code and clearinghouse rules, includes Federal Home Loan Banks and their members and eligible institutions.

PART 944—[RESERVED]

SUBCHAPTER C—FINANCING CORPORATION

PART 950—OPERATIONS

Sec.
950.1 Definitions.
950.2 General authority.
950.3 Authority to establish investment policies and procedures.
950.4 Book-entry procedure for Financing Corporation obligations.
950.5 Bank and Office of Finance employees.
950.6 Budget and expenses.
950.7 Administrative expenses.
950.8 Non-administrative expenses; assessments.
950.9 Reports to the Finance Board.
950.10 Review of books and records.

AUTHORITY: 12 U.S.C. 1441(b)(8), (c), and (j).

SOURCE: 61 FR 59314, Nov. 22, 1996, unless otherwise noted

§ 950.1 Definitions.

For purposes of this part:

(a) *Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421, *et seq.*).

(b) *Administrative expenses:*

(1) Include general office and operating expenses such as telephone and photocopy charges, printing, legal, and professional fees, postage, courier services, and office supplies; and

(2) Do not include any form of employee compensation, custodian fees, issuance costs, or any interest on (and any redemption premium with respect to) any Financing Corporation obligations.

(c) *Bank* or *Banks* means a Federal Home Loan Bank or the Federal Home Loan Banks.

(d) *BIF-assessable deposit* means a deposit that is subject to assessment for purposes of the Bank Insurance Fund under the Federal Deposit Insurance Act (12 U.S.C. 1811, *et seq.*), including a deposit that is treated as a deposit insured by the Bank Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act.

(e) *Custodian fees* means any fee incurred by the Financing Corporation in connection with the transfer of any security to, or maintenance of any security in, the segregated account established under section 21(g)(2) of the Act, and any other expense incurred by the Financing Corporation in connection with the establishment or maintenance of such account.

(f) *Directorate* means the board established under section 21(b) of the Act to manage the Financing Corporation.

(g) *Exit fees* means the amounts paid under sections 5(d)(2) (E) and (F) of the Federal Deposit Insurance Act, and regulations promulgated thereunder (12 CFR part 312).

(h) *FDIC* means the agency established as the Federal Deposit Insurance Corporation.

(i) *Finance Board* means the agency established as the Federal Housing Finance Board.

(j) *Insured depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(k) *Issuance costs* means issuance fees and commissions incurred by the Financing Corporation in connection with the issuance or servicing of Financing Corporation obligations, including legal and accounting expenses, trustee, fiscal, and paying agent charges, securities processing charges, joint collection agent charges, advertising expenses, and costs incurred in connection with preparing and printing offering materials to the extent the Financing Corporation incurs such costs in connection with issuing any obligations.

(l) *Non-administrative expenses* means custodian fees, issuance costs, and interest on Financing Corporation obligations.

(m) *Obligations* means debentures, bonds, and similar debt securities issued by the Financing Corporation under sections 21 (c)(3) and (e) of the Act.

(n) *Office of Finance* means the joint office of the Banks established under part 941 of this chapter.

(o) *Receivership proceeds* means the liquidating dividends and payments made on claims received by the Federal Savings and Loan Insurance Corporation Resolution Fund established under section 11A of the Federal Deposit Insurance Act from receiverships, that are not required by the Resolution Funding Corporation to provide funds for the Funding Corporation Principal

Fund established under section 21B of the Act.

(p) *SAIF-assessable deposit* means a deposit that is subject to assessment for purposes of the Savings Association Insurance Fund under the Federal Deposit Insurance Act, including a deposit that is treated as a deposit insured by the Savings Association Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act.

§950.2 General authority.

Subject to the limitations and interpretations in this part and such orders and directions as the Finance Board may prescribe, the Financing Corporation shall have authority to exercise all powers and authorities granted to it by the Act and by its charter and bylaws regardless of whether the powers and authorities are specifically implemented in regulation.

§950.3 Authority to establish investment policies and procedures.

The Directorate shall have authority to establish investment policies and procedures with respect to Financing Corporation funds provided that the investment policies and procedures are consistent with the requirements of section 21(g) of the Act. The Directorate shall promptly notify the Finance Board in writing of any changes to the investment policies and procedures.

§950.4 Book-entry procedure for Financing Corporation obligations.

(a) *Authority*. Any Federal Reserve Bank shall have authority to apply book-entry procedure to Financing Corporation obligations.

(b) *Procedure*. The book-entry procedure for Financing Corporation obligations shall be governed by the book-entry procedure established for Bank securities, codified at part 912 of this chapter. Wherever the term ''Federal Home Loan Bank security(ies)'' appears in part 912, the term shall be construed also to mean ''Financing Corporation obligation(s),'' if appropriate to accomplish the purposes of this section.

§950.5 Bank and Office of Finance employees.

The Financing Corporation shall have authority to utilize the officers, employees, or agents of any Bank or the Office of Finance in such manner as may be necessary to carry out its functions.

§950.6 Budget and expenses.

(a) *Directorate approval*. The Financing Corporation shall submit annually to the Directorate for approval, a budget of proposed expenditures for the next calendar year that includes administrative and non-administrative expenses.

(b) *Finance Board approval*. The Directorate shall submit annually to the Finance Board for approval, the budget of the Financing Corporation's proposed expenditures it approved pursuant to paragraph (a) of this section.

(c) *Spending limitation*. The Financing Corporation shall not exceed the amount provided for in the annual budget approved by the Finance Board pursuant to paragraph (b) of this section, or as it may be amended by the Directorate within limits set by the Finance Board.

(d) *Amended budgets*. Whenever the Financing Corporation projects or anticipates that it will incur expenditures, other than interest on Financing Corporation obligations, that exceed the amount provided for in the annual budget approved by the Finance Board or the Directorate pursuant to paragraph (b) or (c) of this section, the Financing Corporation shall submit an amended annual budget to the Directorate for approval, and the Directorate shall submit such amended budget to the Finance Board for approval.

§950.7 Administrative expenses.

(a) *Payment by Banks*. The Banks shall pay all administrative expenses of the Financing Corporation approved pursuant to §950.6.

(b) *Amount*. The Financing Corporation shall determine the amount of administrative expenses each Bank shall pay in the manner provided by section 21(b)(7)(B) of the Act. The Financing Corporation shall bill each Bank for such amount periodically.

(c) *Adjustments.* The Financing Corporation shall adjust the amount of administrative expenses the Banks are required to pay in any calendar year pursuant to paragraphs (a) and (b) of this section, by deducting any funds that remain from the amount paid by the Banks for administrative expenses in the prior calendar year.

§ 950.8 Non-administrative expenses; assessments.

(a) *Interest expenses.* The Financing Corporation shall determine anticipated interest expenses on its obligations at least semiannually.

(b) *Assessments on insured depository institutions*—(1) *Authority.* To provide sufficient funds to pay the non-administrative expenses of the Financing Corporation approved under § 950.6, the Financing Corporation shall, with the approval of the Board of Directors of the FDIC, assess against each insured depository institution an assessment in the same manner as assessments are made by the FDIC under section 7 of the Federal Deposit Insurance Act.

(2) *Assessment rate*—(i) *Determination.* The Financing Corporation at least semiannually shall determine the rate or rates of the assessment it will assess against insured depository institutions pursuant to section 21(f)(2) of the Act and paragraph (b)(1) of this section.

(ii) *Limitation.* Until the earlier of December 31, 1999, or the date as of which the last savings association ceases to exist, the rate of the assessment imposed on an insured depository institution with respect to any BIF-assessable deposit shall be a rate equal to ⅕ of the rate of the assessment imposed on an insured depository institution with respect to any SAIF-assessable deposit.

(iii) *Notice.* The Financing Corporation shall notify the FDIC and the collection agent, if any, of its determination under paragraph (b)(2)(i) of this section.

(3) *Collecting assessments*—(i) *Collection agent.* The Financing Corporation shall have authority to collect assessments made under section 21(f)(2) of the Act and paragraph (b)(1) of this section through a collection agent of its choosing.

(ii) *Accounts.* Each Bank shall permit any insured depository institution whose principal place of business is in its district to establish and maintain at least one demand deposit account to facilitate collection of the assessments made under section 21(f)(2) of the Act and paragraph (b)(1) of this section.

(c) *Receivership proceeds*—(1) *Authority.* To the extent the amounts collected under paragraph (b) of this section are insufficient to pay the non-administrative expenses of the Financing Corporation approved under § 950.6, the Financing Corporation shall have authority to require the FDIC to transfer receivership proceeds to the Financing Corporation in accordance with section 21(f)(3) of the Act.

(2) *Procedure.* The Directorate shall request in writing that the FDIC transfer the receivership proceeds to the Financing Corporation. Such request shall specify the estimated amount of funds required to pay the non-administrative expenses of the Financing Corporation approved under § 950.6.

(d) *Exit fees*—(1) *Authority.* To the extent the amounts provided under paragraphs (b) and (c) of this section are insufficient to pay the interest due on Financing Corporation obligations, the Financing Corporation shall have authority to request that the Secretary of the Treasury order the transfer of exit fees to the Financing Corporation in accordance with section 5(d)(2)(E) of the Federal Deposit Insurance Act.

(2) *Procedure.* The Directorate shall request in writing that the Secretary of the Treasury order that exit fees be transferred to the Financing Corporation. Such request shall specify the estimated amount of funds required to pay the interest due on Financing Corporation obligations.

§ 950.9 Reports to the Finance Board.

The Financing Corporation shall file such reports as the Finance Board shall direct.

§ 950.10 Review of books and records.

The Finance Board shall examine the Financing Corporation at least annually to determine whether the Financing Corporation is performing its functions in accordance with the requirements of section 21 of the Act and this part.

SUBCHAPTER D—RESOLUTION FUNDING CORPORATION

PART 955—AUTHORITY FOR BANK ASSISTANCE

Sec.
955.1 Bank employees.
955.2 Demand deposit accounts.

AUTHORITY: Secs. 2A, 2B, as added by sec. 702, 103 Stat. 413, 414 (12 U.S.C. 1422a, 1422b).

§955.1 Bank employees.

Upon the request of the Directorate of the Resolution Funding Corporation, established pursuant to section 21B(b) of the Act, officers, employees, or agents of the Federal home loan banks are authorized to act for and on behalf of the Resolution Funding Corporation in such manner as may be necessary to carry out the functions of the Resolution Funding Corporation as provided in section 21B(c)(6)(B) of the Act.

[54 FR 39729, Sept. 28, 1989]

§955.2 Demand deposit accounts.

Each bank shall allow any Savings Association Insurance Fund member (''SAIF member'') whose principal place of business is in its district to establish and maintain at least one demand deposit account for the purpose of facilitating the Resolution Funding Corporation's assessments pursuant to section 21B(e)(7) of the Act.

[54 FR 39729, Sept. 28, 1989]

SUBCHAPTER E—AFFORDABLE HOUSING

PART 960—AFFORDABLE HOUSING PROGRAM

Sec.
960.1 Definitions.
960.2 Establishment of program.
960.3 Use of subsidized advances and direct subsidies.
960.4 Applications for funding.
960.5 Project scoring and funding.
960.6 Reporting requirements.
960.7 Monitoring.
960.8 Recapture.
960.9 Maximum subsidy.
960.10 Annual contributions.
960.11 Temporary suspension of contributions.
960.12 Affordable Housing Reserve Fund.
950.13 Coordination.
960.14 Advisory Councils.

AUTHORITY: 12 U.S.C. 1422a, 1422b, 1430(j).

SOURCE: 56 FR 8694, Mar. 1, 1991, unless otherwise noted.

§ 960.1 Definitions.

(a) *Advances* means extensions of credit by Banks to members under the provisions of 12 CFR part 935 and this part 960.

(b) *Affordable for very-low income households* means the monthly housing expense charged to tenants for rental units made available for occupancy by very low-income households shall not exceed 30 percent of the income of a very low-income household, adjusted for family size.

(c) *Area* means a metropolitan statistical area, a county, or a nonmetropolitan area, as established by the U.S. Office of Management and Budget.

(d) *Bank(s)* means a Federal Home Loan Bank established under the authority of the Federal Home Loan Bank Act.

(e) *Board* means the Federal Housing Finance Board or an official duly authorized to act on its behalf.

(f) *Cost of funds* means the estimated cost of issuing Bank System consolidated obligations with maturities comparable to those of the subsidized advances, as published from time to time by the Federal Home Loan Bank System's Office of Finance.

(g) *Low- and moderate-income households* means households for which the aggregate income is 80 percent or less of the area median income.

(h) *Median income* means the median family income for an area as determined and published by the U.S. Department of Housing and Urban Development.

(i) *Member* means an institution admitted to membership in a Federal Home Loan Bank.

(j) *Net earnings of a Bank* means the net earnings of a Bank for a calendar year after deducting the Bank's *pro rata* share of the annual contribution to The Resolution Funding Corporation.

(k) *Program* means the Affordable Housing Program established by this part.

(l) *Rural* means any open country, or any place, town, village, or city which is not part of or associated with an urban area and which has a population not in excess of 2,500 inhabitants, or has a population in excess of 2,500 but not in excess of 10,000 if it is rural in character, or has a population in excess of 10,000 but not in excess of 20,000 and is not contained within a standard metropolitan statistical area, and has a serious lack of mortgage credit for lower and moderate-income families, as determined by the Secretary of Agriculture and the Secretary of Housing and Urban Development. Any area classified as rural prior to October 1, 1990, and determined not to be rural as a result of data received from or after the 1990 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2000, if such area has a population in excess of 20,000 but not in excess of 25,000 is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families.

(m) *Sponsor* means a nonprofit or for-profit organization or public entity that is integrally involved in a project, such as exercising control over the planning, development, and/or management of a project.

(n) *Subsidy* means the direct cash payments under the Program or the net present-value of the foregone interest revenues to the Bank from making

funds available under the Program at rates below the cost of funds.

(o) *Very low-income households* means households for which the aggregate income is fifty percent (50%) or less of the area median income.

§960.2 Establishment of program.

(a) It is the policy of the Board and the Banks to promote decent and safe affordable housing and to address critical affordable housing needs through the use of subsidized advances, direct subsidies, and other assistance to members.

(b) Each Bank's board of directors shall adopt an annual implementation plan consistent with Federal Home Loan Bank Act, 12 U.S.C.A. 1430(j) (''the Act''), and this part to provide subsidized advances, direct subsidies, or other assistance to members engaged in long-term lending that provides owner-occupied and rental housing affordable to very low-, low-, and moderate-income households. A copy of the Bank's plan shall be submitted to the Board annually.

(c) The Program will be carried out in accordance with the requirements of the Fair Housing Act, 42 U.S.C. 3601–19, and other applicable civil rights laws and regulations.

§960.3 Use of subsidized advances and direct subsidies.

(a) *General.* (1) Funds under each Bank's Program shall be used to provide subsidized assistance to members engaged in lending for activities eligible to receive subsidized assistance pursuant to the provisions of section 10(j) of the Act and this part. Subsidized advances made under the Program shall be consistent with the provisions of the Act and the regulations applicable to advances in general contained in 12 CFR part 935, except to the extent modified by this part. Direct subsidies and other assistance provided to members shall comply with the provisions of this part.

(2) In making extensions of credit under the Program, members shall use prudent, flexible, and innovative underwriting standards. Members shall maintain safe and sound lending practices, consistent with the requirements of their primary regulator, and designed to return a profit, but members will be encouraged and assisted in funding qualified projects that do not meet customary underwriting criteria or existing secondary mortgage market requirements or for which no secondary market exists. The Board and the Banks shall encourage and assist the development of new secondary markets for projects funded by the Program.

(b) *Authorized uses.* All members receiving subsidized advances, direct subsidies, and other assistance from a Bank shall use the proceeds of such subsidies and the benefits of such assistance to:

(1) Finance the purchase, construction, and/or rehabilitation of owner-occupied housing for very low-, low-, and moderate-income households; or

(2) Finance the purchase, construction, and/or rehabilitation of rental housing, at least twenty percent (20%) of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term.

(c) Program funds may only be used for direct costs required to produce and/or finance affordable housing units.

(d) Each Bank shall ensure that the preponderance of assistance provided by the Bank is ultimately received by very low-, low-, and moderate-income households.

§960.4 Applications for funding.

(a) Except as provided in §960.5(g), the Program is based on District-wide competitions administered by the Board. Banks may accept applications for funding during two of four quarterly application periods each year, as announced by the Banks no later than December 1 of the preceding year. Applications must be received by the 15th day of each quarter (January, April, July, October), or the next subsequent business day if the 15th falls on a weekend or holiday. For 1991, Banks may accept applications for funding on two of three dates, which dates are April 15th, July 15th, and October 15th.

(b) Each Bank shall notify its members of the approximate amount of annual program funds available for the District, and the approximate amount to be offered in each funding period.

The amount of funds made available in each offering should be comparable.

(c) Each member shall include in its application for a subsidized advance, direct subsidy, or other assistance:

(1) A concise description of the purpose for the request, its relationship to the Program's priorities identified in § 960.5(b), and its consistency with the criteria identified in §§ 960.5(c), 960.5(d) and 960.5(e);

(2) A statement of how the project complies with fair housing laws and regulations;

(3) A description of the feasibility of the project, including the local market conditions justifying the project;

(4) The qualifications and role of the sponsor;

(5) The subsidy requested;

(6) A disclosure of any applicant's interest, direct or indirect, in the property or project;

(7) An explanation of how the member intends to monitor the use of any subsidy or other assistance provided by the Bank, including an explanation of how the structure of the project ensures that a preponderance of the subsidy is ultimately received by the targeted groups;

(8) A certification signed by member's managing officer that the subsidy received by the project will not exceed the maximum allowable under the Program and an explanation of how any excess subsidy will be recaptured;

(9) A certification signed by the member's managing officer that the subsidy or other assistance shall only be for authorized uses; and

(10) Such other information as the Bank or Board may require.

[56 FR 8694, Mar. 1, 1991, as amended at 60 FR 49330, Sept. 25, 1995]

§ 960.5 Project scoring and funding.

(a) *General.* (1) Each Bank will evaluate all applications received pursuant to § 960.4(a) from its members that satisfy the use provisions identified in § 960.3(b).

(2) Projects should first be evaluated for:

(i) Compliance with fair housing laws and regulations;

(ii) Feasibility of the project;

(iii) The ability of the member to qualify for an advance to fund the project; and

(iv) The ability of the project to begin using Bank assistance within twelve months.

(3) Projects meeting all four of the requirements of § 960.5(a)(2) that also meet at least three of the priorities identified in paragraph (b) of this section shall be grouped and rated before projects that meet fewer than three of the priorities. Each Bank will then rank the projects within the first group (*i.e.*, those meeting at least three priorities) based on the criteria contained in paragraphs (c), (d), and (e) of this section. Projects in the second group will be rated only if there are insufficient applications in the first group.

(4) The total possible score a project may receive is 100 points. The maximum numerical score that a Bank may assign any project meeting the criterion identified in paragraph (c) of this section is 25 points; in paragraph (d) of this section, 15 points per criterion; and in paragraph (e) of this section, 10 points per criterion. In determining the number of points to award a project for any given criterion, the Bank should evaluate each proposed project relative to the other proposals received by the Bank. The project(s) best achieving each criterion shall receive the maximum point score available for that criterion, with the remaining projects scored on a declining scale.

(b) *Priorities.* Projects meeting at least three of the following objectives shall have priority for funding:

(1) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of owner-occupied homes for very low-, low-, and moderate-income households in that priority order; or

(2) Projects the principal purpose of which is to finance the purchase, construction, and/or rehabilitation of rental housing, at least twenty percent (20%) of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term; or

(3) Projects that finance the purchase and/or rehabilitation of housing owned

or held by the United States Government or any agency or instrumentality of the United States, for example, the U.S. Department of Housing and Urban Development, Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation; or

(4) Projects that finance the purchase, construction, and/or rehabilitation of housing, which are sponsored by a nonprofit organization, a state or political subdivision of a state, a local housing authority, or a state housing agency; or

(5) Projects that empower the urban or rural poor through resident management, homesteading, self-help housing, or similar programs that meet critical urban or rural housing needs; or

(6) Projects that provide permanent housing for the homeless; or

(7) Projects that meet a Bank objective recommended by the Bank's Advisory Council, adopted by the Bank's board of directors, and approved by the Board.

(c) *25 Point Category—Consistency with Priorities.* To ensure consistency with the priorities identified in paragraph (b) of this section, the project(s) that achieves the greatest number of priorities or achieves more than one goal in a clearly superior manner shall be awarded 25 points, and the remaining projects shall be scored on a declining scale.

(d) *15 Point Categories*—In each of the following three categories, 15 points shall be awarded to the project(s) that best achieves the objective and the remaining projects shall be scored on a declining scale:

(1) *Targeting.* To encourage the flow of Program resources to households with incomes below the statutory maximums, the Bank shall consider the extent to which the project targets households below the statutory maximums. The most points shall be awarded to projects serving the greatest percentage of very low-income households.

(2) *Long-term Retention.* To promote the continued availability of housing affordable for very low-, low- and moderate-income households, the Bank shall consider the extent to which the project facilitates the maximum retention of such housing as evidenced through the existence of long-term guarantees, covenants, land trusts, and similar techniques. The Bank shall evaluate the type of housing and the type of assurances and the percentage of units and years for which these assurances are given.

(3) *Effectiveness.* To ensure that the Program resources help the greatest number of households, the Bank shall consider how effectively the project uses the Program subsidy dollars. Within this context, effectiveness should be measured by the amount of Program subsidy dollars per subsidized unit.

(e) *10 Point Categories*—In each of the following three categories, 10 points shall be awarded to the project(s) that best achieves the objective and the remaining projects shall be scored on a declining scale:

(1) *Community Involvement.* The Bank shall consider the extent to which a project involves demonstrated support by community organizations, other than as project sponsors, the community interests served by the project, and the extent to which the support is local in nature.

(2) *Community Stability.* The Bank shall evaluate the extent to which a project maximizes community stability and minimizes the displacement of very low-, low-, and moderate-income households and the extent to which the project serves existing very low, low-, and moderate-income members of the community.

(3) *Innovation.* The Bank shall consider the extent to which the project involves a particularly new or unusual approach for meeting housing needs in the area being served. The Bank shall consider both nonfinancial and financial innovation in providing affordable housing.

(f) *Application Processing.* (1) No later than 30 days after each offering deadline, the Bank shall forward to the Board for final funding consideration applications from those projects receiving the highest overall rankings. To ensure an adequate pool of projects for Board consideration, each Bank shall forward to the Board the highest ranking projects sufficient to exhaust

the funds being made available by the Bank for that funding round plus the next four highest-ranking projects. If in the Board's opinion there is an insufficient number of applications from any Bank, the Board may request that the Bank submit to the Board for review additional eligible applications.

(2) The Bank shall also submit a summary of each project forwarded to the Board. The summary shall:

(i) Briefly describe the project;

(ii) Indicate the amount of subsidy recommended by the Bank;

(iii) Describe how the member and the Bank will monitor the project;

(iv) Describe the provisions for recapture of the subsidy; and

(v) State the reason for the points awarded for each of the enumerated objectives.

(3) The Board will review the applications submitted from each Bank to ensure consistency with the Program's priorities, objectives, and regulations. Based on this review and the rankings submitted by the Banks, the Board will make a final funding decision and notify the Banks within 30 days.

(g) *Set-aside programs.* Programs established by a Bank under this paragraph (g) shall be priority projects under section 10(j)(3) of the Federal Home Loan Bank Act. For purposes of this paragraph (g), the term ''first-time homebuyer'' means a first-time homebuyer as defined in 42 U.S.C. 12704(14).

(1) *Programs exempt from prior Board approval.* Without the prior approval of the Board, a Bank may set aside annually up to the greater of $1 million or 10 percent of its annual required Affordable Housing Program contribution to fund a matched savings first-time homebuyers' initiative that meets all of the following requirements:

(i) *Announcement of available Bank funds.* The Bank shall notify its members of the amount of annual funds available under the initiative;

(ii) *Pre-approval of member participants.* The Bank shall approve a member's participation in the initiative if the member has:

(A) Established a savings account program offering dedicated savings accounts to eligible households;

(B) Established a first-time homebuyer policy that includes financial or other incentives for first-time homebuyers;

(C) Established a homebuyer counseling program based on those offered by or in conjunction with a not-for-profit housing agency or other recognized counseling organization;

(D) Committed that the Bank or member participant will be entitled to recapture of the equivalent amount of the matching funds, as provided in paragraph (g)(1)(xi) of this section;

(iii) *Approval of initial enrollment of households.* Subject to a Bank's policy established under paragraph (g)(1)(iv) of this section, the Bank shall approve the initial enrollment, through the approved member participant, of a household as a potential beneficiary in the initiative, if the household:

(A) Is low- or moderate-income, as defined in § 960.1(g), and is a first-time homebuyer, as of the date of enrollment;

(B) Has opened a dedicated savings account with the member participant and established a schedule of savings into the account;

(C) Has enrolled in a homebuyer counseling program established by the member participant that is based on those offered by or in conjunction with a not-for-profit housing agency or other recognized counseling organization; and

(D) Has agreed to obtain mortgage financing from the member participant for the purchase of a home;

(iv) *Establishment of Bank policy on enrollment.* The Bank shall establish a policy that ensures that the Bank enrolls no more households in its initiative than the Bank can fund with the amount of funds set aside by the Bank for the initiative in a given year;

(v) *Bank reservation of matching funds six months after initial enrollment.* The Bank shall reserve, in the name of the household, matching funds as targeted in the household's schedule of savings for a given year, and shall notify the member participant and household of such reservation, if, six months after the initial enrollment of the household (or, in cases of households enrolled after being on a waiting list under paragraph (g)(1)(x)(B)*(2)* of this section, and who, for a period of at least six

months, have contributed to a dedicated savings account with a member participant), the member participant certifies to the Bank that the household is progressing satisfactorily by participating in the homebuyer counseling program and depositing funds to its dedicated savings account consistent with the goals of its agreed schedule of savings;

(vi) *Verification of household progress.* The Bank shall require the member participant to verify, semi-annually, each participating household's satisfactory progress in completing the homebuyer counseling program and making deposits to its dedicated savings account consistent with the goals of its agreed schedule of savings;

(vii) *Approval of matching funds drawdown.* The Bank shall approve a request from a member participant for matching funds, and shall credit such funds to the member participant's account, if the member participant certifies to the Bank that:

(A) The household made deposits to its dedicated savings account consistent with the goals of its agreed schedule of savings for a minimum of ten months;

(B) Closing on the sale of a home to the household is scheduled to occur within two years of the date the Bank reserved matching funds in the name of the household, or a longer period if the Bank determines that reasonable circumstances (such as unforeseen hardship, inability to locate a suitable home, or delays in closing on the sale) justified extending such time period for the use of the funds;

(C) The household has completed the required homebuyer counseling program;

(D) The household has received the financial or other incentives committed by the member participant pursuant to its first-time homebuyer policy, and the interest rate on the mortgage loan provided by the member to the household does not exceed the market rate for a loan of similar maturity and terms;

(E) A deed restriction, ''soft'' second mortgage or other legally enforceable mechanism exists on the household's home that entitles the Bank or member participant to recapture of the equivalent amount of the matching funds, as provided in paragraph (g)(1)(xi) of this section;

(viii) *Amount of matching funds.* Each Bank shall determine the amount of matching funds that it will provide to households receiving funds under its initiative, which amount shall not exceed the lesser of three times the amount of a household's savings in its dedicated savings account or $5,000;

(ix) *Eligible uses of funds.* Households receiving funds under an initiative may use such funds only for the payment of downpayment or closing costs in connection with the household's purchase of a one-to-four family, owner-occupied residential property (including a condominium or cooperative housing unit) to be used as its primary residence;

(x) *Availability of funds.* In making initiative funds available:

(A) The Bank shall make such funds available on a rolling, first-come, first-served basis;

(B) In cases where demand for initiative funds in a given year exceeds the amount of set aside funds available for that year, the Bank may:

(*1*) Make available up to an additional $1 million from the next year's set-aside of funds under such initiative; and/or

(*2*) Establish a waiting list for households meeting the requirements for enrollment, provided that the Bank clearly inform households on the waiting list that there is no guarantee that they will be enrolled;

(xi) *Long-term requirement—recapture of funds upon resale.* The Bank shall require that a home purchased using funds under an initiative be subject to a deed restriction, ''soft'' second mortgage or other legally enforceable mechanism that requires that, if the home is sold prior to the end of a period of not less than 5 years (or such longer period as the Bank may determine in establishing its initiative) from the date of purchase by the initial household:

(A) The Bank or its designee be given notice of the sale; and

(B) The seller be required to repay a pro rata share, except for de minimis amounts determined by the Bank, of the funds provided under the initiative, reduced for every year the seller owned the home, to be repaid from any net

gain from the sale of the home after deduction for sales expenses, and to be returned to the Bank to be made available to other households under the Initiative or to other Affordable Housing Program projects, except that the Bank in its discretion may waive such repayment requirement if its imposition would cause undue hardship on the seller, as defined by the Bank;

(xii) *Bank implementation procedures.* Each Bank may establish its own procedures for further implementation of the requirements of this paragraph (g)(1).

(2) *Nonconforming homeownership set-aside programs.* A Bank may set aside a portion of its annual required Affordable Housing Program contribution, in an amount approved by the Board, to implement a homeownership program that does not meet the requirements of paragraph (g)(1) of this section, provided the program satisfies the requirements of 12 U.S.C. 1430(j); meets those goals of the National Homeownership Strategy that, in the Board's determination, are consistent with the goals of the AHP; and receives the prior approval of the Board.

[56 FR 8694, Mar. 1, 1991, as amended at 60 FR 49330, Sept. 25, 1995]

§ 960.6 Reporting requirements.

(a) Each Bank shall provide reports and documentation concerning the Program as the Board may from time to time request.

(b) To meet Board requests for reports and documentation, at least annually each Bank shall require members that receive a subsidy to file periodic reports supported by appropriate documentation, with such Bank continuing until the subsidy has been fully used or repaid by the member. Reports shall, at a minimum, state the manner in which the member has used the proceeds of the subsidy.

(c) Each Bank shall require the boards of directors of members receiving subsidies to certify that the subsidy has been passed through to the borrower and continues to be used for the approved purposes.

§ 960.7 Monitoring.

(a) The Board shall have the responsibility and authority to monitor, audit, and review Bank and member compliance with the Program requirements of the Federal Home Loan Bank Act, this part, and other applicable laws and regulations. The Board shall, in its discretion, use all necessary resources, including Office of Inspector General and Office of General Counsel personnel, Program support staff, and specialized contractors to carry out this responsibility.

(b) Each Bank shall monitor, audit, and review its Program and member Program projects and lending to assure full compliance with the requirements of this part. The Banks shall audit the following Program elements: subsidy calculations, pricing, development, promotion, marketing, compliance, member project development, subsidy delivery, loan pricing (including markup, fees, and terms), community involvement, and oversight.

(c) Monitoring of Program performance and compliance shall be by audits of applications and supporting documentation, loan-record analysis, specialized reporting, data gathering, site inspections, and such other techniques determined by the Board as necessary to detect and eliminate violations, fraud, mismanagement, and dissipation of Program assets.

(d) Miscalculations, errors, and violations of Program regulations identified by the Board or a Bank shall be corrected immediately. In cases where subsidies have been improperly received, the Bank shall recover the subsidy amount, with fees and interest, if appropriate, in accordance with § 960.8 of this part. Other violations of the Act, this part, or other laws and regulations shall be referred to the Board, the Bank, and other agencies of competent jurisdiction for criminal prosecution or civil recovery.

§ 960.8 Recapture.

(a) A member shall notify the Bank immediately upon receiving information that the proceeds of a subsidized advance or other subsidized assistance granted by the Bank to the member will not be or are no longer being used for the purposes approved by the Bank and the Board. The member shall not advance any additional subsidized funds. Furthermore, the amount of

committed but unused subsidy or improperly used subsidy shall be recovered and made available by the Bank for future projects.

(b) In recapturing unused or improperly used subsidies, the Bank shall, at its discretion, take any or all of the following actions, without limitation on other remedies:

(1) Reprice the advance to the interest rate charged to members on nonsubsidized advances of comparable type and maturity at the time of the original advance;

(2) Call the advance;

(3) Assess a prepayment fee; or

(4) Require the member to reimburse the Bank for the amount of the unused or improperly used subsidy on the advance or other assistance.

(c) To preclude potential windfall profits on the premature sale of rental housing where a Program subsidy has already been fully used to develop or rehabilitate the property, the member shall agree, in the event of such a sale, to:

(1) Provide the Bank with evidence that the sales contract includes a provision that the rental housing will continue to be used for the purpose originally intended; or

(2) Agree to reimburse the Bank an amount equal to the *pro rata* subsidy value considered to have been realized by the seller as profit, based upon the amount of the subsidy and the remaining term of the project as originally proposed.

§960.9 Maximum subsidy.

(a) *General.* (1) Except as provided in paragraph (b) of this section, a Bank shall not offer subsidized advances and other subsidized assistance to members in excess of that amount needed to reduce the monthly housing costs (as defined in paragraph (a)(2) of this section) for targeted households in the targeted income group of 20 percent of the household's gross monthly income. In projects where other forms of federal, state, local, or private subsidized assistance are being used in conjunction with the AHP, the total amount of subsidy provided shall not exceed this amount.

(2) For purposes of paragraph (a)(1) of this section, monthly housing costs are defined as:

(i)(A) For homeowner households, mortgage principal and interest payments, real property taxes, homeowners' insurance, and a reasonable estimate of utility costs excluding telephone service; or

(B) For rental households, rent payments, and where they are not already included in rent payments, a reasonable estimate of utility costs excluding telephone service; and

(ii) For households in condominium, cooperative, mutual housing or other projects involving common ownership, those portions of any regular operating assessment or fee allocated for principal and interest payments, taxes, insurance and a reasonable estimate of utilities attributable to the household's share of the common area and/or the individual unit.

(3) A household subject to the 20 percent requirement set forth in paragraph (a)(1) of this section is only required to meet such requirement at the time it initially purchases or occupies a unit.

(b) *Alternative maximum subsidy requirements.* (1) The requirements in paragraph (a) of this section shall not apply where a Bank provides subsidized advances or other subsidized assistance to a member for a rental housing project, which project also receives funds from a federal or state rental housing program that requires qualifying households to pay as rent a certain percentage of their monthly income or a designated amount, provided that the rental household meets the housing payment requirements of the other program.

(2) The requirements in paragraph (a) of this section shall not apply where the total amount of Bank subsidized advances or other subsidized assistance ultimately benefiting a qualifying very low-income homeowner household who already owns and occupies his or her dwelling unit is $10,000 or less per qualifying homeowner household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics), and where such

AHP assistance is used to rehabilitate the homeowner's dwelling unit.

(3) The requirements in paragraph (a) of this section shall not apply where the total amount of Bank subsidized advances or other subsidized assistance ultimately benefiting a qualifying homeowner household that is not very low income at a particular project is $5,000 or less per qualifying homeowner household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics).

(4) The requirements in paragraph (a) of this section shall not apply where a Bank provides subsidized advances or other subsidized assistance ultimately benefiting a qualifying household which is participating in a self-help, sweat equity, or similar housing program that requires the household to contribute its skilled or unskilled labor valued at a minimum of $2,000 per qualifying household (adjusted annually according to the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics), working cooperatively with others, to construct or rehabilitate the housing in which the household resides or other program participants live, and that involves supervision by skilled builders or rehabilitators of the work performed.

(c) A member receiving a subsidized advance shall extend credit to qualified borrowers at an effective rate of interest discounted at least to the same extent as the subsidy granted to the member by the Bank.

[58 FR 17972, Apr. 7, 1993]

§ 960.10 Annual contributions.

(a) Each Bank shall fund its Program in accordance with the following formula:

(1) On January 1 of 1990, 1991, 1992, and 1993, the greater of:

(i) 5 percent of the Bank's net income for the previous year (as defined in § 960.1(i) of this part); or

(ii) That Bank's *pro rata* share of an aggregate of $50 million to be contributed in total by the Banks, such proration being made on the basis of the net income of the Banks for the previous year.

(2) On January 1, 1994, the greater of:

(i) 6 percent of the Bank's net income for the previous year; or

(ii) That Bank's *pro rata* share of an aggregate of $75 million to be contributed in total by the Banks, such proration being made on the basis of the net income of the Banks for the previous year.

(3) On January 1, 1995 and each year thereafter, the greater of:

(i) 10 percent of the Bank's net income for the previous year; or

(ii) That Bank's *pro rata* share of an aggregate of $100 million to be contributed in total by the Banks, such proration being made on the basis of the net income of the Banks for the previous year.

(b) Funding sources for subsidized advances and subsidies under the Program shall be at the discretion of each Bank.

§ 960.11 Temporary suspension of contributions.

(a) If making the contributions required by § 960.10 of this part will lead to the financial instability of a Bank, the Bank shall immediately notify the Board. The Bank may apply for a temporary suspension of Program contributions. The application for the temporary suspension shall be in writing and shall be accompanied by the Bank's preceding year's annual report, if available, and the Bank's most recent quarterly and monthly financial statements. In addition, the application shall state the period of time for which the Bank seeks a suspension and shall include a plan for returning the Bank to a financially stable position.

(b) In reviewing a Bank application for temporary suspension of contributions, the Board shall consider the following factors and financial data:

(1) The extent to which the Bank's quarterly or annual net income has decreased from the preceding quarter or year and whether such decline is projected to continue;

(2) The extent to which the Bank's paid-in membership capital has declined in any given quarter or year and whether such decline is projected to continue;

(3) The extent to which the Bank's level of advances has declined in any

given quarter or year and whether such decline is projected to continue;

(4) Other financial conditions, which, in the opinion of the Bank's board of directors, have resulted, or are likely to result, in the financial instability of the Bank; and

(5) The financial data submitted by the Bank in support of its application.

(c) The Board shall disapprove an application for a temporary suspension if it determines that a Bank's financial instability is a result of:

(1) A change in the terms of advances (other than subsidized advances) not justified by market conditions;

(2) Inordinate operating and administrative expenses;

(3) Operation of the Bank in a manner contrary to accepted banking practices for the Banks;

(4) Mismanagement; or

(5) If for any other reason the temporary suspension is not warranted.

(d) Within thirty (30) days after receipt of a written application made pursuant to paragraph (a) of this section, the Board shall approve or disapprove such application in writing. The Board's decision shall be accompanied by specific findings and reasons for its action and shall state the time period for any temporary suspension. A copy of the decision shall be forwarded to the Congress as provided in paragraph (g) of this section and a copy forwarded to each Bank.

(e) During the term of a temporary suspension approved by the Board, the affected Bank shall provide to the Board such financial reports as the Board shall require to monitor the financial condition of such Bank. If, in the opinion of the Board, a Bank has returned to a position of financial stability prior to the conclusion of the temporary suspension period, the Board may, upon written notice to the Bank, terminate such temporary suspension.

(f) A Bank may apply for an extension of a temporary suspension when such Bank's board of directors determines that the Bank has not, or is not likely to, return to a position of financial stability at the conclusion of the temporary suspension. A request for an extension is to be in written form and shall be approved or disapproved by the Board within thirty (30) days of receipt. The Board's decision to approve or disapprove a request for an extension shall be accompanied by specific findings and reasons for its action and shall state the effective date and time period of any extension. A copy of such decision shall be forwarded to the Congress as provided in paragraph (g) of this section and a copy forwarded to each Bank.

(g) The Board shall notify the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate of any temporary suspension and any extension of a temporary suspension. A temporary suspension may not take effect until at least 60 days after the Board gives the notice of its action required by this section. An extension of a temporary suspension may not take effect until at least 30 days after the Board gives the notice of its action required by this section. Such suspension or extension shall become effective as determined by the Board, unless a joint resolution of Congress is enacted, prior to the Board's determined effective date, disapproving such suspension.

§960.12 Affordable Housing Reserve Fund.

(a) If a Bank fails to use or commit the amount it is required to contribute to the Program pursuant to §960.10 of this part in a given year, ninety percent of the amount that has not been used or committed in that year shall be paid over to the Affordable Housing Reserve Fund established and administered by the Board. The ten percent of the unused or uncommitted amount retained by a Bank should be fully used or committed by that Bank during the following year and any remaining portion must be deposited in the Affordable Housing Reserve Fund. For purposes of this section, approval of applications sufficient to exhaust the amount a Bank is required to contribute pursuant to §960.10 of this part shall constitute use or commitment of the funds.

(b) No later than January 15 of each year, each Bank shall provide to the Board a statement indicating the amount of funds from the prior year, if

any, which will be paid over to the Affordable Housing Reserve Fund.

(c) No later than January 31 of each year, the Board will notify the Banks of the total amount of funds available in the Affordable Housing Reserve Fund.

(d) Upon receipt of an application from a member, a Bank may apply to the Board for use of the available Reserve Funds. Such application shall only be made after the Bank has used or committed all of its current annual allocation to the Program. Such application shall state the amount of funds desired, the purpose of the advance to be made with such funds, and the subsidy to be made on the advance or other subsidized assistance. The application shall be accompanied by the written application of the member requesting a subsidy and shall be acted upon by the Board.

§ 960.13 Coordination.

The Board and the Banks shall coordinate activities under this part, to the maximum extent possible, with other federal, state, or local agencies and nonprofit organizations involved in affordable housing activities.

§ 960.14 Advisory Councils.

(a) Each Bank shall appoint an Advisory Council of 7 to 15 persons, who reside in the Bank's District and are drawn from community and nonprofit organizations actively involved in providing or promoting low- and moderate-income housing in the District. The Advisory Council shall meet with representatives of the board of directors of the Bank at least quarterly to advise the Bank on very low-, low-, and moderate-income housing programs and needs in the District, and on the use of subsidized advances, direct subsidies, and other assistance for these purposes.

(b) Advisory Councils shall be appointed by the Banks giving consideration to the size and diversity of the District, and the very low-, low-, and moderate-income housing needs of the District.

(c) The composition of the Advisory Council shall reflect the very low-, low-, and moderate-income housing activities and needs within the District, as well as the full range of community and nonprofit organizations' concerns. Local and state housing officials may serve as members of an Advisory Council, provided that such officials do not constitute an undue proportion of the membership.

(d) The nomination and selection process shall be as broad and as participatory as possible. Each Bank shall actively solicit nominations from community and nonprofit organizations, allowing sufficient lead time for responses.

(e) Council members shall be paid travel expenses by the Banks, including transportation and subsistence, for each day devoted to attending meetings.

(f) Council members shall serve terms of 2 years, but the terms shall be staggered to provide continuity in experience and service to the Advisory Council.

(g) Each Council shall designate a member or request that a member of the Bank's staff be designated to act as Secretary of the Advisory Council. The Secretary shall record and maintain minutes of the meetings of the Council. Minutes of each meeting shall contain, among other things, a record of the persons present, a description of the matters discussed, and recommendations made. The person acting as Secretary at a meeting shall certify to the accuracy of the minutes of that meeting.

(h) Meetings of the Advisory Council shall be held at least once each quarter and may be held more frequently at the call of the Bank.

(i) By January 31 of each year each Bank shall submit to the Board for review and approval a detailed plan for the operation of its Advisory Council during the year. Such plan shall be subject to review by the Board. Plans shall contain such information as the Board may from time to time require and shall be updated by each Bank as necessary.

(j) By January 3l of each year, each Advisory Council shall submit to the Board its analysis of the low-income housing activity of the Bank by which it is appointed.

CHAPTER XI—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Part		*Page*
1101	Description of office, procedures, public information	694
1102	Appraiser Regulation	699

PART 1101—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

Sec.
1101.1 Scope and purpose.
1101.2 Authority and functions.
1101.3 Organization and methods of operation.
1101.4 Disclosure of information, policies, and records.
1101.5 Testimony and production of documents in response to subpoena, order, etc.

AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 3307.

SOURCE: 45 FR 46794, July 11, 1980, unless otherwise noted.

§ 1101.1 Scope and purpose.

This part implements the Freedom of Information Act (FOIA), 5 U.S.C. 552, with respect to the Federal Financial Institutions Examination Council (Council), and establishes related information disclosure procedures.

§ 1101.2 Authority and functions.

(a) The Council was established by the Federal Financial Institutions Examination Council Act of 1978 (Act), 12 U.S.C. 3301–3308. It is composed of the Comptroller of the Currency; the Chairman of the Federal Deposit Insurance Corporation; a Governor of the Board of Governors of the Federal Reserve System; the Chairman of the Federal Home Loan Bank Board; and the Chairman of the National Credit Union Administration Board.

(b) The statutory functions of the Council are set out at 12 U.S.C. 3305. In summary, the mission of the Council is to promote consistency and progress in federal examination and supervision of financial institutions and their affiliates. The Council is empowered to prescribe uniform principles, standards, and reporting forms and systems; make recommendations in the interest of uniformity; and conduct examiner schools open to personnel of the agencies represented on the Council and employees of state financial institutions supervisory agencies.

§ 1101.3 Organization and methods of operation.

(a) Statutory requirements relating to the Council's organization are stated in 12 U.S.C. 3303.

(b) *Council staff.* Administrative support and substantive coordination for Council activities are provided by a small staff detailed on a full-time basis from the five member agencies. The Executive Secretary and Deputy Executive Secretary of the Council supervise this staff.

(c) *Agency Liaison Group, Task Forces and Legal Advisory Group.* Most staff support in the substantive areas of the Council's duties is provided by interagency task forces and the Council's Legal Advisory Group (LAG). These task forces and the LAG are responsible for securing the services, as needed, of staff experts from the five agencies; supervising research and other investigative work for the Council; and preparing reports and recommendations for the Council. The Agency Liaison Group (ALG) is responsible for the overall coordination of the respective agencies' staff contributions to Council business. The ALG, the task forces, and the LAG are each composed of Council member agency staff serving the Council on a part-time basis.

(d) *State Liaison Committee.* Under 12 U.S.C. 3306, the Council has established a State Liaison Committee, composed of five representatives of state financial institutions supervisory agencies.

(e) *Council address.* Council offices are located at 1776 G Street, NW., Suite 701, Washington, DC 20006.

[45 FR 46794, July 11, 1980, as amended at 53 FR 7341, Mar. 8, 1988]

§ 1101.4 Disclosure of information, policies, and records.

(a) *Statements of policy published in the Federal Register or available for public inspection and copying; indices.* Under 5 U.S.C. 552(a)(1), the Council publishes general rules, policies and interpretations in the FEDERAL REGISTER. Under 5 U.S.C. 552(a)(2), policies and interpretations adopted by the Council, including instructions to Council staff affecting members of the public, and an

index to the same, are available for public inspection and copying at the address set out in § 1101.3(e) of this part during regular business hours. The preceding materials may be withheld from disclosure under the principles stated in paragraph (b)(1) of this section.

(b) *Other records of the Council available for public inspection; procedures*—(1) *General rule and exemptions.* Under 5 U.S.C. 552(a)(3), all other records of the Council are available for public inspection and copying, except those exempted from disclosure as provided in this paragraph. Except as specifically authorized by the Council, the following records, and portions thereof, are not available to the public:

(i) A record, or portion thereof, which is specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and which is, in fact, properly classified pursuant to such Executive order.

(ii) A record, or portion thereof, relating solely to the internal personnel rules and practices of an agency.

(iii) A record, or portion thereof, specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(iv) A record, or portion thereof, containing trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(v) An intraagency or interagency memorandum or letter that would not be routinely available by law to a private party in litigation, including, but not limited to, memoranda, reports, and other documents prepared by the personnel of the Council or its constituent agencies.

(vi) A personnel, medical, or similar record, including a financial record, or any portion thereof, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(vii) Records or information compiled for law enforcement purposes, including records relating to a proceeding by a financial institution's regulatory agency for the issuance of a cease-and-desist order, or order of suspension or removal, or assessment of a civil money penalty and the granting, withholding, or revocation of any approval, permission, or authority, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings; (B) would deprive a person of a right to a fair trial or an impartial adjudication; (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (D) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (F) could reasonably be expected to endanger the life or physical safety of any individual.

(viii) A record, or portion thereof, containing, relating to, or derived from an examination, operating, or condition report prepared by, or on behalf of, or for the use of any agency directly or indirectly responsible for the regulation or supervision of financial institutions, relating to the affairs of any financial institution or affiliate thereof, financial institution holding company or subsidiary, broker, finance company, or any other person engaged, or proposing to engage, in the business of operating, managing or controlling financial institutions.

(ix) A record, or portion thereof, which contains or is related to geological and geophysical information and data, including maps, concerning wells.

(2) *Waiver of exemption.* Notwithstanding the applicability of an exemption,

the Council or the Council's designee may elect, under the circumstances of a particular request, to disclose all or a portion of any requested record where permitted by law. Such disclosure has no precedential significance whatsoever.

(3) *Procedure for records request*—(i) *Initial request.* Requests for records shall be submitted in writing to the Executive Secretary of the Council, at the address set out in § 1101.3(e) of this part. Mailed requests should be marked ''Freedom of Information Request,'' ''FOIA Request,'' or the like on the envelope. Requests must reasonably describe the records sought. The Executive Secretary will aid members of the public in formulating their requests. All requests should give the complete telephone number of the individual seeking the records, if possible.

(ii) *Council response to initial requests.* The Executive Secretary will respond by mail to all properly submitted initial requests within 10 working days of receipt. The time for response may be extended up to 10 additional working days, as provided in 5 U.S.C. 552(a)(6)(B), or for other periods by agreement between the requesting party and the Executive Secretary.

(iii) *Appeals of responses to initial requests.* If a request is denied in whole or in part, the individual making the request may appeal in writing, within 35 days of the date of the denial, to the Chairman of the Council, at the address set out in § 1101.3(e) of this part. Mailed requests should be marked ''Freedom of Information Appeal,'' ''FOIA Appeal,'' or the like on the envelope. Appeals should refer to the date of the original request and the date of the Council's initial ruling. Appeals should include an explanation of the basis for the appeal.

(iv) *Council response to appeals.* The Chairman of the Council, or another member designated by the Chairman, will respond by mail to all properly submitted appeals within 20 working days of receipt. The time for response may be extended up to 10 additional working days, as provided in 5 U.S.C. 552(a)(6)(B), or for other periods by agreement between the requesting party and the Chairman or the Chairman's designee.

(4) *Procedure for access to records if request is granted.* When a request for access to records is granted, in whole or in part, a copy of the records to be disclosed will be promptly delivered to the requesting party or made available for inspection, whichever was requested. Inspection of records, or duplication and delivery of copies of records will be arranged so as not to interfere with their use by the Council and other users of the records.

(5) *Fees for document search, review, and duplication; waiver and reduction of fees*—(i) *Definitions*—(A) *Direct costs* means those expenditures which the Council actually incurs in searching for, duplicating, and reviewing documents to respond to a FOIA request.

(B) *Search* means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(C) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request.

(D) *Review* means the process of examining documents located in response to a request that is for a commercial use (*see* § 1101.4(b)(5)(i)(E)) to determine whether any portion of any document located is permitted to be withheld and processing such documents for disclosure.

(E) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(F) *Educational institution* means a preschool, an elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(G) *Noncommercial scientific institution* means an institution that is not operated on a ''commercial'' basis as that term is referenced in § 1101.4(b)(i)(E), and which is operated solely for the

purposes of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(H) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public.

(ii) *Fees to be charged.* The Council will charge fees that recoup the full allowable direct costs it incurs. The Council may contract with the private sector to locate, reproduce, and/or disseminate records. Provided, however, that the Council has ensured that the ultimate cost to the requester is no greater than it would be if the Council performed these tasks. Fees are subject to change as costs change. In no case will the Council contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(A) *Manual searches and review.* The Council will charge fees at the following rates for manual searches for and review of records:

(*1*) If search/review is done by clerical staff, the hourly rate for GS–7, step 5, plus 16 percent of the rate to cover benefits;

(*2*) If search/review is done by professional staff, the hourly rate for GS–13, step 5, plus 16 percent of the rate to cover benefits.

(B) *Computer searches.* The Council will charge fees at the hourly rate for GS–13, step 5, plus 16 percent of the rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

(C) *Duplication of records.* (*1*) The per-page fee for paper copy reproduction of a document is $.25;

(*2*) The fee for documents generated by computer is the hourly rate for the computer operator (at GS 7, step 5, plus 16 percent for benefits if clerical staff, and GS 13, step 5, plus 16 percent for benefits if professional staff) plus the cost of materials (computer paper, tapes, labels, etc.).

(*3*) If any other method of duplication is used, the Council will charge the actual direct cost of duplicating the documents.

(D) If search, duplication and/or review is provided by personnel of member agencies of the Council, fees will reflect their actual hourly rates, plus 16 percent for benefits.

(E) *Fees to exceed $25.* If the Council estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. In the case of such notification by the Council, the requester will then have the opportunity to confer with Council personnel with the object of reformulating the request to meet his/her needs at a lower cost.

(F) *Other services.* Complying with requests for special services is entirely at the discretion of the Council. The Council will recover the full costs of providing such services to the extent it elects to provide them.

(G) *Restriction on assessing fees.* The Council will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(H) *Waiving or reducing fees.* The Council shall waive or reduce fees under this section whenever disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(*1*) The Council will make a determination of whether the public interest requirement above is met based on the following factors:

(*i*) The subject of the request: Whether the subject of the requested records concerns the operations or activities of the government;

(*ii*) The informative value of the information to be disclosed: Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(*iii*) The contribution to an understanding of the subject by the general public likely to result from disclosure:

Whether disclosure of the requested information will contribute to public understanding;

(*iv*) The significance of the contribution to the public understanding: Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(*2*) If the public interest requirement is met, the Council will make a determination on the commercial interest requirement based upon the following factors:

(*i*) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(*ii*) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large in comparison with the public interest in disclosure; that disclosure is primarily in the commercial interest of the requester.

(*3*) If the required public interest exists and the requester's commercial interest is not primary in comparison to it, the Council will waive or reduce fees.

(iii) *Categories of requesters.* (A) Commercial use requesters. The Council will assess fees for commercial use requesters which recover the full direct costs of searching for, reviewing for release, the duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents.

(B) Requesters who are representatives of the news media, educational and noncommercial scientific institution requesters. The Council shall provide documents to requesters in these categories for the cost of reproduction alone, excluding fees for the first 100 pages.

(C) All other requesters. The Council shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without a fee.

(D) All requesters must specifically describe records sought.

(iv) *Interest on unpaid fees.* The Council may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C. and will accrue from the date of the billing.

(v) *Fees for unsuccessful search and review.* The Council may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(vi) *Aggregating requests.* A requester(s) may not file multiple requests each seeking portions of a document or documents, solely in order to avoid payment of fees. If this is done, the Council may aggregate any such requests and charge accordingly. In no case will the Council aggregate multiple requests on unrelated subjects from the same requester.

(vii) *Advance payment of fees.* The Council will not require a requester to make an assurance of payment or an advance payment unless:

(A) The Council estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. The Council will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(B) A requester has previously failed to pay a fee charged in a timely fashion. The Council may require the requester to pay the full amount owed plus any applicable interest as provided in § 1101.4(b)(5)(iv) or demonstrate that he/she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the Council begins to process a new request or a pending request from that requester.

(C) When the Council acts under § 1101.4(b)(5)(vii) (A) or (B), the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the Council has received the fee payments described.

(6) *Records of another agency*. If a requested record is the property of another federal agency or department, and that agency or department, either in writing or by regulation, expressly retains ownership of such record, upon receipt of a request for the record the Council will promptly inform the requester of this ownership and immediately shall forward the request to the proprietary agency or department either for processing in accordance with the latter's regulations or for guidance with respect to disposition.

[45 FR 46794, July 11, 1980, as amended at 53 FR 7341, Mar. 8, 1988]

§ 1101.5 Testimony and production of documents in response to subpoena, order, etc.

No person shall testify, in court or otherwise, as a result of activities on behalf of the Council without prior written authorization from the Council. This section shall not restrict the authority of a Council member to testify before Congress on matters within his or her official responsibilities as a Council member. No person shall furnish documents reflecting information of the Council in compliance with a subpoena, order, or otherwise, without prior written authorization from the Council. The Council may authorize testimony or production of documents after the litigant (or the litigant's attorney) submits an affidavit to the Council setting forth the interest of the litigant and the testimony or documents desired. Authorization to testify or produce documents is limited to authority expressly granted by the Council. When the Council has not authorized testimony or production of documents, the individual to whom the subpoena or order has been directed will appear in court and respectfully state that he or she is unable to comply further with the subpoena or order by reason of this section.

PART 1102—APPRAISER REGULATION

Subpart A—Temporary Waiver Requests

Sec.
1102.1 Authority, purpose and scope.
1102.2 Requirements for requests.
1102.3 Other requests and information submissions.
1102.4 Notice and comment.
1102.5 Subcommittee determination.
1102.6 Waiver extension.
1102.7 Waiver termination.

Subpart B—Rules of Practice for Proceedings

1102.20 Authority, purpose and scope.
1102.21 Definitions.
1102.22 Appearance and practice before the Subcommittee.
1102.23 Formal requirements as to papers filed.
1102.24 Filing requirements.
1102.25 Service.
1102.26 When papers are deemed filed or served.
1102.27 Computing time.
1102.28 Documents and exhibits in proceedings public.
1102.29 Conduct of proceedings.
1102.30 Rules of evidence.
1102.31 Burden of proof.
1102.32 Notice of Intention to Commence a Proceeding.
1102.33 Rebuttal or Notice Not To Contest.
1102.34 Briefs, memoranda and statements.
1102.35 Opportunity for informal settlement.
1102.36 Oral presentations.
1102.37 Decision of the Subcommittee and judicial review.
1102.38 Compliance activities.
1102.39 Duty to cooperate.

Subpart C—Rules Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee

1102.100 Authority, purpose and scope.
1102.101 Definitions.
1102.102 Times, places and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to records pertaining to them.
1102.103 Disclosure of requested records.
1102.104 Special procedure: Medical records.
1102.105 Requests for amendment of records.
1102.106 Review of requests for amendment.

1102.107 Appeal of initial adverse agency determination regarding access or amendment.
1102.108 General provisions.
1102.109 Fees.
1102.110 Penalties.

Subpart D—Description of Office, Procedures, Public Information

1102.300 Authority, scope and purpose.
1102.301 Definitions.
1102.302 ASC authority and functions.
1102.303 Organization and methods of operation.
1102.304 General requirements, exemptions, procedures and other matters.
1102.305 Availability of interpretive, no-action and other written communications.
1102.306 Confidential treatment procedures.
1102.307 Right to petition for issuance, amendment and repeal of rules of general application.

Subpart A—Temporary Waiver Requests

AUTHORITY: 12 U.S.C. 3348(b).

SOURCE: 57 FR 10982, Apr. 1, 1992, unless otherwise noted.

§ 1102.1 Authority, purpose and scope.

(a) *Authority*. This subpart is issued under section 1119(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA'') (12 U.S.C. § 3348(b)).

(b) *Purpose and scope*. This subpart prescribes rules of practice and procedure governing temporary waiver proceedings under Section 1119(b) of Title XI of FIRREA (12 U.S.C. 3348(b)). These procedures apply whenever a State appraiser regulatory agency requests the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (''ASC'') for a waiver of any requirement relating to certification or licensing of a person to perform appraisals under Title XI of FIRREA. They also apply whenever the ASC, based on sufficient, credible information or requests received from other persons or entities, initiates a temporary waiver proceeding.

§ 1102.2 Requirements for requests.

A request will not be deemed received by the ASC unless it fully and accurately sets out:

(a) If the requester is a State Appraiser Regulatory Agency, a written, duly authorized determination by the State Appraiser Regulatory Agency that there is a scarcity of State licensed or State certified appraisers leading to significant delays in obtaining appraisals in federally related transactions. The scarcity can relate to the entire State or to particular geographical or political subdivisions. In the absence of such a written determination, a State Appraiser Regulatory Agency must ask the ASC for such a determination;

(b) The requirement or requirements of State law from which relief is being sought;

(c) A description of all significant problems currently being encountered in efforts to comply with Title XI;

(d) The nature of the scarcity of certified or licensed appraisers (including supporting documentation);

(e) The extent of the delays anticipated or experienced in obtaining the services of certified or licensed appraisers (including supporting documentation);

(f) The reasons why the requester believes that the requirement or requirements are causing the scarcity of certified or licensed appraisers and the service delays; and

(g) A specific plan for expeditiously alleviating the scarcity and the service delays.

§ 1102.3 Other requests and information submissions.

The federal financial institutions regulatory agencies and the Resolution Trust Corporation, their respective regulated financial institutions, and other persons or institutions with a demonstrable interest in appraiser regulation, may ask the ASC for a determination under § 1102.2(a) of this subpart, and may ask that the ASC exercise its discretionary authority to initiate a temporary waiver proceeding. Such regulated financial institutions and other persons or institutions do not need to comply with § 1102.2(g) of this subpart, but are strongly encouraged to include meaningful suggestions and recommendations for remedying the situation. A copy of the request or

informational submission shall be forwarded promptly to the State Appraiser Regulatory Agency. The ASC shall consider these submissions and requests in exercising its authority to initiate a temporary waiver procedure. When the ASC initiates a temporary waiver proceeding, these documents shall correspond to a received request under § 1102.4 of this subpart.

§ 1102.4 Notice and comment.

The ASC shall publish promptly in the FEDERAL REGISTER a notice respecting:

(a) The received request; or

(b) The ASC order initiating a temporary waiver proceeding. The notice or initiation order shall contain a concise general statement of the nature and basis for the action and shall give interested persons 30 calendar days from its publication in which to submit written data, views and arguments.

§ 1102.5 Subcommittee determination.

Within 45 calendar days of the date of the publication of the notice or initiation order in the FEDERAL REGISTER, the ASC, by order, shall either grant or deny a waiver in whole, in part, and upon specified terms and conditions, including provisions for waiver termination. Such order shall respond to comments received from interested members of the public and shall provide the reasons for the ASC's finding. The order shall be published promptly in the FEDERAL REGISTER, which, in the case of an approval order, shall be after Federal Financial Institution Examination Council concurrence. Upon the ASC's determination that an emergency exists, the ASC may issue an interim approval order simultaneously with its action under § 1120.4 of this subpart. Any ASC approval order shall be effective only upon Federal Financial Institution Examination Council concurrence.

§ 1102.6 Waiver extension.

The ASC may initiate an extension of temporary waiver relief and shall follow §§ 1102.4, 1102.5 and 1102.7 of this subpart. A State Appraiser Regulatory Agency also may request an extension of temporary waiver relief by forwarding an additional written request to the ASC. A request for an extension from State Appraiser Regulatory Agency shall be subject to all the requirements of this subpart.

§ 1102.7 Waiver termination.

The ASC at any time may terminate a waiver order on the finding that:

(a) The significant delays in obtaining the services of certified or licensed appraisers no longer exist; or

(b) The terms and conditions of the waiver order are not being satisfied. The ASC shall publish a finding of waiver termination promptly in the FEDERAL REGISTER, giving interested persons no less than 30 calendar days from publication in which to submit written data, views and arguments. In the absence of further ASC action to the contrary, the finding of waiver termination automatically shall become final 21 calendar days after the close of the comment period.

Subpart B—Rules of Practice for Proceedings

AUTHORITY: 12 U.S.C. 3332, 3335, 3347, and 3348(c).

SOURCE: 57 FR 31650, July 17, 1992, unless otherwise noted.

§ 1102.20 Authority, purpose, and scope.

(a) *Authority*. This subpart is issued under sections 1103, 1106, 1118 and 1119(c) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3332, 3335, 3347, and 3348(c)).

(b) *Purpose and scope*. This subpart prescribes rules of practice and procedure governing non-recognition proceedings under section 1118 of Title XI (12 U.S.C. 3347); and other proceedings necessary to carry out the purposes of Title XI under section 1119(c) of Title XI (12 U.S.C. 3348(c)).

[57 FR 31650, July 17, 1992, as amended at 57 FR 35004, Aug. 7, 1992]

§ 1102.21 Definitions.

As used in this subpart:

(a) *Subcommittee* or *ASC* means the Appraisal Subcommittee of the Federal Financial Institutions Examination

Council, as established under section 1011 of Title XI (12 U.S.C. 3310).

(b) *Party* means the ASC or a person, agency or other entity named as a party, including, when appropriate, persons appearing in the proceeding under § 1102.22 of this subpart.

(c) *Respondent* means any party other than the ASC.

(d) *Secretary* means the Secretary of the ASC under its Rules of Operation.

§ 1102.22 Appearance and practice before the Subcommittee.

(a) *By attorneys and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State or of the District of Columbia, or of any possession, territory, or commonwealth of the United States, may represent parties before the ASC upon filing with the Secretary a written notice of appearance stating that he or she is currently qualified as provided in this paragraph and is authorized to represent the particular party on whose behalf he or she acts.

(b) *By non-attorneys.* An individual may appear on his or her own behalf. A member of a partnership may represent the partnership, and an officer, director or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority. The partner, officer, director or employee must file with the Secretary a written statement that he or she has been duly authorized by the partnership, government unit, agency, institution, corporation or authority to act on its behalf. The ASC may require the representative to attach to the statement appropriate supporting documentation, such as a corporate resolution.

(c) *Conduct during proceedings.* All participants in a proceeding shall conduct themselves with dignity and in an orderly and ethical manner. The attorney or other representative of a party shall make every effort to restrain a client from improper conduct in connection with a proceeding. Improper language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct constitute grounds for immediate exclusion from the proceeding at the direction of the ASC.

§ 1102.23 Formal requirements as to papers filed.

(a) *Form.* All papers filed under this subpart must be double-spaced and printed or typewritten on 8½″ x 11″ paper. All copies shall be clear and legible.

(b) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the ASC and of the filing party, the title and/or docket number of the proceeding and the subject of the particular paper.

(c) *Party names, signatures, certificates of service.* All papers filed must set forth the name, address and telephone number of the attorney or party making the filing, must be signed by the attorney or party, and must be accompanied by a certification setting forth when and how service has been made on all other parties.

(d) *Copies.* Unless otherwise specifically provided in the notice of proceeding or by the ASC during the proceeding, an original and one copy of all documents and papers shall be furnished to the Secretary.

§ 1102.24 Filing requirements.

(a) *Filing.* All papers filed with the ASC in any proceeding shall be filed with the Secretary, Appraisal Subcommittee, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

(b) *Manner of filing.* Unless otherwise specified by the ASC, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery; and

(3) Mailing the papers by first class, registered, or certified mail.

§ 1102.25 Service.

(a) *Methods; appearing party.* A serving party, who has made an appearance under § 1102.22 of this subpart, shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight

delivery service, or to the U.S. Post Office for Express Mail delivery; and

(3) Mailing the papers by first class, registered, or certified mail.

(b) *Methods; non-appearing party.* If a party has not appeared in the proceeding in accordance with § 1102.22 of this subpart, the ASC or any other party shall make service by any of the following methods:

(1) By personal service;

(2) By delivery to a person of suitable age and discretion at the party's last known address;

(3) By registered or certified mail addressed to the party's last known address; or

(4) By any other manner reasonably calculated to give actual notice.

(c) *By the Subcommittee.* All papers required to be served by the ASC shall be served by the Secretary unless some other person shall be designated for such purpose by the ASC.

(d) *By the respondent.* All papers filed in a proceeding under this subpart shall be served by a respondent on the Secretary and each party's attorney, or, if any party is not so represented, then upon such party. Such service may be made by any of the appropriate methods specified in paragraphs (a) and (b) of this section.

§ 1102.26 When papers are deemed filed or served.

(a) *Effectiveness.* Filing and service are deemed effective:

(1) For personal service or same-day commercial courier delivery, upon actual delivery; and

(2) For overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in, or delivery to, an appropriate point of collection.

(b) *Modification.* The effective times for filing and service in paragraph (a) of this section may be modified by the ASC in the case of filing or by agreement of the parties in the case of service.

§ 1102.27 Computing time.

(a) *General rule.* In computing any period of time prescribed or allowed by this subpart, the date of the act, event or default from which the designated period of time begins to run is not included. The last day so computed is included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall not be included in the computation.

(b) *For service and filing responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time periods are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period; and

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period.

§ 1102.28 Documents and exhibits in proceedings public.

Unless and until otherwise ordered by the ASC or unless otherwise provided by statute or by ASC regulation, all documents, papers and exhibits filed in connection with any proceeding, other than those that may be withheld from disclosure under applicable law, shall be placed by the Secretary in the proceeding's public file and will be available for public inspection and copying at the address set out in § 1102.24 of this subpart.

§ 1102.29 Conduct of proceedings.

(a) *In general.* Unless otherwise provided in the notice of proceedings, all proceedings under this subpart shall be conducted as hereinafter provided.

(b) *Written submissions.* All aspects of the proceeding shall be conducted by written submissions only, with the exception of oral presentations allowed under § 1102.36 of this subpart.

(c) *Disqualification.* A Subcommittee member who deems himself or herself disqualified may at any time withdraw. Upon receipt of a timely and sufficient affidavit of personal bias or disqualification of such member, the ASC will rule on the matter as a part of the record and decision in the case.

(d) *User of ASC staff.* Appropriate members of the ASC's staff who are not engaged in the performance of investigative or prosecuting functions in the

proceeding may advise and assist the ASC in the consideration of the case and in the preparation of appropriate documents for its disposition.

(e) *Authority of Subcommittee Chairperson.* The Chairperson of the ASC, in consultation with other members of the ASC whenever appropriate, shall have complete charge of the proceeding and shall have the duty to conduct it in a fair and impartial manner and to take all necessary action to avoid delay in the disposition of proceedings in accordance with this subpart.

(f) *Conferences.* (1) The ASC may on its own initiative or at the request of any party, direct all parties or counsel to meet with one or more duly authorized ASC members or staff at a specified time and place, or to submit to the ASC or its designee, suggestions in writing for the purpose of considering any or all of the following:

(i) Scheduling of matters, including a timetable for the information-gathering phase of the proceeding;

(ii) Simplification and clarification of the issues;

(iii) Stipulations and admissions of fact and of the content and authenticity of documents;

(iv) Matters of which official notice will be taken; and

(v) Such other matters as may aid in the orderly disposition of the proceeding, including disclosure of the names of persons submitting affidavits or other documents and exhibits which may be introduced into the public file of the proceeding.

(2) Such conferences will not be recorded, but the Secretary shall place in the proceeding's public file a memorandum summarizing the results of the conference and shall provide a copy of the memorandum to each party. The memorandum shall control the subsequent course of the proceedings, unless the ASC for good cause shown by one or more parties to the conference, modifies those results and instructs the Secretary to place an amendatory memorandum to that effect in the public file.

(g) *Changes or extensions of time and changes of place of proceeding.* The ASC, in connection with initiating a specific proceedings under § 1102.32 of this subpart, may instruct the Secretary to publish in the FEDERAL REGISTER time limits different from those specified in this subpart, and may, on its own initiative or for good cause shown, issue an exemption changing the place of the proceeding or extending any time limit prescribed by this subpart, including the date for ending the information-gathering phase of the proceeding.

(h) *Call for further briefs, memoranda, statements; reopening of matters.* The ASC may call for the production of further information upon any issue, the submission of briefs, memoranda and statements (together with written responses), and, upon appropriate notice, may reopen any aspect of the proceeding at any time prior to a decision on the matter.

[57 FR 31650, July 17, 1992, as amended at 57 FR 35004, Aug. 7, 1992]

§ 1102.30 Rules of evidence.

(a) *In general.* (1) Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted under this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may be deemed or ruled admissible in a proceeding conducted under this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Stipulations.* Any party may stipulate in writing as to any relevant matters of fact, law, or the authenticity of any relevant documents. The Secretary shall place such stipulations in the public file, and they shall be binding on the parties.

(c) *Official notice.* Every matter officially noticed by the ASC shall appear in the public file, unless the ASC determines that the matter must be withheld from public disclosure under applicable Federal law.

§ 1102.31 Burden of proof.

The ultimate burden of proof shall be on the respondent. The burden of going

forward with a *prima facie* case shall be on the ASC.

§ 1102.32 Notice of Intention to Commence a Proceeding.

The ASC shall instruct the Secretary or other designated officer acting for the ASC to publish in the FEDERAL REGISTER a Notice of Intention To Commence A Proceeding (Notice of Intention). The Notice of Intention shall be served upon the party or parties to the proceeding and shall commence at the time of service. The Notice of Intention shall state the legal authority and jurisdiction under which the proceeding is to be held; shall contain, or incorporate by appropriate reference, a specific statement of the matters of fact or law constituting the grounds for the proceeding; and shall state a date no sooner than 25 days after service of the Notice of Intention is made for termination of the information-gathering phase of the proceeding. The Notice of Intention also must contain a bold-faced warning respecting the effect of a failure to file a Rebuttal or Notice Not To Contest under § 1102.33(d) of this subpart. The ASC may amend a Notice of Intention in any manner and to the extent consistent with provisions of applicable law.

§ 1102.33 Rebuttal or Notice Not To Contest.

(a) *When required.* A party to the proceeding may file either a Rebuttal or a Notice Not to Contest the statements contained in the Notice of Intention or any amendment thereto with the Secretary within 15 days after being served with the Notice of Intention or an amendment to such Notice. The Secretary shall place the Rebuttal or the Notice Not To Contest in the public file.

(b) *Requirements of Rebuttal; effect of failure to deny.* A Rebuttal filed under this section shall specifically admit, deny or state that the party does not have sufficient information to admit or deny each statement in the Notice of Intention. A statement of lack of information shall have the effect of a denial. Any statement not denied shall be deemed to be admitted. When a party intends to deny only a part or a qualification of a statement, the party shall admit so much of it as is true and shall deny only the remainder.

(c) *Notice Not To Contest.* A party filing a Notice Not To Contest the statement of fact set forth in the Notice of Intention shall constitute a waiver of the party's opportunity to rebut the facts alleged, and together with the Notice of Intention and any referenced documents, will provide a record basis on which the ASC shall decide the matter. The filing of a Notice Not To Contest shall not constitute a waiver of the right of such party to a judicial review of the ASC's decision, findings and conclusions.

(d) *Effect of failure to file Rebuttal or Notice Not To Contest.* Failure of a party to file a response required by this section within the time provided shall constitute a waiver of the party's opportunity to rebut and to contest the statements in the Notice of Intention and shall constitute authorization for the ASC to find the facts to be as presented in the Notice of Intention and to file with the Secretary a decision containing such findings and appropriate conclusions. The ASC, for good cause shown, will permit the filing of a Rebuttal after the prescribed time.

§ 1102.34 Briefs, memoranda and statements.

(a) *By the parties.* Until the end of the information-gathering phase of the proceeding, any party may file with the Secretary a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice of Intention. The filing party shall simultaneously serve other parties to the proceeding with a copy of the document. No later than ten days after such service, any party may file with the Secretary a written response to the document and must simultaneously serve a copy thereof on the other parties to the proceeding. The Secretary will receive documents and responses and will place them in the public file.

(b) *By interested persons, in non-recognition proceedings.* Until the end of the information-gathering phase of a proceeding under section 1118 of FIRREA (12 U.S.C. 3347), any person with a demonstrable, direct interest in

the outcome of the proceeding may file with the Secretary a written brief, memorandum or other statement providing factual data and policy and legal arguments regarding the matters set out in the Notice of Intention. The ASC's Chairperson or his or her designee may not accept any such written brief, memorandum or other statement if the submitting person cannot demonstrate a direct interest in the outcome of the proceeding. Upon acceptance of the written brief, memorandum or other statement, the Secretary shall make copies of the document and forward one copy thereof to each party to the proceeding. No later than ten days after such service, any party may file with the Secretary a written response to the document and must simultaneously serve one copy thereof on the other parties to the proceeding. The Secretary will place a copy of such briefs, memoranda, statements and responses in the public file.

§ 1102.35 Opportunity for informal settlement.

Any party may at any time submit to the Secretary, for consideration by the Subcommittee, written offers or proposals for settlement of a proceeding, without prejudice to the rights of the parties. No offer or proposal shall be included in the proceeding's public file over the objection of any party to such proceeding. This paragraph shall not preclude settlement of any proceeding by the filing of a Notice Not To Contest as provided in § 1102.33(c) or by the submission of the case to the ASC on a stipulation of facts.

§ 1102.36 Oral presentations.

(a) *In general.* A party does not have a right to an oral presentation. Under this section, a party's request to make an oral presentation may be denied if such a denial is appropriate and reasonable under the circumstances. An oral presentation shall be considered as an opportunity to offer, emphasize and clarify the facts, policies and laws concerning the proceeding.

(b) *Method and time of request.* Between the commencement of the proceeding and ten days before the end of the information-gathering phase, any party to the proceeding may file with the Secretary a letter requesting that the Secretary schedule an opportunity for the party to give an oral presentation to the ASC. That letter shall include the reasons why an oral presentation is necessary.

(c) *ASC processing.* The Secretary must promptly forward the letter request to the Chairman of the ASC. The Chairman, after informally contacting other ASC members and the ASC's senior staff for their views, will instruct the Secretary to forward a letter to the party either: Scheduling a date and time for the oral presentation and specifying the allowable duration of the presentation; or declining the request and providing the reasons therefor. The party's letter request and the ASC's response will be included in the proceeding's public file.

(d) *Procedure on presentation day.* On the appropriate date and time, the party or his or her attorney (if any) will make the oral presentation before the ASC. Any ASC member may ask the party or the attorney, as the case may be, pertinent questions relating to the content of the oral presentation. Oral presentations will not be recorded or otherwise transcribed. The Secretary must enter promptly into the proceeding's public file a memorandum summarizing the subjects discussed during the oral presentation.

§ 1102.37 Decision of the Subcommittee and judicial review.

At a reasonable time after the end of the information-gathering phase of the proceeding, but not exceeding 35 days, the ASC shall issue a final decision, containing specified terms and conditions as it deems appropriate, in the matter and shall cause the decision to be published promptly in the FEDERAL REGISTER. The final decision shall be effective on issuance. The Secretary shall serve the decision upon the parties promptly, shall place it in the proceeding's public file and shall furnish it to such other persons as the ASC may direct. Pursuant to the provisions of chapter 7 of title 5 of the U.S. Code and section 1118(c)(3) of title XI of FIRREA (12 U.S.C. 3348(c)(3)), a final decision of the ASC is a prerequisite to seeking judicial review.

§1102.38 Compliance activities.

(a) Where, from complaints received from members of the public, communications from Federal or State agencies, examination of information by the ASC, or otherwise, it appears that a person has violated, is violating or is about to violate title XI of FIRREA or the rules or regulations thereunder, the ASC staff may commence an informal, preliminary inquiry into the matter. If, upon such inquiry, it appears that one or more allegations relate to possible violations of regulations administered by another agency or instrumentality of the Federal Government, then the matter shall be referred to that agency or instrumentality for appropriate action. The ASC, pursuant to its responsibilities under section 1103(a)(2) of title XI (12 U.S.C. 3332(a)(2)) and section 1119(c) of title XI (12 U.S.C. 3348)), shall monitor the matter. If, upon inquiry, it appears that one or more allegations are within the ASC's jurisdiction, then the ASC, in its discretion, may determine to commence a formal investigation respecting the matter and shall instruct the Secretary to create a public file for the formal investigation. The Secretary shall place in that file a memorandum naming the person or persons subject to the investigation and the statutory basis for the investigation.

(b) Unless otherwise instructed by the ASC or required by law, the Secretary shall ensure that all other papers, documents and materials gathered or submitted in connection with the investigation are non-public and for ASC use only.

(c) Persons who become involved in preliminary inquiries or formal investigations may, on their own initiative, submit a written statement to the Secretary setting forth their interests, positions or views regarding the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them and the amount of time that may be available for preparing and submitting such a statement prior to the presentation of a staff recommendation to the ASC. Upon the commencement of a formal investigation or a proceeding under this subpart, the Secretary shall place any such statement in the appropriate public file.

(d) In instances where the staff has concluded its inquiry of a particular matter and has determined that it will not recommend the commencement of a formal investigation or a proceeding under this subpart against a person, the staff shall advise the person that its inquiry has been terminated. Such advice, if given, must in no way be construed as indicating that the person has been exonerated or that no action may ultimately result from the staff's inquiry into the particular matter.

§1102.39 Duty to cooperate.

In the course of the investigations and proceedings, the ASC (and its staff, with appropriate authorization) must provide parties or persons ample opportunity to work out problems by consent, by settlement, or in some other manner.

Subpart C—Rules Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee

AUTHORITY: 12 U.S.C. 552a.

SOURCE: 57 FR 36357, Aug. 13, 1992, unless otherwise noted.

§1102.100 Authority, purpose and scope.

(a) This subpart is issued under the Privacy Act of 1974, Public Law 93–579, 88 Stat. 1896; 12 U.S.C. 552a, as amended.

(b) The Privacy Act of 1974 is based, in part, on the finding by Congress that ''in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.'' To achieve this objective, the Act generally provides that Federal agencies must advise an individual upon request whether records maintained by the agency in a system of records pertain to the individual and must grant the individual access to such records. The

Act further provides that individuals may request amendments to records pertaining to them that are maintained by the agency, and that the agency shall either grant the requested amendments or set forth fully its reasons for refusing to do so.

(c) The Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC), pursuant to subsection (f) of the Privacy Act, adopts the following rules and procedures to implement the provisions of the Act summarized above and other provisions of the Act. These rules and procedures are applicable to all requests for information and access or amendment to records pertaining to an individual that are contained in any system of records that is maintained by the ASC.

§ 1102.101 Definitions.

The following definitions shall apply for purposes of this subpart:

(a) The terms *individual, maintain, record, system of records,* and *routine use* are defined for purposes of these rules as they are defined in 5 U.S.C. 552a(a)(2), (a)(3), (a)(4), (a)(5) and (a)(7).

(b) *ASC* or *Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(c) *Privacy Act Officer* means the ASC's Associate Director for Administration or such other ASC staff officer, other than the Executive Director, duly designated by the ASC's Executive Director.

§ 1102.102 Times, places and requirements for requests pertaining to individual records in a record system and for the identification of individuals making requests for access to records pertaining to them.

(a) *Place to make request.* Any request by an individual to be advised whether any system of records maintained by the ASC and named by the individual contains a record pertaining to him or her, or any request by an individual for access to a record pertaining to him or her that is contained in a system of records maintained by the ASC, shall be submitted in person at the ASC between 9 a.m. and 4:30 p.m., Monday through Friday, which is located at 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC. 20037, or by mail addressed to: Privacy Act Officer, ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC. 20037. All requests will be required to be put in writing and signed by the individual making the request. In the case of requests for access that are made by mail, the envelope should be clearly marked ''Privacy Act Request.''

(1) *Information to be included in requests.* Each request by an individual concerning whether the ASC maintains in a system of records a record that pertains to the individual, or for access to any record pertaining to the individual that is maintained by the ASC in a system of records, shall include such information as will assist the ASC in identifying those records as to which the individual is seeking information or access. Where practicable, the individual should identify the system of records that is the subject of his or her request by reference to the ASC's notices of systems of records, which are published in the FEDERAL REGISTER, as required by section (e)(4) of the Privacy Act, 5 U.S.C. 552a(e)(4). Where a system of records is compiled on the basis of a specific identification scheme, the individual should include in his or her request the identification number or other identifier assigned to the individual. In the event the individual does not know that number or identifier, the individual shall provide other information, including his or her full name, address, date of birth and subject matter of the record, to aid in processing his or her request. If additional information is required before a request can be processed, the individual shall be so advised.

(2) *Verification of identity.* When the fact of the existence of a record is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, or when a record as to which access has been requested is not required to be disclosed under that Act, the individual seeking the information or requesting access to the record shall be required to verify his or her identity before access will be granted or information given. For this purpose, individuals shall appear at the ASC located at 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC., between 9

a.m. to 4:30 p.m., Monday through Friday. The ASC's Office is not open on Saturdays, Sundays or Federal holidays.

(3) *Methods for verifying identity—appearance in person.* For the purpose of verifying identity, an individual seeking information regarding pertinent records or access to those records shall furnish documentation that may reasonably be relied on to establish the individual's identity. Such documentation might include a valid birth certificate, driver's license, employee or military identification card, and medicare card.

(4) *Method for verifying identity—by mail.* Where an individual cannot appear at the ASC's Office for the purpose of verifying identity, the individual shall submit, along with the request for information or access, a signed and notarized statement attesting to his or her identity. Where access is being sought, the sworn statement shall include a representation that the records being sought pertain to the individual and a stipulation that the individual is aware that knowingly and willfully requesting or obtaining records pertaining to an individual from the ASC under false pretenses is a criminal offense.

(5) *Additional procedures for verifying identity.* When it appears appropriate to the Privacy Act Officer, other arrangements may be made for the verification of identity as are reasonable under the circumstances and appear to be effective to prevent unauthorized disclosure of, or access to, individual records.

(b) *Acknowledgement of requests for information pertaining to individual records in a record system or for access to individual records.* (1) Except where an immediate acknowledgement is given for requests made in person, the receipt of a request for information pertaining to individual records in a record system will be acknowledged within 10 days, excluding Saturdays, Sundays and Federal holidays. Requests will be processed as promptly as possible and a response to such requests will be given within 30 days (excluding Saturdays, Sundays, and Federal holidays) unless, within the 30 day period and for cause shown, the individual making the request is notified in writing that a longer period is necessary.

§1102.103 Disclosure of requested records.

(a) *Initial review.* Requests by individuals for access to records pertaining to them will be referred to the ASC's Privacy Act Officer, who initially will determine whether access will be granted.

(b) *Grant of request for access.* (1) If it is determined that a request for access to records pertaining to an individual will be granted, the individual will be advised by mail that access will be given at the ASC or a copy of the requested record will be provided by mail if the individual shall so indicate. Where the individual requests that copies of the record be mailed to or her or requests copies of a record upon reviewing it at the ASC, the individual shall pay the cost of making requested copies, as set forth in §1102.109 of this subpart.

(2) In granting access to an individual to a record pertaining to him or her, the ASC staff shall take steps to prevent the unauthorized disclosure of information pertaining to other individuals.

(c) *Denial of request for access.* If it is determined that access will not be granted, the individual making the request will be notified of that fact and given the reasons why access is being denied. The individual also will be advised of his or her right to seek review by the Executive Director of the initial decision to deny access, in accordance with the procedures set forth in §1102.107 of this subpart.

(d) *Time for acting on requests for access.* Access to a record pertaining to an individual normally will be granted or denied within 30 days (excluding Saturdays, Sundays, and Federal holidays) after the receipt of the request for access, unless the individual making the request is notified in writing within the 30 day period that, for good cause shown, a longer time is required. In such cases, the individual making the request shall be informed in writing of the difficulties encountered and an indication shall be given as to when it is anticipated that access may be granted or denied.

(e) *Authorization to allow designated person to review and discuss records pertaining to another individual.* An individual, who is granted access to records pertaining to him or her and who appears at the ASC Office to review the records, may be accompanied by another person of his or her choosing. Where the records as to which access has been granted are not required to be disclosed under provisions of the Freedom of Information Act, 5 U.S.C. 552, as amended, the individual requesting the records, before being granted access, shall execute a written statement, signed by him or her, specifically authorizing the latter individual to review and discuss the records. If such authorization has not been given as described, the person who has accompanied the individual making the request will be excluded from any review or discussion of the records.

(f) *Exclusion for certain records.* Nothing contained in these rules shall allow an individual access to any information compiled in reasonable anticipation of an administrative judicial or civil action or proceeding.

§ 1102.104 Special procedure: Medical records.

(a) *Statement of physician or mental health professional.* When an individual requests access to records pertaining to the individual that include medical and/or psychological information, the ASC, if it deems it necessary under the particular circumstances, may require the individual to submit with the request a signed statement by the individual's physician or a mental health professional indicating that, in his or her opinion, disclosure of the requested records or information directly to the individual will not have an adverse effect on the individual.

(b) *Designation of physician or mental health professional to receive records.* If the ASC believes, in good faith, that disclosure of medical and/or psychological information, directly to an individual could have an adverse effect on that individual, the individual may be asked to designate in writing a physician or mental health professional to whom the individual would like the records to be disclosed, and disclosure that otherwise would be made to the individual will instead be made to the designated physician or mental health professional.

§ 1102.105 Requests for amendment of records.

(a) *Place to make requests.* A request by an individual to amend records pertaining to him or her may be made in person during normal business hours at the ASC located at 2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC, or by mail addressed to the Privacy Act Officer, ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

(1) *Information to be included in requests.* Each request to amend an ASC record shall reasonably describe the record sought to be amended. Such description should include, for example, relevant names, dates and subject matter to permit the record to be located among the records maintained by the ASC. An individual who has requested that a record pertaining to the individual be amended will be advised promptly if the record cannot be located on the basis of the description given and that further identifying information is necessary before the request can be processed. An initial evaluation of a request presented in person will be made immediately to ensure that the request is complete and to indicate what, if any, additional information will be required. Verification of the individual's identity as set forth in § 1102.102(a) (2), (3), (4) and (5) may also be required.

(2) *Basis for amendment.* An individual requesting an amendment to a record pertaining to the individual shall specify the substance of the amendment and set forth facts and provide such materials that would support his or her contention that the record as maintained by the ASC is not accurate, timely or complete, or that the record is not necessary and relevant to accomplish a statutory purpose of the ASC as authorized by law or by Executive Order of the President.

(b) *Acknowledgement of requests for amendment.* Receipt of a request to amend a record pertaining to an individual normally will be acknowledged in writing within 10 days after such request has been received, excluding Saturdays, Sundays and Federal holidays.

When a request to amend is made in person, the individual making the request will be given a written acknowledgement when the request is presented. The acknowledgement will describe the request received and indicate when it is anticipated that action will be taken on the request. No acknowledgement will be sent when the request for amendment will be reviewed, and an initial decision made, within the 10 day period after such request has been received.

§1102.106 Review of requests for amendment.

(a) *Initial review.* As in the case of requests for access, requests by individuals for amendment to records pertaining to them will be referred to the ASC's Privacy Act Officer for an initial determination.

(b) *Standards to be applied in reviewing requests.* In reviewing requests to amend records, the Privacy Act Officer will be guided by the criteria set forth in 5 U.S.C. 552(e) (1) and (5), *i.e.,* that records maintained by the ASC shall contain only such information as is necessary and relevant to accomplish a statutory purpose of the ASC as required by statute or Executive Order of the President and that such information also be accurate, timely, relevant and complete. These criteria will be applied whether the request is to add material to a record or to delete information from a record.

(c) *Time for acting on requests.* Initial review of a request by an individual to amend a record shall be completed as promptly as is reasonably possible and normally within 30 days (excluding Saturdays, Sundays, and Federal holidays) from the date the request was received, unless unusual circumstances preclude completion of review within that time. If the anticipated completion date indicated in the acknowledgement cannot be met, the individual requesting the amendment will be advised in writing of the delay and the reasons therefor, and also advised when action is expected to be completed.

(d) *Grant of requests to amend records.* If a request to amend a record is granted in whole or in part, the Privacy Act Officer will:

(1) Advise the individual making the request in writing of the extent to which it has been granted;

(2) Amend the record accordingly; and

(3) Where an accounting of disclosures of the record has been kept pursuant to 5 U.S.C. 552a(c), advise all previous recipients of the record of the fact that the record has been amended and the substance of the amendment.

(e) *Denial of requests to amend records.* If an individual's request to amend a record pertaining to him is denied in whole or in part, the Privacy Act Officer will:

(1) Promptly advise the individual making the request in writing of the extent to which the request has been denied;

(2) State the reasons for the denial of the request;

(3) Describe the procedures established by the ASC to obtain further review within the ASC of the request to amend, including the name and address of the person to whom the appeal is to be addressed; and

(4) Inform the individual that the Privacy Act Officer will provide information and assistance to the individual in perfecting an appeal of the initial decision.

§1102.107 Appeal of initial adverse agency determination regarding access or amendment.

(a) *Administrative review.* Any person who has been notified pursuant to §1102.103(c) that a request for access to records pertaining to him or her has been denied in whole or in part, or pursuant to §1102.106(e) of this subpart that a request for amendment has been denied in whole or in part, or who has received no response to a request for access or to amend within 30 days (excluding Saturdays, Sundays and Federal holidays) after the request was received by the ASC's staff (or within such extended period as may be permitted in accordance with §§1102.103(d) and 1102.106(c) of this subpart), may appeal the adverse determination or failure to respond by applying for an order of the Executive Director determining and directing that access to the record be granted or that the record be

amended in accordance with his or her request.

(1) The application shall be in writing and shall describe the record in issue and set forth the proposed amendment and the reasons therefor.

(2) The application shall be delivered to the ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC, or by mail addressed to the Privacy Act Officer, ASC, 2100 Pennsylvania Avenue, NW., suite 200, Washington, DC 20037.

(3) The applicant may state such facts and cite such legal or other authorities in support of the application.

(4) The Executive Director will make a determination with respect to any appeal within 30 days after the receipt of such appeal (excluding Saturdays, Sundays, and Federal holidays), unless for good cause shown, the Executive Director shall extend that period. If such an extension is made, the individual who is appealing shall be advised in writing of the extension, the reasons therefor, and the anticipated date when the appeal will be decided.

(5) In considering an appeal from a denial of a request to amend a record, the Executive Director shall apply the same standards as set forth in § 1102.106(b).

(6) If the Executive Director concludes that access should be granted, the Executive Director shall issue an order granting access and instructing the Privacy Act Officer to comply with § 1102.103(b).

(7) If the Executive Director concludes that the request to amend the record should be granted in whole or in part, the Executive Director shall issue an order granting the requested amendment in whole or in part and instructing the Privacy Act Officer to comply with the requirements of § 1102.106(d) of this subpart, to the extent applicable.

(8) If the Executive Director affirms the initial decision denying access, the Executive Director shall issue an order denying access and advising the individual seeking access of:

(i) The order;

(ii) The reasons for denying access; and

(iii) The individual's right to obtain judicial review of the decision pursuant to 5 U.S.C. 552a(g)(1)(B).

(9) If the Executive Director determines that the decision of the Privacy Act Officer denying a request to amend a record should be upheld, the Executive Director shall issue an order denying the request and the individual shall be advised of:

(i) The order refusing to amend the record and the reasons therefor;

(ii) The individual's right to file a concise statement setting forth his or her disagreement with the Executive Director's decision not to amend the record;

(iii) The procedures for filing such a statement of disagreement with the Executive Director;

(iv) The fact that any such statement of disagreement will be made available to anyone to whom the record is disclosed, together with, if the Executive Director deems it appropriate, a brief statement setting forth the Executive Director's reasons for refusing to amend;

(v) The fact that prior recipients of the record in issue will be provided with the statement of disagreement and the Executive Director's statement, if any, to the extent that an accounting of such disclosures has been maintained pursuant to 5 U.S.C. 552a(c); and

(vi) The individual's right to seek judicial review of the Executive Director's refusal to amend, pursuant to 5 U.S.C. 552a(g)(1)(A).

(b) *Statement of disagreement.* As noted in paragraph (a)(9)(ii) of this section, an individual may file with the Executive Director a statement setting forth his or her disagreement with the Executive Director's denial of his or her request to amend a record.

(1) Such statement of disagreement shall be delivered to the ASC, 2100 Pennsylvania Avenue, NW., Suite 200, Washington, DC 20037, within 30 days after receipt by the individual of the Executive Director's order denying the amendment, excluding Saturdays, Sundays and Federal holidays. For good cause shown, this period can be extended for a reasonable time.

(2) Such statement of disagreement shall concisely state the basis for the individual's disagreement. Unduly lengthy or irrelevant materials will be

returned to the individual by the Executive Director for appropriate revisions before they become a permanent part of the individual's record.

(3) The record about which a statement of disagreement has been filed will clearly note which part of the record is disputed and the Executive Director will provide copies of the statement of disagreement and, if the Executive Director deems it appropriate, provide a concise statement of his or her reasons for refusing to amend the record, to persons or other agencies to whom the record has been or will be disclosed.

§1102.108 General provisions.

(a) *Extensions of time.* Pursuant to §§1102.103(b), 1102.104(d), 1102.109(c) and 1102.109(a)(4) of this subpart, the time within which a request for information, access or amendment by an individual with respect to records maintained by the ASC that pertain to him or her normally would be processed may be extended for good cause shown or because of unusual circumstances. As used in these rules, *good cause* and *unusual circumstances* shall include, but only to the extent reasonably necessary to the proper processing of a particular request:

(1) The need to search for and collect the requested records from establishments that are separate from the ASC. Some records of the ASC may be stored in Federal Records Centers in accordance with law—including many of the documents that have been on file with the ASC for more than 2 years—and cannot be made available promptly. Any person who has requested for personal examination a record stored at the Federal Records Center will be notified when the record will be made available.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which may be demanded in a single request. While every reasonable effort will be made to comply fully with each request as promptly as possible on a first-come, first-served basis, work done to search for, collect and appropriately examine records in response to a request for a large number of records will be contingent upon the availability of processing personnel in accordance with an equitable allocation of time to all members of the public who have requested or wish to request records.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more components within the ASC having substantial subject-matter interest herein.

(b) *Effective date of action.* Whenever it is provided in this subpart that an acknowledgement or response to a request will be given by specific times, deposit in the mails of such acknowledgement or response by that time, addressed to the person making the request, will be deemed full compliance.

(c) *Records in use by a member of the ASC or its staff.* Although every effort will be made to make a record in use by a member of the ASC or its staff available when requested, it may occasionally be necessary to delay making such a record available when doing so at the time the request is made would seriously interfere with the work of the ASC or its staff.

(d) *Missing or lost records.* Any person who has requested a record or a copy of a record pertaining to him or her will be notified if the record sought cannot be found. If the person so requests, he or she will be notified if the record subsequently is found.

(e) *Oral requests; misdirected written requests*—(1) *Telephone and other oral requests.* Before responding to any request by an individual for information concerning whether records maintained by the ASC in a system of records pertain to the individual or to any request for access to records by an individual, such request must be in writing and signed by the individual making the request. The Executive Director will not entertain any appeal from an alleged denial of failure to comply with an oral request. Any person who has made an oral request for information or access to records who believes that the request has been improperly denied should resubmit the request in appropriate written form to obtain proper consideration and, if need be, administrative review.

(2) *Misdirected written requests.* The ASC cannot assure that a timely or satisfactory response will be given to written requests for information, access or amendment by an individual with respect to records pertaining to him or her that are directed to the ASC other than in a manner prescribed in §§ 1102.103(a), 1102.106(a), 1102.108(a)(2), and 1102.110 of this subpart. Any staff member who receives a written request for information, access or amendment should promptly forward the request to the Privacy Act Officer. Misdirected requests for records will be considered to have been received by the ASC only when they have been actually received by the Privacy Act Officer in cases under § 1102.108(a)(2). The Executive Director will not entertain any appeal from an alleged denial or failure to comply with a misdirected request, unless it is clearly shown that the request was in fact received by the Privacy Act Officer.

§ 1102.109 Fees.

(a) There will be no charge assessed to the individual for the ASC's expense involved in searching for or reviewing the record. Copies of the ASC's records will be provided by a commercial copier at rates established by a contract between the copier and the ASC or by the ASC at the rates in § 1101.4(b)(5)(ii) of 12 CFR part 1101.

(b) *Waiver or reduction of fees.* Whenever the Executive Director of the ASC determines that good cause exists to grant a request for reduction or waiver of fees for copying documents, he or she may reduce or waive any such fees.

§ 1102.110 Penalties.

Title 18 U.S.C. 1001 makes it a criminal offense, subject to a maximum fine of $10,000, or imprisonment for not more than 5 years or both, to knowingly and willingly make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. 5 U.S.C. 552a(i) makes it a misdemeanor punishable by a fine of not more than $5,000 for any person knowingly and willfully to request or obtain any record concerning an individual from the ASC under false pretenses. 5 U.S.C. 552a(i) (1) and (2) provide criminal penalties for certain violations of the Privacy Act by officers and employees of the ASC.

Subpart D—Description of Office, Procedures, Public Information

AUTHORITY: 5 U.S.C. 552, 553(e); and Executive Order 12600, 52 FR 23781 (3 CFR, 1987 Comp., p. 235).

SOURCE: At 57 FR 60724, Dec. 22, 1992, unless otherwise noted.

§ 1102.300 Authority, scope and purpose.

This subpart implements the Freedom of Information Act (''FOIA''), 5 U.S.C. 552, with respect to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council and establishes related information disclosure procedures and fees.

§ 1102.301 Definitions.

(a) *ASC* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(b) *FFIEC* means the Federal Financial Institutions Examination Council.

§ 1102.302 ASC authority and functions.

(a) *Authority.* The ASC was established on August 9, 1989, pursuant to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (''FIRREA''), 12 U.S.C. 3331 and 3310 through 3351. Title XI is intended ''to provide that Federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.'' 12 U.S.C. 3331.

(b) *Functions.* The ASC's statutory functions are generally set out in 12 U.S.C. 3332. In summary, the ASC must:

(1) Monitor the requirements established by the States for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related

transactions, including a code of professional responsibility;

(2) Monitor the requirements of the Federal financial institutions regulatory agency and Resolution Trust Corporation with respect to appraisal standards for federally related transactions and determinations as to which federally related transactions require the services of a State certified appraiser and which require the services of a State licensed appraiser;

(3) Monitor and review the practices, procedures, activities and organizational structure of the Appraisal Foundation; and

(4) Maintain a national registry of State certified and licensed appraisers eligible to perform appraisals in federally related transactions.

§1102.303 Organization and methods of operation.

(a) *Statutory and other guidelines.* Statutory requirements relating to the ASC's organization are stated in 12 U.S.C. 3310, 3333 and 3334. The ASC has adopted and published Rules of Operation guiding its administration, meetings and procedures. These Rules of Operation were published at 56 FR 28561 (June 21, 1991) and 56 FR 33451 (July 22, 1991).

(b) *ASC members and staff.* The ASC is composed of six members, each being designated by the head of their respective agencies: the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, Office of Thrift Supervision, and the Department of Housing and Urban Development. Administrative support and substantive program, policy and legal guidance for ASC activities are provided by a small, full-time, professional staff supervised by the Executive Director, Associate Director for Administration, Associate Director for Policy and Programs and the General Counsel.

(c) *FFIEC.* Title XI placed the ASC within FFIEC as a separate, appropriated agency of the United States Government with specific statutory responsibilities under Federal law.

(d) *ASC Address.* ASC offices are located at 2100 Pennsylvania Avenue NW., suite 200, Washington, DC 20037.

§1102.304 General requirements, exemptions, procedures and other matters.

(a) *In general.* The ASC, as part of the FFIEC, has determined that the FFIEC's regulations at 12 CFR 1101.4 and 1101.5 pertaining to the implementation of FOIA will guide the ASC's implementation of, and compliance with, FOIA. Therefore, the ASC is incorporating by reference into this subpart the FFIEC's regulations at 12 CFR 1101.4 and 1101.5, subject to the following conforming changes.

(b) *Exceptions.* Because the ASC is an appropriated U.S. Government agency with specific statutory responsibilities, the FFIEC's regulations at 12 CFR 1101.4 and 1101.5, as incorporated by reference into this subpart, are amended as follows:

(1) All references to the term ''Council'' in 12 CFR 1101.4 and 1101.5 shall be deleted, and the term ''ASC'' shall be inserted;

(2) All references to the term ''Executive Secretary'' in 12 CFR 1101.4 and 1101.5 shall be deleted, and the term ''Executive Director'' shall be inserted;

(3) All references to ''§1101.3(e)'' in 12 CFR 1101.4 (a) and (b)(3) (i) and (iii) shall be deleted, and new references to ''§1102.303(d)'' shall be inserted; and

(4) The reference to ''$.25'' in 12 CFR 1101.4(b)(5)(ii)(C)(1) shall be deleted and ''$.15'' shall be inserted.

§1102.305 Availability of interpretive, no-action and other written communications.

(a) *In general.* Subject to the provisions of §1102.304 and subpart C of this part, certain types of ASC written communications shall be made publicly available upon request.

(b) *Types of written communications.* The following types of written communications shall be subject to paragraph (a) of this section:

(1) The ASC's annual report to Congress;

(2) All final opinions and orders made in the adjudication of cases;

(3) All statements of general policy not published in the FEDERAL REGISTER.

(4) Requests for the ASC or its staff to provide interpretive advice with respect to the meaning or application of any statute administered by the ASC or any rule or regulation adopted thereunder and any ASC responses thereto;

(5) Requests for a statement that, on the basis of the facts presented in such a request, the ASC would not take any enforcement action pertaining to the facts as represented and any ASC responses thereto: and

(6) Correspondence between the ASC and a State appraiser regulatory agency arising out of the ASC's field review of the State agency's appraiser regulatory program.

(c) *Embargo period.* Unless the ASC determines otherwise, the written communications in paragraph (b) of this section shall be made publicly available no sooner than ten business days after a written response has been sent or given to the affected person or persons.

[59 FR 1902, Jan. 13, 1994]

§ 1102.306 Confidential treatment procedures.

(a) *In general.* Any submitter of written information to the ASC who desires that some or all of his or her submission be afforded confidential treatment under 5 U.S.C. 552(b)(4) (*i.e.,* trade secrets and commercial or financial information obtained from a person and privileged or confidential) shall file a request for confidential treatment with the Executive Director of the ASC at the time the written information is submitted to the ASC or within ten business days thereafter. Nothing in this section limits the authority of the ASC and its staff to make determinations regarding access to documents under this subpart.

(b) *Form of request.* A request for confidential treatment shall be submitted in a separate letter or memorandum conspicuously entitled, ''Request for Confidential Treatment.'' Each request shall state in reasonable detail the facts and arguments supporting the request and its legal justification. If the submitter had been required by the ASC to provide the particular information, conclusory statements that the information would be useful to competitors or would impair sales or similar statements generally will not be considered sufficient to justify confidential treatment. When the submitter had voluntarily provided the particular information to the ASC, the submitter must specifically identify the documents or information which are of a kind the submitter would not customarily make available to the public.

(c) *Designation and separation of confidential material.* Submitters shall clearly designate all information considered confidential and shall clearly separate such information from other non-confidential information, whenever possible.

(d) *ASC action on request.* A request for confidential treatment of information will be considered only in connection with a request for access to the information under FOIA as implemented by this subpart. Upon the receipt of a request for access, the Executive Director or his or her designee (''ASC Officer'') as soon as possible shall provide the submitter with a written notice describing the request and shall provide the submitter with a reasonable opportunity, no longer than ten business days, to submit written objections to disclosure of the information. Notice may be given orally, and such notice shall be promptly confirmed in writing. The ASC Officer may provide a submitter with a notice if the submitter did not request confidential treatment of the requested information. If the ASC required the submitter to provide the requested information, the ASC Officer would need substantial reason to believe that disclosure of the requested information would result in substantial competitive harm to the submitter. If the submitter provided the information voluntarily to the ASC, the ASC officer would need to believe that the information is of a kind the submitter would not customarily make available to the public. The ASC Officer similarly shall notify the person seeking disclosure of the information under FOIA of the existence of a request for confidential treatment. These notice requirements need not be followed if the ASC Officer determines under this subpart that the information should not be disclosed; the information has been published or

has been officially made available to the public; disclosure of the information is required by law (other than FOIA); or the submitter's request for confidential treatment appears obviously frivolous, in such instance the submitter shall be given written notice of the determination to disclose the information at least five business days prior to release. The ASC Officer shall carefully consider the issues involved, and if disclosure of the requested information is warranted, a written notice, containing a brief description of why the submitter's objections were not sustained, must be forwarded to the submitter within ten business days. The time for response may be extended up to ten additional business days, as provided in 5 U.S.C. 552(a)(6)(B), or for other periods by agreement between the requester and the ASC Officer. This notice shall be provided to the submitter at least five business days prior to release of the requested information.

(e) *Notice of lawsuit.* The ASC Officer shall notify a submitter of any filing of any suit against the ASC pursuant to 5 U.S.C. 552 to compel disclosure of documents or information covered by the submitter's request for confidential treatment within ten business days of service of the suit. The ASC Officer also shall notify the requester of the documents or information of any suit filed by the submitter against the ASC to enjoin their disclosure within ten business days of service of the suit.

[59 FR 1902, Jan. 13, 1994]

§1102.307 Right to petition for issuance, amendment and repeal of rules of general application.

Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition for those purposes with the Executive Director of the ASC. The petition shall include a statement setting forth the text or substance of any proposed rule or amendment desired or shall specify the rule for which repeal is desired. The petitioner also shall state the nature of his or her interest and the reasons for seeking ASC action. The Executive Director shall acknowledge receipt of the petition within ten business days of receipt. As soon as reasonably practicable, the ASC shall consider the petition and related staff recommendations and shall take such action as it deems appropriate. The Executive Director shall notify the petitioner in writing of the ASC action within ten business days of the action.

[59 FR 1902, Jan. 13, 1994]

CHAPTER XIV—FARM CREDIT SYSTEM INSURANCE CORPORATION

Part		*Page*
1400	Organization and functions	720
1401	Employee responsibilities and conduct	720
1402	Releasing information	720
1403	Privacy Act regulations	728
1408	Collection of claims owed the United States	731
1410	Premiums	744
1411	Rules of practice and procedure	747

PART 1400—ORGANIZATION AND FUNCTIONS

Subpart A—Organization and Functions

Sec.
1400.1 Farm Credit System Insurance Corporation.
1400.2 Board of Directors of the Farm Credit System Insurance Corporation.
1400.3 Organization of the Farm Credit System Insurance Corporation.

Subpart B—[Reserved]

AUTHORITY: 12 U.S.C. 2277a–5; 12 U.S.C. 2277a–7.

SOURCE: 55 FR 36610, Sept. 6, 1990, unless otherwise noted.

Subpart A—Organization and Functions

§ 1400.1 Farm Credit System Insurance Corporation.

The Farm Credit System Insurance Corporation (Corporation) was created by sections 5.52 and 5.58 of the Farm Credit Act of 1971 (Act) to carry out the responsibilities set out in part E of title V of the Act, including insuring the timely payment of principal and interest on notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 4.2 of the Farm Credit Act on behalf of one or more Farm Credit System banks.

§ 1400.2 Board of Directors of the Farm Credit System Insurance Corporation.

The Board of Directors of the Farm Credit System Insurance Corporation is entrusted with the responsibility to manage the Corporation. The Board of Directors consists of the members of the Farm Credit Administration Board. The Chairman of the Corporation is elected by the members of the Board.

§ 1400.3 Organization of the Farm Credit System Insurance Corporation.

Officers of the Corporation shall be appointed by the Board of Directors of the Corporation. Current information on the organization of the Corporation may be obtained from the Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102–0826.

Subpart B—[Reserved]

PART 1401—EMPLOYEE RESPONSIBILITIES AND CONDUCT

AUTHORITY: 5 U.S.C. 7301; 12 U.S.C. 2277a–7.

§ 1401.1 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Board members, officers, and other employees of the Farm Credit System Insurance Corporation are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the Farm Credit System Insurance Corporation regulation at 5 CFR part 4001, which supplements the Executive Branch-wide Standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[60 FR 30778, June 12, 1995]

PART 1402—RELEASING INFORMATION

Subpart A—[Reserved]

Subpart B—Availability of Records of the Farm Credit System Insurance Corporation

Sec.
1402.10 Official records of the Farm Credit System Insurance Corporation.
1402.11 Current index.
1402.12 Identification of records requested.
1402.13 Request for records.
1402.14 Response to requests for records.
1402.15 Business information.

SUBPART C—FEES FOR PROVISION OF INFORMATION

1402.20 Definitions.
1402.21 Categories of requesters—fees.
1402.22 Fees to be charged.
1402.23 Waiver or reduction of fees.
1402.24 Advance payments—notice.
1402.25 Interest.
1402.26 Charges for unsuccessful searches or reviews.
1402.27 Aggregating requests.

AUTHORITY: Secs. 5.58, 5.59 of the Farm Credit Act (12 U.S.C. 2277a–7, 2277a–8); 5 U.S.C. 552; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

SOURCE: 59 FR 24638, May 12, 1994, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Availability of Records of the Farm Credit System Insurance Corporation

§ 1402.10 Official records of the Farm Credit System Insurance Corporation.

(a) The Farm Credit System Insurance Corporation shall, upon any request for records which reasonably describes them and is made in accordance with the provisions of this subpart, make the records available as promptly as practicable to any person, except exempt records, which include the following:

(1) Records specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Records related solely to the internal personnel rules and practices of the Farm Credit System Insurance Corporation, including matters which are for the guidance of agency personnel;

(3) Records which are specifically exempted from disclosure by statute;

(4) Trade secret, commercial, proprietary, or financial information obtained from any person or organization and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with the Farm Credit System Insurance Corporation or in litigation in which the United States, as a real party in interest on behalf of the Farm Credit System Insurance Corporation, is a party;

(6) Personnel and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual; and

(8) Records of or related to examination, operation, reports of condition and performance, or reports of or related to Farm Credit System institutions and that are prepared by, on behalf of, or for the use of the Farm Credit System Insurance Corporation.

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this section.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

§ 1402.11 Current index.

The Farm Credit System Insurance Corporation will make available for public inspection and copying a current index to provide identifying information as to any matter required by 5 U.S.C. 552(a)(2)(C) to be made available or published in the FEDERAL REGISTER. Because of the anticipated infrequency

of requests for material required to be indexed, it is determined that the publication of the index in the FEDERAL REGISTER is unnecessary and impracticable. However, the Farm Credit System Insurance Corporation will provide a copy of such index to a member of the public upon request therefor at a cost not in excess of the direct cost of duplication.

§ 1402.12 Identification of records requested.

A member of the public who requests records from the Farm Credit System Insurance Corporation shall provide a reasonable description of the records sought including, where possible, specific information as to dates, titles, and subject matter, so that such records may be located without undue search or inquiry. If a record is not identified by a reasonable description, the request therefor may be denied.

§ 1402.13 Request for records.

Requests for records shall be in writing, in an envelope clearly marked ''FOIA Request,'' and addressed to the Freedom of Information Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826. A request improperly addressed will be deemed not to have been received for purposes of the 10-day time period set forth in § 1402.14(a) until it is received, or would have been received with the exercise of due diligence by the Freedom of Information Officer. Records requested in conformance with this subpart and which are not exempt records may be received in person or by mail as specified in the request. Records to be received in person will be available for inspection or copying during business hours on a regular business day in the offices of the Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

§ 1402.14 Response to requests for records.

(a) Within 10 days (excluding Saturdays, Sundays, and legal public holidays), or any extension thereof as provided in paragraph (d) of this section, of the receipt of a request, the Freedom of Information Officer shall determine whether to comply with or to deny such request and place a notice thereof in writing in the mail addressed to the requester.

(b) Within 30 days of the receipt of a notice denying, in whole or in part, a request for records, the requester may appeal the denial. The appeal shall be in writing addressed to the Chief Financial Officer, Farm Credit System Insurance Corporation, and both the letter and envelope shall be clearly marked ''FOIA Appeal.'' An appeal improperly addressed shall be deemed not to have been received for purposes of the 20-day time period set forth in paragraph (c) of this section until it is received, or would have been received with the exercise of due diligence by Farm Credit System Insurance Corporation personnel.

(c) Within 20 days (excluding Saturdays, Sundays, and legal public holidays), or any extension thereof as provided in paragraph (d) of this section, of the receipt of an appeal, the Farm Credit System Insurance Corporation shall act upon the appeal and place a notice of the determination thereof in writing in the mail addressed to the requester. If the determination on the appeal upholds in whole or in part the denial of the request for records, or, if a determination on the appeal has not been mailed at the end of the 20-day period or the last extension thereof, the requester is deemed to have exhausted that person's administrative remedies, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When a determination cannot be mailed within the applicable time limit, the appeal will nevertheless be processed. In such case, upon the expiration of the time limit, the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be mailed, and of that person's right to seek judicial review. The requester may be asked to forego judicial review until determination of the appeal.

(d) In unusual circumstances as specified in this paragraph the 10-day time limit prescribed in paragraph (a) of this section or the 20-day time limit prescribed in paragraph (c) of this section, or both, may be extended provided that the total of all extensions

shall not exceed 10 days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be made by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be mailed. As used in this paragraph, *unusual circumstances* means, but only to the extent necessary to the proper processing of the request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Farm Credit System Insurance Corporation having substantial subject-matter interest therein.

§ 1402.15 Business information.

(a) Business information provided to the Farm Credit System Insurance Corporation by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. The requirements of this section shall not apply if:

(1) The Farm Credit System Insurance Corporation determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(b) For the purpose of this section, the following definitions shall apply.

(1) *Business information* means trade secrets or other commercial or financial information.

(2) *Business submitter* means any person or entity which provides business information to the government.

(3) *Requester* means the person or entity making the Freedom of Information Act request.

(c)(1) The Freedom of Information Officer shall, to the extent permitted by law, provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (d) of this section. Such notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(2) Whenever the Freedom of Information Officer provides a business submitter with the notice set forth in paragraph (c)(1) of this section, the Freedom of Information Officer shall notify the requester that the request includes information that may arguably be exempt from disclosure under 5 U.S.C. 552(b)(4) and that the person or entity who submitted the information to the Farm Credit System Insurance Corporation has been given the opportunity to comment on the proposed disclosure of information.

(d)(1) The Farm Credit System Insurance Corporation shall provide a business submitter with notice of a request whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) The Farm Credit System Insurance Corporation has reason to believe that the disclosure of the information may result in commercial or financial injury to the business submitter.

(2) Notice of a request for business information falling within paragraph (d)(1)(i) of this section shall be required for a period of not more than 10 years after the date of submission unless the business submitter requests and provides acceptable justification for a specific notice period of greater duration.

(3) Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter that the information in question is in fact a trade secret or commercial or financial information that is privileged or confidential.

(e) Through the notice described in paragraph (c) of this section, the Farm Credit System Insurance Corporation shall, to the extent permitted by law, afford a business submitter a reasonable period within which it can provide the Farm Credit System Insurance Corporation with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of the exemption provided by 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f)(1) The Farm Credit System Insurance Corporation shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the Farm Credit System Insurance Corporation decides to disclose business information over the objection of a business submitter, the Freedom of Information Officer shall forward to the business submitter a written notice which shall include:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) The notice of intent to disclose required by this paragraph shall be sent, to the extent permitted by law, within a reasonable number of days prior to the specified date upon which disclosure is intended.

(3) The Freedom of Information Officer shall send a copy of such disclosure notice to the requester at the same time the notice is sent to the business submitter.

(g) Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (d) of this section, the Farm Credit System Insurance Corporation shall promptly notify the business submitter of such action.

Subpart C—Fees for Provision of Information

§ 1402.20 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) *Commercial use request* means a request for information that is from or on behalf of an individual or entity seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or on whose behalf the request is being made. To determine whether a request is properly classified as a commercial use request, the Farm Credit System Insurance Corporation shall determine the purpose for which the documents requested will be used. If the Farm Credit System Insurance Corporation has reasonable cause to doubt the purpose specified in the request, for which a requester will use the records sought, or where the purpose is not clear from the request itself, the Farm Credit System Insurance Corporation shall seek additional clarification before assigning the request to a specified category.

(b) *Direct costs* means those expenditures the Farm Credit System Insurance Corporation actually incurs in searching for and reproducing documents to respond to a request for information. In the case of a commercial use request, the term also means those expenditures the Farm Credit System Insurance Corporation actually incurs in reviewing documents to respond to the request. The direct cost shall include the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating reproduction equipment. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education that operates a program or programs of scholarly research.

(d) *Noncommercial scientific institution* refers to an institution that is not operated on a commercial, trade, or profit basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(e) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunication services), such alternative media would be included in this category. ''Freelance'' journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by the organization. A publication contract would be the clearest proof that a journalist is working for a news organization, but the Farm Credit System Insurance Corporation may look to a requester's past publication record to determine whether a journalist is working for a news organization.

(f) *Reproduce* and *reproduction* mean the process of making a copy of a document necessary to respond to a request for information. Such copies take the form of paper copy, microfilm, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(g) *Review* means the process of examining documents located in response to a request for information to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure (e.g., doing all that is necessary to prepare the documents for release). The term review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. The Farm Credit System Insurance Corporation shall only charge fees for reviewing documents in response to a commercial use request.

(h) *Search* includes all time spent looking for material that is responsive to a request for information, including page-by-page or line-by-line identification of material within documents. Searching for material shall be done in the most efficient and least expensive manner so as to minimize the costs of the Farm Credit System Insurance Corporation and the requester. For example, a line-by-line search for responsive material should not be performed when merely reproducing an entire document would be the less expensive and the faster method of complying with a request for information. Searches may be done manually or by computer using existing programming. A ''search'' for material that is responsive to a request should be distinguished from a ''review'' of material to determine whether the material is exempt from disclosure.

§ 1402.21 Categories of requesters—fees.

There are four categories of requesters: Commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters.

(a) The Farm Credit System Insurance Corporation shall charge fees for records requested by or on behalf of educational institutions and noncommercial scientific institutions in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research (if the

request is from an educational institution) or scientific research (if the request is from a noncommercial scientific institution).

(b) The Farm Credit System Insurance Corporation shall charge fees for records requested by representatives of the news media in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, the requester must qualify as a representative of the news media and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(c) The Farm Credit System Insurance Corporation shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and reproducing the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents. In accordance with § 1402.26, commercial use requesters may be charged the costs of searching for and reviewing records even if there is ultimately no disclosure of records.

(d) The Farm Credit System Insurance Corporation shall charge fees for records requested by persons or entities that are not classified in any of the categories listed in paragraphs (a), (b), or (c) of this section in an amount that equals the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding the first 2 hours of search time and the cost of reproducing the first 100 pages of records. In accordance with § 1402.26, requesters in this category may be charged the cost of searching for records even if there is ultimately no disclosure of records, excluding the first 2 hours of search time.

(e) For purposes of the exceptions contained in this section on assessment of fees, the word *pages* refers to paper copies of ''8½ × 11'' or ''11 × 14.'' Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or a computer disk containing the equivalent of 100 pages of computer printout meets the terms of the exception.

(f) For purposes of paragraph (d) of this section, the term *search time* has as its basis, manual search. To apply this term to searches made by computer, the Farm Credit System Insurance Corporation will determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent of that rate. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary of the person performing the search, i.e., the operator, the Farm Credit System Insurance Corporation will begin assessing charges for computer search.

§ 1402.22 Fees to be charged.

(a) Generally, the fees charged for requests for records shall cover the full allowable direct costs of searching for, reproducing, and reviewing documents that are responsive to a request for information.

(b) Manual searches for records will be charged at the salary rate(s) (i.e., basic pay plus 16 percent of that rate) of the employee(s) making the search.

(c) Computer searches for records will be charged at the actual direct cost of providing the service. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for records and the operator/programmer salary apportionable to the search. A charge shall also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to the Farm Credit System Insurance Corporation for the type and amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as a right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart.

(d) Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for the initial review; i.e., the review undertaken the first time the Farm Credit System Insurance Corporation analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

(e) Records will be reproduced at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, the requester shall be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of producing the document(s) shall be charged.

(f) The Farm Credit System Insurance Corporation will recover the full costs of providing services such as those enumerated below when it elects to provide them:

(1) Certifying that records are true copies; or

(2) Sending records by special methods such as express mail.

(g) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Farm Credit System Insurance Corporation.

(h) A receipt for fees paid will be given upon request.

§ 1402.23 Waiver or reduction of fees.

(a) The Farm Credit System Insurance Corporation may grant a waiver or reduction of fees if the Farm Credit System Insurance Corporation determines that the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and the disclosure of the information is not primarily in the commercial interest of the requester.

(b) The Farm Credit System Insurance Corporation will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. The elements to be considered in determining the ''cost of collecting a fee'' are the administrative costs of receiving and recording a requester's remittance and processing the fee.

§ 1402.24 Advance payments—notice.

(a) Where it is anticipated that the fees chargeable will amount to more than $25 and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof that can be readily estimated.

(b) If the anticipated fees exceed $250 and if the requester has a history of promptly paying fees charged in connection with information requests, the Farm Credit System Insurance Corporation may obtain satisfactory assurances that the requester will fully pay the fees anticipated.

(c) If the anticipated fees exceed $250 and if the requester has no history of paying fees charged in connection with information requests, the Farm Credit System Insurance Corporation may require an advance payment of fees in an amount up to the full amount anticipated.

(d) If the requester has previously failed to pay a fee charged within 30 days of the date of a billing for fees charged in connection with information requests, the Farm Credit System Insurance Corporation may require the requester to pay the fees owed, plus interest, or demonstrate that the full amount owed has been paid, and require the requester to make an advance payment of the full amount of the fees anticipated before processing a new request or a pending request from that requester.

(e) The notice of the amount of an anticipated fee or a request for an advance deposit shall include an offer to the requester to confer with identified

Farm Credit System Insurance Corporation personnel to attempt to reformulate the request in a manner which will meet the needs of the requester at a lower cost.

§ 1402.25 Interest.

The Farm Credit System Insurance Corporation may begin charging interest on unpaid fees, starting on the 31st day following the day on which the bill for such fees was sent. Interest will not accrue if payment of the fees has been received by the Farm Credit System Insurance Corporation, even if said payment has not been processed. Interest will accrue at the rate prescribed in section 3717 of title 31, United States Code, and will accrue from the day on which the bill for such fees was sent.

§ 1402.26 Charges for unsuccessful searches or reviews.

The Farm Credit System Insurance Corporation may assess charges for time spent searching for records on behalf of requesters in the categories provided for in § 1402.21 (c) and (d), even if there are no records that are responsive to the request or there is ultimately no disclosure of records. The Farm Credit System Insurance Corporation may assess charges for time spent reviewing records for requesters in the category provided for in § 1402.21(c) even if the records located are determined to be exempt from disclosure.

§ 1402.27 Aggregating requests.

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Farm Credit System Insurance Corporation reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Farm Credit System Insurance Corporation may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred.

PART 1403—PRIVACY ACT REGULATIONS

Sec.

1403.1 Purpose and scope.
1403.2 Definitions.
1403.3 Procedures for requests pertaining to individual records in a record system.
1403.4 Times, places, and requirements for identification of individuals making requests.
1403.5 Disclosure of requested information to individuals.
1403.6 Special procedures for medical records.
1403.7 Request for amendment to record.
1403.8 Agency review of request for amendment of record.
1403.9 Appeal of an initial adverse determination of a request to amend a record.
1403.10 Fees for providing copies of records.
1403.11 Criminal penalties.
1403.12 Exemptions.

AUTHORITY: Secs. 5.58, 5.59 of the Farm Credit Act (12 U.S.C. 2277a–7, 2277a–8); 5 U.S.C. app. 3, 5 U.S.C. 552a.

SOURCE: 59 FR 53084, Oct. 21, 1994, unless otherwise noted.

§ 1403.1 Purpose and scope.

(a) This part is published by the Farm Credit System Insurance Corporation pursuant to the Privacy Act of 1974 (Pub. L. 93–579, 5 U.S.C. 552a) which requires each Federal agency to promulgate rules to establish procedures for notification and disclosure to an individual of agency records pertaining to that person, and for review of such records.

(b) The records covered by this part include:

(1) Personnel and employment records maintained by the Farm Credit System Insurance Corporation not covered by §§ 293.101 through 293.108 of the regulations of the Office of Personnel Management (5 CFR 293.101 through 293.108); and

(2) Other records contained in record systems maintained by the Farm Credit System Insurance Corporation.

(c) This part does not apply to any records maintained by the Farm Credit System Insurance Corporation in its capacity as a receiver or conservator.

§ 1403.2 Definitions.

For the purposes of this part:

(a) *Agency* means the Farm Credit System Insurance Corporation. It does not include the Farm Credit System Insurance Corporation when it is acting as a receiver or a conservator;

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(c) *Maintain* includes maintain, collect, use, or disseminate;

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency including, but not limited to, that person's education, financial transactions, medical history, and criminal or employment history, and that contains that person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph;

(e) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected;

(f) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8;

(g) *System of records* means a group of any records under the control of any agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§1403.3 Procedures for requests pertaining to individual records in a record system.

(a) Any present or former employee of the Farm Credit System Insurance Corporation seeking access to that person's official civil service records maintained by the Farm Credit System Insurance Corporation shall submit a request in such manner as is prescribed by the Office of Personnel Management.

(b) Individuals shall submit their requests in writing to the Privacy Act Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826, when seeking to obtain the following information from the Farm Credit System Insurance Corporation:

(1) Notification of whether the agency maintains a record pertaining to that person in a system of records;

(2) Notification of whether the agency has disclosed a record for which an accounting of disclosure is required to be maintained and made available to that person;

(3) A copy of a record pertaining to that person or the accounting of its disclosure; or

(4) The review of a record pertaining to that person or the accounting of its disclosure.

The request shall state the full name and address of the individual, and identify the system or systems of records believed to contain the information or record sought.

§1403.4 Times, places, and requirements for identification of individuals making requests.

The individual making written requests for information or records ordinarily will not be required to verify that person's identity. The signature upon such requests shall be deemed to be a certification by the requester that he or she is the individual to whom the record pertains, or the parent of a minor, or the duly appointed legal guardian of the individual to whom the record pertains. The Privacy Act Officer, however, may require such additional verification of identity in any instance in which the Privacy Act Officer deems it advisable.

§1403.5 Disclosure of requested information to individuals.

(a) The Privacy Act Officer shall, within a reasonable period of time after the date of receipt of a request for information of records:

(1) Determine whether or not such request shall be granted;

(2) Notify the requester of the determination, and, if the request is denied, of the reasons therefor; and

(3) Notify the requester that fees for reproducing copies of records may be charged as provided in §1403.10.

(b) If access to a record is denied because the information therein has been compiled by the Farm Credit System Insurance Corporation in reasonable

anticipation of a civil or criminal action proceeding, the Privacy Act Officer shall notify the requester of that person's right to judicial appeal under 5 U.S.C. 552a(g).

(c)(1) If access to a record is granted, the requester shall notify the Privacy Act Officer whether the requested record is to be copied and mailed to the requester or whether the record is to be made available for personal inspection.

(2) A requester who is an individual may be accompanied by an individual selected by the requester when the record is disclosed, in which case the requester may be required to furnish a written statement authorizing the discussion of the record in the presence of the accompanying person.

(d) If the record is to be made available for personal inspection, the requester shall arrange with the Privacy Act Officer a mutually agreeable time in the offices of the Farm Credit System Insurance Corporation for inspection of the record.

§ 1403.6 Special procedures for medical records.

Medical records in the custody of the Farm Credit System Insurance Corporation which are not subject to Office of Personnel Management regulations shall be disclosed either to the individual to whom they pertain or that person's authorized or legal representative or to a licensed physician named by the individual.

§ 1403.7 Request for amendment to record.

(a) If, after disclosure of the requested information, an individual believes that the record is not accurate, relevant, timely, or complete, that person may request in writing that the record be amended. Such a request shall be submitted to the Privacy Act Officer and shall identify the system of records and the record or information therein, a brief description of the material requested to be changed, the requested change or changes, and the reason for such change or changes.

(b) The Privacy Act Officer shall acknowledge receipt of the request within 10 days (excluding Saturdays, Sundays, and legal holidays) and, if a determination has not been made, advise the individual when that person may expect to be advised of action taken on the request. The acknowledgment may contain a request for additional information needed to make a determination.

§ 1403.8 Agency review of request for amendment of record.

Upon receipt of a request for amendment of a record, the Privacy Act Officer shall:

(a) Correct any portion of a record which the individual making the request believes is not accurate, relevant, timely, or complete and thereafter inform the individual in writing of such correction, or

(b) Inform the individual in writing of the refusal to amend the record and of the reasons therefor, and advise that the individual may appeal such determination as provided in § 1403.9.

§ 1403.9 Appeal of an initial adverse determination of a request to amend a record.

(a) Not more than 10 days (excluding Saturdays, Sundays, and legal holidays) after receipt by an individual of an adverse determination on the individual's request to amend a record or otherwise, the individual may appeal to the Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826.

(b) The appeal shall be by letter, mailed or delivered to the Chief Operating Officer, Farm Credit System Insurance Corporation, McLean, Virginia 22102–0826. The letter shall identify the records involved in the same manner they were identified to the Privacy Act Officer, shall specify the dates of the request and adverse determination, and shall indicate the expressed basis for that determination. Also, the letter shall state briefly and succinctly the reasons why the adverse determination should be reversed.

(c) The review shall be completed and a final determination made by the Chief Operating Officer not later than 30 days (excluding Saturdays, Sundays, and legal holidays) from receipt of the request for such review, unless the Chief Operating Officer extends such 30-day period for good cause. If the 30-day period is extended, the individual

shall be notified of the reasons therefor.

(d) If the Chief Operating Officer refuses to amend the record in accordance with the request, the individual shall be notified of the right to file a concise statement setting forth that person's disagreement with the final determination and that person's right under 5 U.S.C. 552a(g)(1)(A) to a judicial review of the final determination.

(e) If the refusal to amend a record as requested is confirmed, there shall be included in the disputed portion of the record a copy of the concise statement filed by the individual together with a concise statement of the reasons for not amending the record as requested. Such statements will be included when disclosure of the disputed record is made to persons and agencies as authorized under 5 U.S.C. 552a.

§ 1403.10 Fees for providing copies of records.

Fees for providing copies of records shall be charged in accordance with §§ 1402.22 and 1402.24 of this chapter.

§ 1403.11 Criminal penalties.

Section 552a(i)(3) of the Privacy Act (5 U.S.C. 552a(i)(3)) makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning any individual from an agency under false pretenses. Sections 552a(i) (1) and (2) of the Act (5 U.S.C. 552a(i) (1), (2)) provide penalties for violation by agency employees of the Act or regulations established thereunder.

§ 1403.12 Exemptions.

Specific. Pursuant to 5 U.S.C. 552a(k)(5), the investigatory material compiled for law enforcement purposes in the following system of records is exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a and from the provisions of this part:

Personnel Security Files—FCSIC.

PART 1408—COLLECTION OF CLAIMS OWED THE UNITED STATES

Subpart A—Administrative Collection of Claims

Sec.
1408.1 Authority.
1408.2 Applicability.
1408.3 Definitions.
1408.4 Delegation of authority.
1408.5 Responsibility for collection.
1408.6 Demand for payment.
1408.7 Right to inspect and copy records.
1408.8 Right to offer to repay claim.
1408.9 Right to agency review.
1408.10 Review procedures.
1408.11 Special review.
1408.12 Charges for interest, administrative costs, and penalties.
1408.13 Contracting for collection services.
1408.14 Reporting of credit information.
1408.15 Credit report.

Subpart B—Administrative Offset

1408.20 Applicability.
1408.21 Collection by offset.
1408.22 Notice requirements before offset.
1408.23 Right to review of claim.
1408.24 Waiver of procedural requirements.
1408.25 Coordinating offset with other Federal agencies.
1408.26 Stay of offset.
1408.27 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Subpart C—Offset Against Salary

1408.35 Purpose.
1408.36 Applicability of regulations.
1408.37 Definitions.
1408.38 Waiver requests and claims to the General Accounting Office.
1408.39 Procedures for salary offset.
1408.40 Refunds.
1408.41 Requesting current paying agency to offset salary.
1408.42 Responsibility of the Corporation as the paying agency.
1408.43 Nonwaiver of rights by payments.

AUTHORITY: Sec. 5.58 of the Farm Credit Act (12 U.S.C. 2277a-7); 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 4 CFR parts 101–105; 5 CFR part 550.

SOURCE: 59 FR 24899, May 13, 1994, unless otherwise noted.

Subpart A—Administrative Collection of Claims

§ 1408.1 Authority.

The regulations of this part are issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, 31 U.S.C. 3701–3719 and 5 U.S.C. 5514, and in conformity with the joint regulations issued under that Act by the General Accounting Office and the Department of Justice (joint regulations) prescribing standards for administrative collection, compromise, suspension, and termination of agency collection actions, and referral to the General Accounting Office and to the Department of Justice for litigation of civil claims for money or property owed to the United States (4 CFR parts 101–105).

§ 1408.2 Applicability.

This part applies to all claims of indebtedness due and owing to the United States and collectible under procedures authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982. The joint regulations and this part do not apply to conduct in violation of antitrust laws, tax claims, claims between Federal agencies, or to any claim which appears to involve fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, unless the Justice Department authorizes the Farm Credit System Insurance Corporation, pursuant to 4 CFR 101.3, to handle the claim in accordance with the provisions of 4 CFR parts 101 through 105. Additionally, this part does not apply to Farm Credit System Insurance Corporation's premiums regulations under part 1410 of this chapter.

§ 1408.3 Definitions.

In this part (except where the term is defined elsewhere in this part), the following definitions shall apply:

(a) *Administrative offset* or *offset*, as defined in 31 U.S.C. 3701(a)(1), means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

(b) *Agency* means a department, agency, or instrumentality in the executive or legislative branch of the Government.

(c) *Claim* or *debt* means money or property owed by a person or entity to an agency of the Federal Government. A ''claim'' or ''debt'' includes amounts due the Government from loans insured by or guaranteed by the United States and all other amounts due from fees, leases, rents, royalties, services, sales of real or personal property, overpayment, penalties, damages, interest, and fines.

(d) *Claim certification* means a creditor agency's written request to a paying agency to effect an administrative offset.

(e) *Corporation* means the Farm Credit System Insurance Corporation.

(f) *Creditor agency* means an agency to which a claim or debt is owed.

(g) *Debtor* means the person or entity owing money to the Federal Government.

(h) *Hearing official* means an individual who is responsible for reviewing a claim under § 1408.10.

(i) *Paying agency* means an agency of the Federal Government owing money to a debtor against which an administrative or salary offset can be effected.

(j) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deductions at one or more officially established pay intervals from the current pay account of a debtor.

§ 1408.4 Delegation of authority.

The Corporation official(s) designated by the Chairman of the Farm Credit System Insurance Corporation are authorized to perform all duties which the Chairman is authorized to perform under these regulations, the Federal Claims Collection Act of 1966, as amended, and the joint regulations issued under that Act.

§ 1408.5 Responsibility for collection.

(a) The collection of claims shall be aggressively pursued in accordance with the provisions of the Federal Claims Collection Act of 1966, as amended, the joint regulations issued under that Act, and these regulations.

Debts owed to the United States, together with charges for interest, penalties, and administrative costs, should be collected in one lump sum unless otherwise provided by law. If a debtor requests installment payments, the debtor, as requested by the Corporation, shall provide sufficient information to demonstrate that the debtor is unable to pay the debt in one lump sum. When appropriate, the Corporation shall arrange an installment payment schedule. Claims which cannot be collected directly or by administrative offset shall be either written off as administratively uncollectible or referred to the General Counsel for further consideration.

(b) The Chairman, or designee of the Chairman, may compromise claims for money or property arising out of the activities of the Corporation, where the claim (exclusive of charges for interest, penalties, and administrative costs) does not exceed $100,000. When the claim exceeds $100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to accept a compromise rests solely with the Department of Justice. The standards governing the compromise of claims are set forth in 4 CFR part 103.

(c) The Chairman, or designee of the Chairman, may suspend or terminate the collection of claims which do not exceed $100,000 (exclusive of charges for interest, penalties, and administrative costs) after deducting the amount of any partial payments or collections. If, after deducting the amount of any partial payments or collections, a claim exceeds $100,000 (exclusive of charges for interest, penalties, and administrative costs), the authority to suspend or terminate rests solely with the Department of Justice. The standards governing the suspension or termination of claim collections are set forth in 4 CFR part 104.

(d) The Corporation shall refer claims to the Department of Justice for litigation or to the General Accounting Office (GAO) for claims arising from audit exceptions taken by the GAO to payments made by the Corporation in accordance with 4 CFR part 105.

§1408.6 Demand for payment.

(a) A total of three progressively stronger written demands at not more than 30-day intervals should normally be made upon a debtor, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demands may be preceded by other appropriate actions under Federal law, including immediate referral for litigation and/or administrative offset.

(b) The initial demand for payment shall be in writing and shall inform the debtor of the following:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) The payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the initial demand for payment;

(3) The right of the debtor to inspect and copy the records of the agency related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that the debtor may be assessed for the cost of copying the documents in accordance with §1408.7;

(4) The right of the debtor to obtain a review of the Corporation's determination of indebtedness;

(5) The right of the debtor to offer to enter into a written agreement with the agency to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the agency;

(6) That charges for interest, penalties, and administrative costs will be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date;

(7) That if the debtor has not entered into an agreement with the Corporation to pay the debt, has not requested the Corporation to review the debt, or has not paid the debt by the payment due date, the Corporation intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies

for assistance in collecting the debt by offset;

(8) The name and address of the Corporation official to whom the debtor shall send all correspondence relating to the debt; and

(9) Other information, as may be appropriate.

(c) If, prior to, during, or after completion of the demand cycle, the Corporation determines to collect the debt by either administrative or salary offset, the Corporation shall follow, as applicable, the requirements for a Notice of Intent to Collect by Administrative Offset or a Notice of Intent to Collect by Salary Offset set forth in § 1408.22.

(d) If no response to the initial demand for payment is received by the payment due date, the Corporation shall take further action under this part, under the Federal Claims Collection Act of 1966, as amended, under the joint regulations (4 CFR parts 101–105), or under any other applicable State or Federal law. These actions may include reports to credit bureaus, referrals to collection agencies, termination of contracts, debarment, and salary or administrative offset.

§ 1408.7 Right to inspect and copy records.

The debtor may inspect and copy the Corporation records related to the claim. The debtor shall give the Corporation reasonable advanced notice that he/she intends to inspect and copy the records involved. The debtor shall pay copying costs unless they are waived by the Corporation. Copying costs shall be assessed pursuant to § 1402.22 of this chapter.

§ 1408.8 Right to offer to repay claim.

(a) The debtor may offer to enter into a written agreement with the Corporation to repay the amount of the claim. The acceptance of such an offer and the decision to enter into such a written agreement is at the discretion of the Corporation.

(b) If the debtor requests a repayment arrangement because payment of the amount due would create a financial hardship, the Corporation shall analyze the debtor's financial condition. The Corporation may enter into a written agreement with the debtor permitting the debtor to repay the debt in installments if the Corporation determines, in its sole discretion, that payment of the amount due would create an undue financial hardship for the debtor. The written agreement shall set forth the amount and frequency of installment payments and shall, in accordance with § 1408.12, provide for the imposition of charges for interest, penalties, and administrative costs unless waived by the Corporation.

(c) The written agreement may require the debtor to execute a confess-judgment note when the total amount of the deferred installments will exceed $750. The Corporation shall provide the debtor with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation. The statement shall recite that the written explanation was read and understood before execution of the note and that the debtor signed the note knowingly and voluntarily. Documentation of these procedures will be maintained in the Corporation's file on the debtor.

§ 1408.9 Right to agency review.

(a) If the debtor disputes the claim, the debtor may request a review of the Corporation's determination of the existence of the debt or of the amount of the debt. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the Corporation official named in the initial demand letter, within 15 calendar days after receipt of the letter. The debtor's request for review shall state the basis on which the claim is disputed.

(c) The Corporation shall promptly notify the debtor, in writing, that the Corporation has received the request for review. The Corporation shall conduct its review of the claim in accordance with § 1408.10.

(d) Upon completion of its review of the claim, the Corporation shall notify the debtor whether the Corporation's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification

shall include a copy of the written decision issued by the hearing official pursuant to §1408.10(e). If the Corporation's determination is sustained, this notification shall contain a provision which states that the Corporation intends to collect the debt by all legally available means, which may include initiating legal action against the debtor, referring the debt to a collection agency for collection, collecting the debt by offset, or asking other Federal agencies for assistance in collecting the debt by offset.

§1408.10 Review procedures.

(a) Unless an oral hearing is required by §1408.23(d), the Corporation's review shall be a review of the written record of the claim.

(b) If an oral hearing is required under §1408.23(d) the Corporation shall provide the debtor with a reasonable opportunity for such a hearing. The oral hearing, however, shall not be an adversarial adjudication and need not take the form of a formal evidentiary hearing. All significant matters discussed at the hearing, however, will be carefully documented.

(c) Any review required by this part, whether a review of the written record or an oral hearing, shall be conducted by a hearing official. In the case of a salary offset, the hearing official shall not be under the supervision or control of the Chairman of the Farm Credit System Insurance Corporation.

(d) The Corporation may be represented by legal counsel. The debtor may represent himself or herself or may be represented by an individual of the debtor's choice and at the debtor's expense.

(e) The hearing official shall issue a final written decision based on documentary evidence and, if applicable, information developed at an oral hearing. The written decision shall be issued as soon as practicable after the review but not later than 60 days after the date on which the request for review was received by the Corporation, unless the debtor requests a delay in the proceedings. A delay in the proceedings shall be granted if the hearing official determines, in his or her sole discretion, that there is good cause to grant the delay. If a delay is granted, the 60-day decision period shall be extended by the number of days by which the review was postponed.

(f) Upon issuance of the written opinion, the Corporation shall promptly notify the debtor of the hearing official's decision. Said notification shall include a copy of the written decision issued by the hearing official pursuant to paragraph (e) of this section.

§1408.11 Special review.

(a) An employee subject to salary offset, under subpart C of this part, or a voluntary repayment agreement, may, at any time, request a special review by the Corporation of the amount of the salary offset or voluntary repayment, based on materially changed circumstances such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) To determine whether an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(1) Income from all sources;

(2) Assets;

(3) Liabilities;

(4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Medical expenses; and

(7) Exceptional expenses, if any.

(c) If the employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in an extreme financial hardship to the employee.

(d) The Corporation shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an undue financial hardship on the employee. The Corporation shall notify the employee in writing of such determination, including, if appropriate, a revised offset or payment schedule.

§ 1408.12 Charges for interest, administrative costs, and penalties.

(a) Except as provided in paragraph (d) of this section, the Corporation shall:

(1) Assess interest on unpaid claims;

(2) Assess administrative costs incurred in processing and handling overdue claims; and

(3) Assess penalty charges not to exceed 6 percent a year on any part of a debt more than 90 days past due.

The imposition of charges for interest, administrative costs, and penalties shall be made in accordance with 31 U.S.C. 3717.

(b)(1) Interest shall accrue from the date of mailing or hand delivery of the initial demand for payment or the Notice of Intent to Collect by either Administrative or Salary Offset if the amount of the claim is not paid within 30 days from the date of mailing or hand delivery of the initial demand or notice.

(2) The 30-day period may be extended on a case-by-case basis if the Corporation reasonably determines that such action is appropriate. Interest shall only accrue on the principal of the claim and the interest rate shall remain fixed for the duration of the indebtedness, except, as provided in paragraph (c) of this section, in cases where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, or if the Corporation reasonably determines that a higher rate is necessary to protect the interests of the United States.

(c) If a debtor defaults on a repayment agreement and seeks to enter into a new agreement, the Corporation may assess a new interest rate on the unpaid claim. In addition, charges for interest, administrative costs, and penalties which accrued but were not collected under the original repayment agreement shall be added to the principal of the claim to be paid under the new repayment agreement. Interest shall accrue on the entire principal balance of the claim, as adjusted to reflect any increase resulting from the addition of these charges.

(d) The Corporation may waive charges for interest, administrative costs, and/or penalties if it determines that: (1) The debtor is unable to pay any significant sum toward the claim within a reasonable period of time;

(2) Collection of charges for interest, administrative costs, and/or penalties would jeopardize collection of the principal of the claim;

(3) Collection of charges for interest, administrative costs, or penalties would be against equity and good conscience; or

(4) It is otherwise in the best interest of the United States, including the situation where an installment payment agreement or offset is in effect.

§ 1408.13 Contracting for collection services.

The Chairman, or designee of the Chairman, may contract for collection services in accordance with 31 U.S.C. 3718 and 4 CFR 102.6 to recover debts.

§ 1408.14 Reporting of credit information.

The Chairman, or designee of the Chairman, may disclose to a consumer reporting agency information that an individual is responsible for a debt owed to the United States. Information will be disclosed to reporting agencies in accordance with the terms and conditions of agreements entered into between the Corporation and the reporting agencies. The terms and conditions of such agreements shall specify that all of the rights and protection afforded to the debtor under 31 U.S.C. 3711(f) have been fulfilled. The Corporation shall notify each consumer reporting agency, to which a claim was disclosed, when the debt has been satisfied.

§ 1408.15 Credit report.

In order to aid the Corporation in making appropriate determinations regarding the collection and compromise of claims; the collection of charges for interest, administrative costs, and penalties; the use of administrative offset; the use of other collection methods; and the likelihood of collecting the claim, the Corporation may institute, consistent with the provisions of the Fair Credit Reporting Act (15 U.S.C. 1681, et seq.), a credit investigation of the debtor immediately following a determination that the claim exists.

Subpart B—Administrative Offset

§1408.20 Applicability.

(a) The provisions of this subpart shall apply to the collection of debts by administrative [or salary] offset under 31 U.S.C. 3716, 5 U.S.C. 5514, or other statutory or common law.

(b) Offset shall not be used to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility of discovering and collecting such debt.

(c) Offset shall not be used with respect to: (1) Debts owed by other agencies of the United States or by any State or local government;

(2) Debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1986, as amended, or tariff laws of the United States; or

(3) Any case in which collection by offset of the type of debt involved is explicitly provided for or prohibited by another statute.

(d) Unless otherwise provided by contract or law, debts or payments which are not subject to offset under 31 U.S.C. 3716 or 5 U.S.C. 5514 may be collected by offset if such collection is authorized under common law or other applicable statutory authority.

§1408.21 Collection by offset.

(a) Collection of a debt by administrative [or salary] offset shall be accomplished in accordance with the provisions of these regulations, 4 CFR 102.3, and 5 CFR part 550, subpart K. It is not necessary for the debt to be reduced to judgment or to be undisputed for offset to be used.

(b) The Chairman, or designee of the Chairman, may determine that it is feasible to collect a debt to the United States by offset against funds payable to the debtor.

(c) The feasibility of collecting a debt by offset will be determined on a case-by-case basis. This determination shall be made by considering all relevant factors, including the following: (1) The degree to which the offset can be accomplished in accordance with law. This determination should take into consideration relevant statutory, regulatory, and contractual requirements;

(2) The degree to which the Corporation is certain that its determination of the existence and amount of the debt is correct;

(3) The practicality of collecting the debt by offset. The cost, in time and money, of collecting the debt by offset and the amount of money which can reasonably be expected to be recovered through offset will be relevant to this determination; and

(4) Whether the use of offset will substantially interfere with or defeat the purpose of a program authorizing payments against which the offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee's performance, the imposition of offset against such a payment may be inappropriate.

(d) The collection of a debt by offset may not be feasible when there are circumstances which would indicate that the likelihood of collection by offset is less than probable.

(e) The offset will be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset (or Notice of Intent to Collect by Salary Offset if the offset is a salary offset), or upon the expiration of a stay of offset, unless the Corporation determines under §1408.24 that immediate action is necessary.

(f) If the debtor owes more than one debt, amounts recovered through offset may be applied to them in any order. Applicable statutes of limitation would be considered before applying the amounts recovered to any debts owed.

§1408.22 Notice requirements before offset.

(a) Except as provided in §1408.24, the Corporation will provide the debtor with 30 calendar days' written notice that unpaid debt amounts shall be collected by administrative [or salary] offset (Notice of Intent to Collect by Administrative [or Salary] Offset) before the Corporation imposes offset against any money that is to be paid to the debtor.

(b) The Notice of Intent to Collect by Administrative [or Salary] Offset shall

be delivered to the debtor by hand or by mail and shall provide the following information:

(1) The amount of the debt, the date it was incurred, and the facts upon which the determination of indebtedness was made;

(2) In the case of an administrative offset, the payment due date, which shall be 30 calendar days from the date of mailing or hand delivery of the Notice;

(3) In the case of a salary offset:

(i) The Corporation's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full; and

(ii) The amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) The right of the debtor to inspect and copy the records of the Corporation related to the claim or to receive copies if personal inspection is impractical. The debtor shall be informed that he/she shall be assessed for the cost of copying the documents in accordance with § 1408.7 of this part;

(5) The right of the debtor to obtain a review of, and to request a hearing, on the Corporation's determination of indebtedness, the propriety of collecting the debt by offset, and, in the case of salary offset, the propriety of the proposed repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period). The debtor shall be informed that to obtain a review, the debtor shall deliver a written request for a review to the Corporation official named in the Notice, within 15 calendar days after the debtor's receipt of the Notice. In the case of a salary offset, the debtor shall also be informed that the review shall be conducted by an official arranged for by the Corporation who shall be a hearing official not under the control of the Chairman of the Farm Credit System Insurance Corporation, or an administrative law judge;

(6) That the filing of a petition for hearing within 15 calendar days after receipt of the Notice will stay the commencement of collection proceedings;

(7) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the written request for review unless the employee requests, and the hearing official grants, a delay in the proceedings;

(8) The right of the debtor to offer to enter into a written agreement with the Corporation to repay the amount of the claim. The debtor shall be informed that the acceptance of such an agreement is discretionary with the Corporation;

(9) That charges for interest, penalties, and administrative costs shall be assessed against the debtor, in accordance with 31 U.S.C. 3717, if payment is not received by the payment due date. The debtor shall be informed that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards (4 CFR parts 103 and 104);

(10) The amount of accrued interest and the amount of any other penalties or administrative costs which may have been added to the principal debt;

(11) That if the debtor has not entered into an agreement with the Corporation to pay the debt, has not requested the Corporation to review the debt, or has not paid the debt prior to the date on which the offset is to be imposed, the Corporation intends to collect the debt by administrative [or salary] offset or by requesting other Federal agencies for assistance in collecting the debt by offset. The debtor shall be informed that the offset shall be imposed against any funds that might become available to the debtor, until the principal debt and all accumulated interest and other charges are paid in full;

(12) The date on which the offset will be imposed, which shall be 31 calendar days from the date of mailing or hand delivery of the Notice. The debtor shall be informed that the Corporation reserves the right to impose an offset prior to this date if the Corporation determines that immediate action is necessary;

(13) That any knowingly false or frivolous statements, representations, or evidence may subject the debtor to:

(i) Penalties under the False Claims Act, 31 U.S.C. 3729 through 3731, or any other applicable statutory authority;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority; and, with regard to employees,

(iii) Disciplinary procedures appropriate under 5 U.S.C. chapter 75; 5 CFR part 752, or any other applicable statute or regulation;

(14) The name and address of the Corporation official to whom the debtor shall send all correspondence relating to the debt or the offset;

(15) Any other rights and remedies available to the debtor under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) Other information, as may be appropriate.

(c) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the Corporation is not required to duplicate those requirements before effecting offset.

§1408.23 Right to review of claim.

(a) If the debtor disputes the claim, the debtor may request a review of the Corporation's determination of the existence of the debt, the amount of the debt, the propriety of collecting the debt by offset, and in the case of salary offset, the propriety of the proposed repayment schedule. If only part of the claim is disputed, the undisputed portion should be paid by the payment due date.

(b) To obtain a review, the debtor shall submit a written request for review to the Corporation official named in the Notice of Intent to Collect by Administrative [or Salary] Offset within 15 calendar days after receipt of the notice. The debtor's written request for review shall state the basis on which the claim is disputed and shall specify whether the debtor requests an oral hearing or a review of the written record of the claim. If an oral hearing is requested, the debtor shall explain in the request why the matter cannot be resolved by a review of the documentary evidence alone.

(c) The Corporation shall promptly notify the debtor, in writing, that the Corporation has received the request for review. The Corporation shall conduct its review of the claim in accordance with §1408.10.

(d) The Corporation's review of the claim, under this section, shall include providing the debtor with a reasonable opportunity for an oral hearing if:

(1) An applicable statute authorizes or requires the Corporation to consider waiver of the indebtedness, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the Corporation determines that the question of the indebtedness cannot be resolved by reviewing the documentary evidence; for example, when the validity of the debt turns on an issue of credibility or veracity.

(e) A debtor waives the right to a hearing and will have his or her debt offset in accordance with the proposed offset schedule if the debtor:

(1) Fails to file a written request for review within the timeframe set forth in paragraph (b) of this section, unless the Corporation determines that the delay was the result of circumstances beyond his or her control; or

(2) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines that the failure to appear was due to circumstances beyond the employee's control.

(f) Upon completion of its review of the claim, the Corporation shall notify the debtor whether the Corporation's determination of the existence or amount of the debt has been sustained, amended, or canceled. The notification shall include a copy of the written decision issued by the hearing official, pursuant to §1408.10(e). If the Corporation's determination is sustained, this notification shall contain a provision which states that the Corporation intends to collect the debt by offset or by requesting other Federal agencies for assistance in collecting the debt.

(g) When the procedural requirements of this section have been provided to the debtor in connection with the same debt or under some other statutory or regulatory authority, the Corporation is not required to duplicate those requirements before effecting offset.

§ 1408.24 Waiver of procedural requirements.

(a) The Corporation may impose offset against a payment to be made to a debtor prior to the completion of the procedures required by this part, if:

(1) Failure to impose the offset would substantially prejudice the Government's ability to collect the debt; and

(2) The timing of the payment against which the offset will be imposed does not reasonably permit the completion of those procedures.

(b) The procedures required by this part shall be complied with promptly after the offset is imposed. Amounts recovered by offset, which are later found not to be owed to the Government, shall be promptly refunded to the debtor.

§ 1408.25 Coordinating offset with other Federal agencies.

(a)(1) Any creditor agency which requests the Corporation to impose an offset against amounts owed to the debtor shall submit to the Corporation a claim certification which meets the requirements of this paragraph. The Corporation shall submit the same certification to any agency that the Corporation requests to effect an offset.

(2) The claim certification shall be in writing. It shall certify the debtor owes the debt and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met. If the intended offset is to be a salary offset, a claim certification shall instead certify that the debtor owes the debt and that the applicable requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met.

(3) A certification that the debtor owes the debt shall state the amount of the debt, the factual basis supporting the determination of indebtedness, and the date on which payment of the debt was due. A certification that the requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met shall include a statement that the debtor has been sent a Notice of Intent to Collect by Administrative Offset at least 31 calendar days prior to the date of the intended offset or a statement that pursuant to 4 CFR 102.3(b)(5) said Notice was not required to be sent. A certification that the requirements of 5 U.S.C. 5514 and 5 CFR part 550, subpart K, have been met shall include a statement that the debtor has been sent a Notice of Intent to Collect by Salary Offset at least 31 calendar days prior to the date of the intended offset or a statement that pursuant to 4 CFR 102.3(b)(5) said Notice was not required to be sent.

(b)(1) The Corporation shall not effect an offset requested by another Federal agency without first obtaining the claim certification required by paragraph (a) of this section. If the Corporation receives an incomplete claim certification, the Corporation shall return the claim certification with notice that a claim certification which complies with the requirements of paragraph (a) of this section must be submitted to the Corporation before the Corporation will consider effecting an offset.

(2) The Corporation may rely on the information contained in the claim certification provided by a requesting creditor agency. The Corporation is not authorized to review a creditor agency's determination of indebtedness.

(c) Only the creditor agency may agree to enter into an agreement with the debtor for the repayment of the claim. Only the creditor agency may agree to compromise, suspend, or terminate collection of the claim.

(d) The Corporation may decline, for good cause, a request by another agency to effect an offset. Good cause includes that the offset might disrupt, directly or indirectly, essential Corporation operations. The refusal and the reasons shall be sent in writing to the creditor agency.

§ 1408.26 Stay of offset.

(a)(1) When a creditor agency receives a debtor's request for inspection of agency records, the offset is stayed for 10 calendar days beyond the date set for the record inspection.

(2) When a creditor agency receives a debtor's offer to enter into a repayment agreement, the offset is stayed until the debtor is notified as to whether the proposed agreement is acceptable.

(3) When a review is conducted, the offset is stayed until the creditor agency issues a final written decision.

(b) When offset is stayed, the amount of the debt and the amount of any accrued interest or other charges will be withheld from payments to the debtor. The withheld amounts shall not be applied against the debt until the stay expires. If withheld funds are later determined not to be subject to offset, they will be promptly refunded to the debtor.

(c) If the Corporation is the creditor agency and the offset is stayed, the Corporation will immediately notify an offsetting agency to withhold the payment pending termination of the stay.

§1408.27 Offset against amounts payable from Civil Service Retirement and Disability Fund.

The Corporation may request that monies payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset to collect debts owed to the Corporation by the debtor. The Corporation must certify that the debtor owes the debt, the amount of the debt, and that the Corporation has complied with the requirements set forth in this part, 4 CFR 102.3, and the Office of Personnel Management regulations. The request shall be submitted to the official designated in the Office of Personnel Management regulations to receive the request.

Subpart C—Offset Against Salary

§1408.35 Purpose.

The purpose of this subpart is to implement section 5 of the Debt Collection Act of 1982 (Pub. L. 97–365 (5 U.S.C. 5514)), which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offsets. These regulations provide procedures for the collection of a debt owed to the Government by the imposition of a salary offset against amounts payable to a Federal employee as salary. These regulations are consistent with the regulations on salary offset published by the Office of Personnel Management, codified in 5 CFR part 550, subpart K. Since salary offset is a type of administrative offset, the requirements of subpart B also apply to salary offsets.

§1408.36 Applicability of regulations.

(a) These regulations apply to the following cases: (1) Where the Corporation is owed a debt by an individual currently employed by another agency;

(2) Where the Corporation is owed a debt by an individual who is currently employed by the Corporation; or

(3) Where the Corporation currently employs an individual who owes a debt to another Federal agency. Upon receipt of proper certification from the creditor agency, the Corporation will offset the debtor-employee's salary in accordance with these regulations.

(b) These regulations do not apply to the following: (1) Debts or claims arising under the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(2) Any adjustment to pay arising from an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(3) A claim which has been outstanding for more than 10 years after the creditor agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known and could not reasonably have been known by the official or officials charged with the responsibility for discovery and collection of such debts.

§1408.37 Definitions.

In this subpart, the following definitions shall apply:

(a) *Agency* means:

(1) An executive agency as defined by 5 U.S.C. 105, including the United States Postal Service and the United States Postal Rate Commission;

(2) A military department as defined in 5 U.S.C. 102;

(3) An agency or court of the judicial branch, including a court as defined in 28 U.S.C. 610, the District Court for the Northern Mariana Islands, and the Judicial Panel on Multi-district Litigation;

(4) An agency of the legislative branch, including the United States Senate and the United States House of Representatives; or

(5) Other independent establishments that are entities of the Federal Government.

(b) *Disposable pay* means, for an officially established pay interval, that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. The Corporation shall allow the deductions described in 5 CFR 581.105 (b) through (f).

(c) *Employee* means a current employee of the Corporation or other agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

(d) *Waiver* means the cancellation, remission, forgiveness, or nonrecovery of a debt allegedly owed by an employee to the Corporation or another agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 1408.38 Waiver requests and claims to the General Accounting Office.

(a) The regulations contained in this subpart do not preclude an employee from requesting a waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office.

(b) These regulations also do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debts being collected.

§ 1408.39 Procedures for salary offset.

(a) The Chairman, or designee of the Chairman, shall determine the amount of an employee's disposable pay and the amount to be deducted from the employee's disposable pay at regular pay intervals.

(b) Deductions shall begin within three official pay periods following the date of mailing or delivery of the Notice of Intent to Collect by Salary Offset.

(c)(1) If the amount of the debt is equal to or is less than 15 percent of the employee's disposable pay, such debt should be collected in one lump-sum deduction.

(2) If the amount of the debt is not collected in one lump-sum deduction, the debt shall be collected in installment deductions over a period of time not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any pay period will not exceed 15 percent of the employee's disposable pay for that period, unless the employee has agreed in writing to the deduction of a greater amount.

(3) A deduction exceeding the 15-percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) Whenever an employee subject to salary offset is separated from the Corporation and the balance of the debt cannot be liquidated by offset of the final salary check pursuant to 31 U.S.C. 3716, the Corporation may offset any later payments of any kind against the balance of the debt.

(d) In instances where two or more creditor agencies are seeking salary offsets against current employees of the Corporation or where two or more debts are owed to a single creditor agency, the Corporation, at its discretion, may determine whether one or

more debts should be offset simultaneously within the 15-percent limitation. Debts owed to the Corporation should generally take precedence over debts owed to other agencies.

§1408.40 Refunds.

(a) In instances where the Corporation is the creditor agency, it shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owed to the United States (unless expressly prohibited by statute or regulations); or

(2) An administrative or judicial order directs the Corporation to make a refund.

(b) Unless required or permitted by law or contract, refunds under this section shall not bear interest.

§1408.41 Requesting current paying agency to offset salary.

(a) To request a paying agency to impose a salary offset against amounts owed to the debtor, the Corporation shall provide the paying agency with a claim certification which meets the requirements set forth in §1408.25(a) of this part. The Corporation shall also provide the paying agency with a repayment schedule determined under the provisions of §1408.39 or in accordance with a repayment agreement entered into with the debtor.

(b) If the employee separates from the paying agency before the debt is paid in full, the paying agency shall certify the total amount collected on the debt. A copy of this certification shall be sent to the employee and a copy shall be sent to the Corporation. If the paying agency is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with. However, the Corporation must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(c) When an employee transfers to another paying agency, the Corporation is not required to repeat the due process procedures set forth in 5 U.S.C. 5514 and this part to resume the collection. The Corporation shall, however, review the debt upon receiving the former paying agency's notice of the employee's transfer to make sure the collection is resumed by the new paying agency.

(d) If a special review is conducted pursuant to §1408.11 and results in a revised offset or repayment schedule, the Corporation shall provide a new claim certification to the paying agency.

§1408.42 Responsibility of the Corporation as the paying agency.

(a) When the Corporation receives a claim certification from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. The Corporation shall send the debtor written notice which provides: (1) That the Corporation has received a valid claim certification from the creditor agency;

(2) The date on which salary offset will begin;

(3) The amount of the debt; and

(4) The amount of such deductions.

(b) If, after the creditor agency has submitted the claim certification to the Corporation, the employee transfers to a different agency before the debt is collected in full, the Corporation must certify the total amount collected on the debt. The Corporation shall send a copy of this certification to the creditor agency and a copy to the employee. If the Corporation is aware that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, or other similar payments, it shall provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount).

§1408.43 Nonwaiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this subpart shall not be construed as a waiver of any rights the employee may have under 5 U.S.C.

5514 or any other provisions of a written contract or law unless there are statutory or contractual provisions to the contrary.

PART 1410—PREMIUMS

Sec.
1410.1 Purpose and scope.
1410.2 Definitions.
1410.3 Calculation and reporting of premiums due.
1410.4 Payment of premiums.
1410.5 Delinquent premium payments and premium overpayments.
1410.6 Certified statements.
1410.7 Documentation.

AUTHORITY: 12 U.S.C. 2277a–5; 12 U.S.C. 2277a–7.

SOURCE: 56 FR 3201, Jan. 29, 1991, unless otherwise noted.

§ 1410.1 Purpose and scope.

This part sets forth the rules for:

(a) The calculation of premiums;

(b) The time for payment of the premium required by sections 5.55 and 5.56 of the Farm Credit Act of 1971, as amended;

(c) Interest charges on delinquent payments;

(d) The form and content of certified statements; and,

(e) Documentation supporting certified statements.

§ 1410.2 Definitions.

(a) *Act* means the Farm Credit Act of 1971, as amended.

(b) *Average principal outstanding* means:

(1) For calendar year 1989, the average annual principal outstanding using balances as of monthend for each of the 13 months beginning with December 1988 and ending with December 1989;

(2) For calendar year 1990 and thereafter, the average annual principal outstanding on a daily basis using balances as of the close of each day. In computing the average annual principal outstanding in this manner, the closing balance of the most recent past business day shall be the closing balance for days when an institution is closed.

(c) *Direct lending association* means any production credit association or any other association making direct loans under authority provided under section 7.6 of the Act, including, without limitation, agricultural credit associations and Federal land credit associations.

(d) *Government-guaranteed loans* means loans or credits, or portions of loans or credits, that are guaranteed:

(1) By the full faith and credit of the United States Government or any State government; or,

(2) By an agency or other entity of the United States Government whose obligations are explicitly guaranteed by the United States Government; or,

(3) By an agency or other entity of a State government whose obligations are explicitly guaranteed by such State government.

(e) *Insured bank* means any Farm Credit bank whose participation in notes, bonds, debentures, and other obligations issued under subsection (c) or (d) of section 4.2 of the Act is insured under part E of title V of the Act, including, without limitation, the Federal Intermediate Credit Bank of Jackson and banks that are in or are placed in receivership or conservatorship to the extent that those banks' participation in such obligations is insured.

(f) *Loan* means any extension of credit or lease resulting from direct negotiations between a lender and a borrowing entity that is recorded as an asset of an insured bank, a direct lending association, or an other financing institution. The term ''loan'' includes loans, contracts of sale, notes receivable, and other similar obligations and lease financings. The term ''loan'' includes loans originated through direct negotiations between the insured bank, direct lending association, or other financing institution and a borrowing entity and loans or interests in loans purchased from another lender. Loans purchased subject to recourse shall be considered loans of the seller to the extent of the recourse.

(g)(1) *Nonaccrual loan* means any loan where——

(i) Any amount of outstanding principal and all past and future interest accruals, considered over the full term of the asset, are determined to be uncollectible for any reason; or,

(ii) It has been classified ''loss'' as a result of a periodic credit evaluation and has not been charged off; or,

(iii) The loan is severely past due and is not adequately secured, in process of collection, and fully collectible with respect to all principal and interest.

(2) For the purposes of determining whether a loan is considered as accrual or nonaccrual under this part, all loans on which a borrowing entity, or a component of a borrowing entity, is primarily obligated to the institution shall be considered as one loan unless a review of all pertinent facts supports a reasonable determination that a particular loan constitutes an independent credit risk and such determination is adequately documented in the loan file.

(h) *Other financing institution* means any bank, company, institution, corporation, union, or association described in section 1.7(b)(1)(B) of the Act.

[56 FR 3201, Jan. 29, 1991; 56 FR 10302, Mar. 11, 1991]

§1410.3 Calculation and reporting of premiums due.

(a) *Premium base.* For purposes of computing the annual premium, each insured bank shall:

(1) Report its premium base for each category of loan described in paragraph (a)(2) of this section based on the total of the average annual principal balances of:

(i)(A) Loans of each direct lending association that were able to be made because the direct lending association is receiving, or has received, funds provided through the insured bank;

(B) Loans of each other financing institution that were able to be made because the other financing institution is receiving, or has received, funds provided through the insured bank; and,

(C) The bank's loans, other than loans made to direct lending associations and other financing institutions.

(ii) For purposes of this section, loans of an other financing institution were able to be made because of funds provided through the insured bank only if they are loans which resulted from funding provided through the insured bank and which are pledged to or discounted by the insured bank.

(2) Segregate the loans of each entity described in paragraph (a) of this section into:

(i) Loans in accrual status, excluding the guaranteed portions of State and Federal government-guaranteed loans;

(ii) The guaranteed portions of State government-guaranteed loans that are in accrual status;

(iii) The guaranteed portions of Federal government-guaranteed loans that are in accrual status; and,

(iv) Nonaccrual loans.

(b) *Calculating the 1989 premium payment.* The 1989 premium payment shall be equal to the sum of:

(1) The total annual average principal outstanding for calendar year 1989 on the loans in accrual status as described in paragraph (a)(2)(i) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0015;

(2) The total annual average principal outstanding for calendar year 1989 on loans in accrual status as described in paragraph (a)(2)(ii) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0003; and,

(3) The total annual average principal outstanding for calendar year 1989 on loans in accrual status as described in paragraph (a)(2)(iii) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.00015.

(c) *Calculating the premium payment for 1990 and subsequent years.* Except as provided in paragraph (d) of this section, the annual premium payment for 1990 and for each subsequent year shall be equal to the sum of:

(1) The total annual average principal outstanding for each calendar year on the loans in accrual status as described in paragraph (a)(2)(i) of this section of each entity described in paragraph (a) of this section multiplied by 0.0015;

(2) The total annual average principal outstanding for each calendar year on the loans in accrual status as described in paragraph (a)(2)(ii) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0003;

(3) The total annual average principal outstanding for each calendar

year on the loans in accrual status as described in paragraph (a)(2)(iii) of this section of each entity as described in paragraph (a)(1) of this section multiplied by 0.00015; and,

(4) The total annual average principal outstanding for each calendar year on the nonaccrual loans as described in paragraph (a)(2)(iv) of this section of each entity described in paragraph (a)(1) of this section multiplied by 0.0025.

(d) *Secure base amount.* Upon reaching the secure base amount determined by the Corporation in accordance with section 5.55 of the Act, the annual premium to be paid by each insured bank, computed in accordance with paragraph (c) of this section, shall be reduced by a percentage determined by the Corporation so that the aggregate of the premiums payable by all of the Farm Credit banks for the following calendar year is sufficient to ensure that the Insurance Fund balance is maintained at not less than the secure base amount. The Corporation shall announce any such percentage no later than December 31 of the year prior to the January in which such premiums are to be paid.

[56 FR 3201, Jan. 29, 1991; 56 FR 13211, Mar. 29, 1991]

§ 1410.4 Payment of premiums.

(a) *Calendar years 1989 and 1990.* Each insured bank shall pay to the Corporation the amount of the premium due to the Corporation computed in accordance with § 1410.3 of this part, and shown on its certified statement, at the time its certified statement is filed. The certified statement for calendar years 1989 and 1990 must be filed with the Corporation and the premium must be received by the Corporation on or before March 29, 1991.

(b) *Calendar year 1991 and subsequent years.* Each insured bank shall pay to the Corporation the amount of the premium due to the Corporation computed in accordance with § 1410.3 of this part, and shown on its certified statement, at the time the statement is filed. Certified statements shall be considered to have been filed and payments made in a timely manner if they are received on or before January 31 following the end of the calendar year on which the certified statement is based.

(c) *Premiums as obligations of insured banks.* Premiums required to be paid by § 1410.3 are obligations of the insured banks, and are to be paid at the times required by this section, regardless of whether the insured bank has assessed and collected any assessments under section 1.12 of the Act.

[56 FR 3201, Jan. 29, 1991; 56 FR 10302, Mar. 11, 1991]

§ 1410.5 Delinquent premium payments and premium overpayments.

(a) *Delinquent payments.* Each insured bank shall pay to the Corporation interest on delinquent premium payments. All premiums will be considered delinquent if they are received after the time for payment specified in § 1410.4 of this part, including late payments caused by bank errors in the certified statement. The interest rate will be the United States Treasury Department's current value of funds rate, which is issued under the Treasury Fiscal Requirements Manual (TFRM rate) and published quarterly in the FEDERAL REGISTER. The interest rate will be determined as follows:

(1) *Current year.* (i) For delinquent days occurring on or prior to March 31, the rate will be the TFRM rate that is published in the preceding December.

(ii) For delinquent days occurring from April 1 to June 30, the rate will be the TFRM rate that is published in March for the second quarter of the year.

(iii) For delinquent days occurring from July 1 to September 30, the rate will be the TFRM rate that is published in June for the third quarter.

(iv) For delinquent days occurring from October 1 to December 31, the rate will be the TFRM rate that is published in September for the fourth quarter.

(2) *Prior years.* The interest will be calculated quarterly and compounded annually at the rates applicable for each quarter as issued under the TFRM. For the initial year, the rate will be applied to the gross amount of the delinquent payment. For each additional year or portion thereof the rate will be applied to the net amount of the delinquent payment after it has

been reduced by any premium credit under paragraph (c) of this section.

(b) *Other rights and remedies.* Payment of the interest specified in paragraph (a) of this section does not affect any other rights and remedies available to the Corporation.

(c) *Overpayments.* To the extent that any payment by a bank exceeds the required amount:

(1) The excess shall be credited against future premium payments by the bank which overpaid; or,

(2)(i) Upon written request to the Corporation by the bank which overpaid, the excess shall be refunded to the bank within 30 days of receipt of the written request; and

(ii) If the Corporation fails to make a refund within such 30-day period, and the Corporation determines that a refund is in order, the Corporation shall pay to the bank interest on the amount of the overpayment, from the end of such 30-day period through the date the refund is issued.

§1410.6 Certified statements.

(a) *Forms.* The certified statements required to be filed by insured banks under the provisions of section 5.56 of the Act shall be filed with the Corporation. The certified statement forms will be furnished to all insured banks by, or may be obtained from, the Corporation. The following forms are available from the Corporation:

(1) *Form FCSIC 90–001: First Certified Statement.* The form shows the premium base for calendar years 1989 and 1990. The premium payment period is from January 1 of each year to December 31 of each year. The form must show the computation of the premium base and the bank's calculation of the premium due the Corporation.

(2) *Form FCSIC 90–002: Certified Statement.* This form must be used for calendar year 1991 and subsequent years. The form shows the premium base for the annual premium payment period. The premium payment period is from January 1 of each year to December 31 of each year. The form must show the computation of the premium base and the bank's calculation of the amount of the premium due the Corporation.

(b) *Amendments to certified statements.* In the event of an amendment or correction of a previously submitted certified statement, the amending insured bank shall resubmit to the Corporation the appropriate certified statement along with a letter of explanation regarding the amendment or correction.

[56 FR 3201, Jan. 29, 1991, as amended at 56 FR 57233, Nov. 8, 1991]

§1410.7 Documentation.

Each insured bank shall:

(a) Prepare and maintain accurate and complete records as necessary to prepare certified statements, including, but not limited to, records relating to the loans of each direct lending association and other financing institution that are able to make such loans because they are receiving, or have received, funding from the insured bank.

(b) Prepare and maintain on its premises books and records in such a manner as to facilitate reconciliation with certified statements prepared from them.

(c) Maintain in its books and records documentation supporting its certified statement for a period no less than 5 years following the date of each certified statement, unless the bank shall have requested in writing, and the Corporation shall have granted to the bank, written permission to dispose of such documentation prior to the expiration of 5 years.

(d) Make all records and any supporting documentation available, without limitation, to Corporation officials upon request.

PART 1411—RULES OF PRACTICE AND PROCEDURE

AUTHORITY: Secs. 5.58(10), 5.65(c) and (d) of the Farm Credit Act (12 U.S.C. 2277a–7(10), 2277a–14(c) and (d)).

Subpart A—Rules and Procedures for Assessment and Collection of Civil Money Penalties

§ 1411.1 Inflation adjustment of civil money penalties for failure to file a certified statement, pay any premium required or obtain approval before employment of persons convicted of criminal offenses.

A civil money penalty imposed pursuant to section 5.65(c) or (d) of the Act for a violation occurring on or after October 23, 1996 shall not exceed $110 per day for each day the violation continues.

[61 FR 55079, Oct. 24, 1996]

CHAPTER XV—THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

SUBCHAPTER A—GENERAL PROVISIONS

Part		*Page*
1502	Availability of Information Under the Freedom of Information Act	750
1503	Privacy Act Procedures	760
1505	Employee responsibilities and conduct	765
1506	Qualification of, ethical standards of conduct for, and restrictions on the use of confidential information by independent contractors	782
1507	Minority and Women Contracting Outreach Program	793

SUBCHAPTER B—RESOLUTION FUNDING CORPORATION

1510	Resolution Funding Corporation operations	796
1511	Book-entry procedure	802

SUBCHAPTER A—GENERAL PROVISIONS

PART 1502—AVAILABILITY OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Sec.
1502.1 Authority, purpose, and scope.
1502.2 Definitions.
1502.3 Published information.
1502.4 Public inspection and copying.
1502.5 Specific requests for records.
1502.6 Request procedures.
1502.7 Responses to requests.
1502.8 Business information.
1502.9 Appeals.
1502.10 Fees.
1502.11 Exemptions.
1502.12 Preservation of records.

AUTHORITY: 5 U.S.C. 552; 12 U.S.C. 1441a(a)(2) and (13).

SOURCE: 57 FR 53240, Nov. 9, 1992, unless otherwise noted.

§ 1502.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Thrift Depositor Protection Oversight Board (Board) pursuant to 5 U.S.C. 552 and 12 U.S.C. 1441a(a) (2) and (13).

(b) *Purpose.* This part sets forth the kinds of information made available to the public and the rules and procedures for obtaining documents and records of the Board.

(c) *Scope.* This part applies to the information and records of the Board, an instrumentality of the United States separate and distinct from the Resolution Trust Corporation (RTC); and this part does not govern or set forth procedures for the implementation of the Freedom of Information Act by the RTC. This part explains:

(1) The kinds of information which the Board is required to publish in the FEDERAL REGISTER;

(2) The kinds of records made available to the public on request;

(3) The kinds of information made exempt from disclosure;

(4) The procedures for obtaining records and for processing requests;

(5) The schedule of fees for processing requests; and

(6) The procedures for appealing denials of requests for information.

§ 1502.2 Definitions.

As used in this part, the following terms shall have the following meanings:

(a) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(e).

(b) *Appeal* means the administrative appeal by a requester of an adverse initial determination on a request for records, as described in 5 U.S.C. 552(a)(6)(A)(ii).

(c) *Business information* means trade secrets and commercial or financial information provided to the Board that arguably is exempt from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

(d) *Denial* means a denial, based upon an exemption of the Freedom of Information Act, of a request for records, or a denial of a fee waiver request.

(e) *Director* means the Board's Vice President for Public Affairs or, in case of the absence or a vacancy in the office of the Vice President, the head or acting head of the Board's Office of Public Affairs.

(f) *President* means the President of the Board.

(g) *Request,* except for the purposes of § 1502.10, means any request for Board records made pursuant to 5 U.S.C. 552(a)(3).

(h) *Requester,* except for the purposes of § 1502.10, means any person who makes a request to the Board pursuant to 5 U.S.C. 552(a)(3).

(i) *Submitter* means any person or entity that provides business information to the Board.

§ 1502.3 Published information.

(a) Subject to the exemptions described or referred to in § 1502.11 and to paragraph (b) of this section, pursuant to 5 U.S.C. 552(a)(1) the Board shall separately state and currently publish in the FEDERAL REGISTER for the guidance of the public:

(1) Descriptions of its organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which such forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Board; and

(5) Each amendment, revision, or repeal of the foregoing.

(b) Except to the extent that a person has actual and timely notice of the terms thereof, such person is not required in any matter to resort to, or be adversely affected by, a matter required to be published pursuant to paragraph (a) of this section and not so published. For the purposes of this section, matter reasonably available to the class of persons affected thereby is deemed published in the FEDERAL REGISTER when it is incorporated by reference therein with the approval of the Director of the Federal Register.

§1502.4 Public inspection and copying.

(a) Subject to the exemptions described or referred to in §1502.11 and to paragraphs (b), (d), and (e) of this section, the Board shall make available for public inspection or copying:

(1) Final opinions of the Board, including concurring and dissenting opinions, as well as orders of the Board, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the Board and are not published in the FEDERAL REGISTER; and

(3) Administrative staff manuals and instructions of the Board to staff that affect a member of the public.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, the Board may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. In each case, however, the justification for the deletion shall be explained in writing. The Director is authorized to act for the Board in implementing this paragraph.

(c) The Board shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated and required by this section to be made available or published. The Board shall provide copies of such an index on request at a cost not to exceed the direct cost of duplication.

(d) A final order, opinion, statement of policy, interpretation, or staff manual or instruction described in paragraph (a) of this section that affects a member of the public may be relied on, used, or cited as precedent by the Board against a party other than an agency only if such document has been indexed and made available pursuant to this section or the party has actual and timely notice of the terms of the document.

(e) Applications to inspect or copy records of the Board that are made available in accordance with paragraphs (a) and (c) of this section shall be made to the Board's Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232.

§1502.5 Specific requests for records.

(a) Except with respect to the records made available pursuant to §1502.3 and §1502.4, and subject to the application of the exemptions in §1502.11, the Board, upon any request for records that reasonably describes such records and complies with this part, shall make such records promptly available to any person.

(b) Records exempt from disclosure to the public pursuant to 5 U.S.C. 552(b), as described in §1502.11, may be released if the President or the Board's General Counsel determines that disclosure is in the public interest, provided that such disclosure is not prohibited by statute, regulation, or order.

§1502.6 Request procedures.

(a) *Written requests.* Except as provided in paragraph (d) of this section, each request for Board records shall be made in writing, signed by or on behalf of the person making the request, and

state that the request is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or this part. Requests shall be submitted to the Board's Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232. The Director is authorized to act for the Board under this section.

(b) *Description of records and form of request.* (1) Each request for records must describe the records sought in reasonably sufficient detail to enable a Board employee who is familiar with the subject matter to locate the records with a reasonable amount of effort. A request for a specific category of records shall be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of the Board's operations. Whenever possible, a request should include specific information about each record sought, such as the date, title, name, author, recipients, and subject matter of the record. If a request does not reasonably describe the records sought, the requester shall be advised what additional information is needed or why the request is insufficient. The requester shall also be given an opportunity to confer with Board staff with the objective of reformulating the request in a manner that will meet the requirements of this section.

(2) Both the envelope and the written request should be clearly marked ''Freedom of Information Act Request.'' Each request shall include:

(i) The name and address of the person filing the request, and the telephone number, if any, at which the requester can be reached during normal business hours;

(ii) The title of any case in litigation to which the request relates, the court, and the nature of the case;

(iii) Whether the requested information is intended for commercial use, and whether the requester is an educational institution, noncommercial scientific institution, or news media representative, employing the definitions in § 1502.10(a);

(iv) A statement indicating the requester's wish to have a copy of a record; or a statement that the requester wishes to inspect a record before copying; and

(v) A statement agreeing to pay applicable fees or a fee waiver request that complies with § 1502.10.

(c) *Returned requests.* The Board need not accept or process a request that is not a request for identifiable records, does not comply with the requirements of paragraphs (a) and (b) of this section, or can be complied with only by designing an information retrieval system. The Board may return such a request, specifying the defects, and the requester may submit a corrected request, which shall be treated as a new request. If a request would require the generation of new documents or files or the creation or editing of a database, it will be returned as a request for which there are no responsive Board records.

(d) *Oral requests.* The Board may honor an oral request for Board records, but if the requester is dissatisfied with the Board's response and wishes to obtain further consideration, the requester must submit a written request, which shall be treated as an initial request.

(e) *Advance payment of fees.* Whenever the Board requires payment of any fee pursuant to § 1502.10(h) (1) or (2), the requester shall promptly remit the required payment to the Board as a condition to further processing of the request.

(f) *Date of receipt.* A request shall be considered as received for the purposes of this part when:

(1) A request that satisfies the requirements of paragraphs (a) and (b) of this section is received by the Office of Public Affairs; and

(2) If payment has been required under paragraph (e) of this section, payment is received from the requester.

§ 1502.7 Responses to requests.

(a) *Authority to grant or deny requests.* The Director is authorized to grant or deny any request for a Board record and to act for the Board under this section.

(b) *Determination.* Pursuant to 5 U.S.C. 552(a)(6)(A)(i), the Director's determination whether or not to comply with a request shall be made within ten days (excluding Saturdays, Sundays,

and legal public holidays) after the date of receipt of the request unless such time limit is extended pursuant to 5 U.S.C. 552(a)(6)(B) or agreement with the requester.

(c) *Notice of determination.* The Director shall immediately notify the requester in writing of the determination whether or not the Board will comply with a request. If a request is granted in whole or in part, the notice shall describe the manner in which a record will be disclosed, whether by providing a copy of the record to the requester or by making a copy of the record available to the requester for inspection at a reasonable time and place, and any fees to be charged in accordance with §1502.10. If a request is denied in whole or in part, the notice shall include a brief statement of the reason or reasons for the denial, including the exemption or exemptions relied upon, and inform the requester of the requester's right to appeal to the Board pursuant to §1502.9.

(d) *Referrals.* To the extent that a request is for records that were created by or obtained from the RTC or another agency, the Board may refer the request to the RTC or such other agency for determination and a direct response to the requester. The Board shall promptly give written notice of such referral to the requester.

(e) *Classified information.* Whenever a request is made for a record containing information that has been classified or that may be eligible for classification by another agency under the provisions of an Executive Order concerning the classification of records, the Board shall refer the responsibility for responding to the request to the agency that classified the information or should consider classifying the information.

(f) *Unlocated or destroyed records.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the Director shall notify the requester in writing.

§1502.8 Business information.

(a) *General.* Business information provided to the Board by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. The President, the Director, or such other officer as the Board may designate, with the advice of the General Counsel to the Board, may act for the Board under this section.

(b) *Submission and request for confidential treatment.* (1) Any submitter of information to the Board who desires that it be afforded confidential treatment pursuant to 5 U.S.C. 552(b)(4) shall file an application for confidential treatment with the Board at the time the information is submitted or within a reasonable time thereafter.

(2) Each application for confidential treatment shall state in reasonable detail the facts and arguments supporting the application and its legal justification. Conclusory statements that particular information would be useful to competitors or would impair sales, or similar statements, generally will not be considered sufficient to justify confidential treatment.

(3) The submitter should clearly designate as ''Confidential'' all material for which confidential treatment is desired and separate it from other information in the submission.

(4) Applications for confidential treatment of any documents shall be considered in connection with a request for access to the documents. At their discretion, the Board, the President, or the Director may approve or disapprove an application for confidential treatment prior to a request for access to the documents.

(c) *Notice to submitters.* Except as provided in paragraph (h) of this section and to the extent permitted by law, the Board shall give prompt written notice to a submitter of a request or appeal encompassing business information provided to the Board by the submitter if:

(1) The submitter has designated the information as confidential pursuant to paragraph (b) of this section within ten years prior to the date of the request; or

(2) The Board has reason to believe that disclosure of the information may reasonably be expected to cause substantial competitive harm to the submitter.

(d) *Opportunity to object.* Through the notice described in paragraph (c) of this section, the Board shall afford the submitter or its designee a reasonable period of time within which to object to disclosure and state grounds for such objection. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the statement should be supported by a certification by the submitter or an authorized representative of the submitter that the information has been treated as confidential by the submitter and has not been disclosed to the public. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(e) *Notice to requester.* At the same time that the Board notifies the submitter, the Board shall also notify the requester that the request is subject to the provisions of this section and that the submitter is being notified of the request.

(f) *Notice of intent to disclose.* (1) The Board shall consider carefully a submitter's objections and grounds for nondisclosure prior to deciding whether to disclose business information. If the Board decides to disclose business information over the objection of a submitter, the Board shall forward to the submitter a written notice, which shall include:

(i) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) Such notice of intent to disclose shall, to the extent permitted by law, be forwarded to the submitter a reasonable number of days prior to the specified disclosure date, and a copy of the notice shall be forwarded to the requester at the same time.

(g) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the Board shall promptly notify the submitter.

(h) *Exceptions to notice requirements.* The notice requirements of paragraph (c) of this section shall not apply if:

(1) The Board determines that the information shall not be disclosed;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such case, the Board shall provide the submitter with written notice of any final administrative decision to disclose information within a reasonable number of days prior to a specified disclosure date.

§ 1502.9 Appeals.

(a) *Appeal to the Board.* When a request or a fee waiver request has been denied in whole or in part, the Board fails to respond to a request within the time limits set forth in the Freedom of Information Act, or the Board responds that records have not been found and the requester deems such response to be an adverse action, the requester may appeal such action to the Board within thirty days of receipt of the notice of denial or response. An appeal to the Board shall be made in writing and shall be addressed to the President, Oversight Board, 1777 F Street, NW., Washington, DC 20232. Both the envelope and the letter of appeal itself should be clearly marked ''Freedom of Information Act Appeal.''

(b) *Untimely appeals.* The Board may consider an untimely appeal if:

(1) It is accompanied by a written request for leave to file an untimely appeal; and

(2) The President determines, within the President's discretion and for good and substantial cause shown, that the appeal should be considered.

(c) *Action on appeals.* The President or such other officer as the Board may designate, with the advice of the General Counsel, shall act on behalf of the Board on appeals under this section, but no officer who has denied a request or application for a waiver or reduction

in fees shall act on the appeal from that denial. The Board shall make a determination with respect to an appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal unless such time limit is extended pursuant to 5 U.S.C. 552(a)(6)(B) or agreement with the requester.

(d) *Form of action on appeal.* The disposition of an appeal shall be in writing and shall constitute final Board action on the request and appeal. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or in the District of Columbia. If the denial of a request is reversed on appeal, the requester shall be so notified, and the request shall be processed promptly in accordance with the decision on appeal.

§ 1502.10 Fees.

(a) *Definitions.* For the purposes of this section:

(1) *Commercial use* in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or a person on whose behalf the request is made, which can include furthering those interests through litigation. In determining whether a requester properly belongs in this category, the Board must determine the use to which a requester will put the documents requested. If the Board has reasonable cause to doubt the stated use, or if that use is not clear from the request itself, the Board will seek additional clarification before assigning the request to a specific category.

(2) *Direct costs* means those expenditures which the Board actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request. Direct costs include, for example, the salary of an employee performing work to respond to a request (the basic rate of pay for the employee plus a factor of 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Overhead expenses, such as the costs of space and heating or lighting the facility in which the records are stored, are not included in direct costs.

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to a request. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. A copy shall be in a form that is reasonably usable by a requester.

(4) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(5) *Fee waiver request* means a request for the waiver or reduction of a fee charged for processing a request.

(6) *News* means information that is about current events or that would be of current interest to the public.

(7) *Noncommercial scientific institution* refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* refers to any person that is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals, but only in those instances when they can qualify as disseminators of news, who make their products available for purchase or subscription by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid

basis for expecting publication through the organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination.

(9) *Request* means a request for records pursuant to 5 U.S.C. 552(a)(2) or 5 U.S.C. 552(a)(3).

(10) *Requester* means a person who makes a request to the Board pursuant to 5 U.S.C. 552(a)(2) or 5 U.S.C. 552(a)(3).

(11) *Review* refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of the document may be withheld. It also includes processing documents for disclosure, e.g., doing all that is necessary to excise portions and otherwise prepare the document for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(12) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity is separate from review.

(b) *General.* (1) The Board's fees for the processing of requests shall recover the direct costs of search, duplication, or review in accordance with the following:

(i) Fees for the processing of requests shall be limited to reasonable standard charges for document search, duplication, and review when records are requested for commercial use.

(ii) Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research or by a representative of the news media.

(iii) Fees for other requesters shall be limited to reasonable standard charges for document search and duplication.

(iv) No fee shall be charged if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

(v) Fees shall be assessed according to the schedule in paragraph (c) of this section; and all fees so assessed shall be charged to the requester except to the extent that the charging of fees is limited under paragraph (d) of this section or unless a waiver or reduction of fees is granted under paragraph (e) of this section.

(vi) Requests from record subjects for records about themselves, which are filed in Board systems of records, will be charged under the fee provisions of the Privacy Act of 1974 (5 U.S.C. 552a), which permit fees only for reproduction or duplication of records, subject to the limitation in paragraph (d)(1) of this section.

(2) Except as otherwise specifically provided, the Director is authorized to act for the Board under this section.

(c) *Assessment of fees.* In responding to requests, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (e) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (d) of this section. The Board may assess fees for time spent searching even if records cannot be located or if records located are subsequently determined to be entirely exempt from disclosure.

(ii) The fee assessed for other than computer searches shall be $3.25 for each quarter hour spent by clerical personnel in searching for and retrieving a requested record. If a search and retrieval requires the use of professional or managerial personnel, the fee assessed for other than computer searches shall be $7.00 for each quarter hour spent by such professional or managerial personnel.

(iii) For computer searches that may be undertaken through the use of existing programming, the requester shall be assessed the actual direct costs of the search. This shall include the cost of operating a processing unit for that portion of operating time that is directly attributable to searching for records responsive to the request as

well as the costs of operator/programmer salary apportionable to the search. The Board is not required to alter or develop programming to conduct a search.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record, the fee shall be $0.10 per page. For copies produced by computer, such as tapes or printouts, a requester shall be charged the actual direct costs of such copy, including operator time. For other methods of duplication, requesters shall be charged the actual direct costs of duplicating a record.

(3) *Review.* (i) Commercial use requesters shall be assessed for review at the initial administrative processing level at the rates set forth in paragraph (c)(1)(ii) of this section.

(ii) No charge shall be assessed for review at the administrative appeal level of an exemption already applied. Records or portions of records withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again, however, to determine the applicability of exemptions not previously considered. The costs of such a subsequent review are assessable at the rates set forth in paragraph (c)(1)(ii) of this section.

(4) *Other services.* Applications for other services and materials that are not required by or subject to the Freedom of Information Act are chargeable at the actual cost to the Board. These include, but are not limited to:

(i) Certifying that records are true copies; and

(ii) Sending records to the requester by special methods such as express mail or messenger.

(5) *Use of private contractors.* The Board, not acting by delegated authority, may authorize contracting with private sector contractors for the services of locating, reproducing, and disseminating records in response to requests if the Board determines that such functions may be performed more efficiently and for less cost through private sector contractors. In such case, a requester shall be charged the actual costs to the Board for the services furnished with respect to the request, provided, however, that in no event shall the requester be charged more than what the Board would have charged if it had performed such services itself.

(d) *Limitations on charging fees.* Except for requesters seeking records for a commercial use, as defined in paragraph (a)(1) of this section, the Board shall provide without charge:

(1) The first 100 pages of duplication, or its cost equivalent; and

(2) The first two hours of search, or its cost equivalent.

(e) *Waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a charge reduced below that established under paragraph (c) of this section if the Board determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Board, that:

(i) Disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Disclosure is not primarily in the commercial interest of the requester.

(2) In order to determine whether the requirement set forth in paragraph (e)(1)(i) of this section is met, the Board shall consider the following four factors in sequence:

(i) Whether the subject of the requested records concerns the operations or activities of the government;

(ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information will contribute to public understanding; and

(iv) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) In order to determine whether the requirement set forth in paragraph (e)(1)(ii) of this section is met, the Board shall consider the following two factors in sequence:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(ii) Whether the magnitude of an identified commercial interest of the

requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) If only a portion of the requested records satisfies the requirements of paragraphs (e)(1)(i) and (e)(1)(ii) of this section, a waiver or reduction shall be granted only as to that portion.

(5) Fee waiver requests shall be considered on a case-by-case basis. A fee waiver request shall address each of the factors listed in paragraphs (e) (2) and (3) of this section as they apply to each request for records.

(6) Normally no charge shall be made for providing records to Federal, state, or foreign governments, international governmental organizations, or local governmental agencies or offices.

(7) In connection with any request by an employee, former employee, or applicant for employment for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived if the total charges (including charges for information provided under the Privacy Act of 1974) are $50 or less; but the Board, in its discretion, may waive fees in excess of that amount.

(8) Appeals from denials of fee waiver requests shall be decided in accordance with § 1509.2(a) and the criteria set forth in paragraph (e)(1) of this section by an official authorized to decide appeals from denials of requests for records. Such appeals shall be addressed in writing to the Board within thirty days after receipt of a denial of a fee waiver request; both the envelope and the letter of appeal itself should be clearly marked ''Fee Waiver Request Appeal.''

(f) *Notice of anticipated fees in excess of $25.00.* If the board determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Board shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has agreed in advance to pay fees as high as those anticipated. If a requester is notified that actual or estimated fees may exceed $25.00, the request shall be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph (f) shall offer the opportunity to confer with Board staff for the purpose of reformulating the request to meet the requester's needs at a lower cost.

(g) *Aggregating requests.* If the Board reasonably believes that a requester or group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Board may aggregate any such requests and charge accordingly. It is considered reasonable for the Board to presume that multiple requests for clearly related documents made within a thirty day period have been made in order to evade fees. Multiple requests for unrelated documents will not be aggregated.

(h) *Advance payments.* (1) If the Board estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, unless it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) If a requester has previously failed to pay a records access fee within thirty days of the date of billing, the Board may require the requester to pay the full amount owed, plus any applicable interest, as provided for in paragraph (i) of this section, and to make an advance payment of the full amount of any estimated fee before the Board begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (h)(1) and (2) of this section, the Board shall not require the requester to make an advance payment. Payment owed for work already completed is not an advance payment.

(4) If the Board requires a payment under paragraph (h)(1) or (2) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) for the processing of an initial request or an appeal, and the permissible extensions of such limits, shall be deemed not to

begin to run until the Board has received payment of the assessed fee.

(i) *Form of payment.* Payment of fees shall be made by check or money order payable to the Treasurer of the United States. The payment shall be forwarded to the Board.

(j) *Other statutes specifically providing for fees.* The fee schedule in this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records.

§ 1502.11 Exemptions.

(a) *General.* Pursuant to 5 U.S.C. 552(b), the disclosure requirements of 5 U.S.C. 552 and this part do not apply to certain matters which are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and that are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Board;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Board, including, but not limited to, records of deliberations of the Board other than meetings held pursuant to 12 U.S.C. 1441a(a)(10);

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished only by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) *Other law enforcement records.* The Board may also withhold disclosure of records pursuant to 5 U.S.C. 552(c).

(c) *Segregable portions of record.* Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt. Reasonably segregable nonexempt portions of a record are those:

(1) Whose meaning is not distorted by deletion;

(2) That are sufficient to be intelligible and useful to the requester; and

(3) From which a skillful and knowledgeable person could not reconstruct any exempt information.

(d) *Computer information.* Information stored in a computer that can be segregated only by creating an information retrieval program is not considered reasonably segregable.

§ 1502.12 Preservation of records.

The Board shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Freedom of Information Act.

PART 1503—PRIVACY ACT PROCEDURES

Sec.

1503.1 Purpose and scope.
1503.2 Definitions.
1503.3 Procedures for determining if an individual's records are contained in a system of records.
1503.4 Requests for disclosure of records.
1503.5 Disclosure of requested records.
1503.6 Special procedure: Medical records.
1503.7 Requests for amendment of records.
1503.8 Board review of requests for amendment of records.
1503.9 Appeal of initial adverse determinations on access or amendment.
1503.10 Disclosure of a record to a person other than the individual to whom it pertains.
1503.11 Fees.
1503.12 Exception.

AUTHORITY: 5 U.S.C. 552a; 12 U.S.C. 1441a(a)(2); 12 U.S.C. 1441a(a)(13).

SOURCE: 57 FR 61252, Dec. 24, 1992, unless otherwise noted.

§ 1503.1 Purpose and scope.

The purpose of this part is to establish regulations implementing the provisions of the Privacy Act with regard to access to and review of personal information in systems of records maintained by the Board.

§ 1503.2 Definitions.

As used in this part, the following terms shall have the following meanings:

(a) *Board* means the Thrift Depositor Protection Oversight Board.

(b) *Business day* means any day other than a Saturday, Sunday, or legal Federal public holiday.

(c) *Guardian* means the parent of a minor individual or the legal guardian of an individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction.

(d) *Individual* means a natural person who is either a citizen of the United States or an alien lawfully admitted for permanent residence.

(e) *Maintain* means maintain, collect, use, disseminate, or control.

(f) *Privacy Act* means the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(g) *Privacy Officer* means an officer or employee of the Board designated by the President of the Board to implement the Privacy Act in accordance with this part.

(h) *Record* means any item, collection, or grouping of information about an individual maintained by the Board that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual.

(i) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected or created.

(j) *System of records* means a group of any records under the control of the Board from which information is retrievable by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.

(k) *Vice President* means a Vice President of the Board designated by the President of the Board to review actions and determinations of the Privacy Officer and to take action on behalf of the Board with respect to appeals under this part.

§ 1503.3 Procedures for determining if an individual's records are contained in a system of records.

(a) An individual or his or her guardian desiring to know if a specific system of records maintained by the Board contains a record pertaining to

such individual shall address an inquiry in writing to the Privacy Officer, Oversight Board, 1777 F Street, NW., Washington, DC 20232. Notwithstanding the preceding sentence, an individual employed by the Board is not required while so employed to make such inquiry in writing. The written inquiry shall:

(1) Identify the system of records maintained by the Board or reasonably describe the type of record in sufficient detail to permit the Privacy Officer to identify an existing system of records; and

(2) Identify the individual making the inquiry or on whose behalf the inquiry is made. The Privacy Officer may require such information concerning the identity or authority of an individual or guardian as the Privacy Officer deems appropriate, as provided under §1503.4(b).

(b) The Privacy Officer shall ordinarily inform an inquirer whether a system of records described in the written inquiry contains a record pertaining to an individual within ten business days following receipt of the inquiry. If the Privacy Officer is unable to respond to a written inquiry within ten business days following its receipt, the Privacy Officer shall inform the inquirer of the reasons for delay and the anticipated date of response.

(c) An affirmative response shall describe or reference the procedures to be followed in order to gain access to a record.

§1503.4 Requests for disclosure of records.

(a) Requests by or on behalf of an individual for access to records pertaining to such individual in a system of records shall be submitted in writing to the Privacy Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, in accordance with the requirements of paragraph (b) of this section. The written request may be mailed, or presented in person on a business day between 9 a.m. and 5 p.m. to the Privacy Officer at the offices of the Board specified in the preceding sentence. The written request and the envelope (if the request is mailed) shall be clearly marked ''Privacy Act Request.'' Notwithstanding the first sentence of this paragraph (a), an individual employed by the Board is not required while so employed to request access to his or her records in writing.

(b) Each written request shall be dated and signed and shall include:

(1) The name, address, and telephone number of the person signing the request;

(2) The name, address, and telephone number of the individual to whom a requested record pertains, if such individual is not the person signing the request, with evidence of authority to act on behalf of the record subject;

(3) Verification of identity, by providing a document, such as a photocopy of a driver's license, bearing the signature of the person signing the request.

(4) Certified or authenticated copies of documents establishing parentage or guardianship if the request is made by the guardian of the individual to whom the requested record pertains;

(5) A statement that the individual whose records are requested is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States; and

(6) The name and location of the system of records in which the requested records are contained.

(c) An individual who appears in person at the offices of the Board to submit a written request for access to his or her records shall present two forms of identification, such as a driver's license, birth certificate, or employment identification card, sufficient to establish his or her identity.

(d) Unless a requested record is publicly available pursuant to the Freedom of Information Act, 5 U.S.C. 552, the Privacy Officer may require certification by a notary public attesting to the identity of a requesting individual or other evidence establishing the identity of the requesting individual as a condition of making available or releasing a copy of a record pertaining to such individual. If a request is made by a guardian or another person acting on behalf of the individual, the Privacy Officer may require appropriate evidence of authority to act on behalf of the individual whose records are requested.

(e) Requests by or on behalf of an individual for an accounting made pursuant to 5 U.S.C. 552a(c) of previous disclosures of records pertaining to such individual in a system of records shall also be made and processed in accordance with paragraphs (a) through (d) of this section.

§ 1503.5 Disclosure of requested records.

(a) The Privacy Officer shall ordinarily respond to a request for access to records or an accounting of previous disclosures within ten business days following receipt of a request. If the Privacy Officer is unable to respond within ten business days following receipt of a request, the Privacy Officer shall inform the requester within ten business days following receipt of a request of the reasons for delay and the anticipated date of response.

(b) The Privacy Officer, in responding to a request for access to records, shall inform the requester:

(1) Whether or not a requested record is maintained by the Board in a system of records;

(2) Whether or not access will be granted;

(3) If access is granted, of a reasonable time, place, and procedure for providing access to and copies of the requested records;

(4) Of any fees that may be required pursuant to § 1503.11;

(5) Of any additional information that may be required as a condition of granting access; and

(6) If access to a record is denied, the reason or reasons for denial and the procedures for obtaining a review of such denial.

(c) The requester of records may be accompanied in the inspection and discussion of such records by a person chosen by the requester, provided that the requester submits a written and signed statement authorizing the presence of such person during such inspection and discussion.

§ 1503.6 Special procedure: Medical records.

Medical records requested pursuant to § 1503.4 will be disclosed to the requester unless the disclosure of such records directly to the requester, in the judgment of the Privacy Officer, could have an adverse effect upon the requester. In such case, such information will be forwarded to a licensed physician named by the requester.

§ 1503.7 Requests for amendment of records.

(a) An individual or his or her guardian may request amendment of records pertaining to such individual in accordance with the requirements of this section. Such request shall be in writing and shall be submitted to the Privacy Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW, Washington, DC 20232, by mail, or in person on a business day between 9 a.m. and 5 p.m. The written request and the envelope (if the request is mailed) shall be clearly marked ''Privacy Act Record Amendment.''

(b) Each request shall be dated and signed and shall:

(1) Identify the system of records containing the record for which amendment or connection is requested;

(2) Specify the record requested to be amended or corrected;

(3) Specify requested additions and deletions;

(4) State the reasons for each requested amendment or correction, with appropriate supporting information or documentation; and

(5) Identify the requester, referring specifically to any previous written request for access submitted pursuant to § 1503.4 or providing the documentation concerning the individual and his or her guardian required by § 1503.4(b).

(c) An individual who appears in person at the offices of the Board to submit a written request for amendment or correction of his or her records shall present two forms of identification such as a driver's license, birth certificate, or employment identification card, sufficient to establish his or her identity.

(d) The Privacy Officer may require additional evidence of the identity or authority of the requester.

(e) This section does not authorize or permit collateral attack upon the results or findings of a previous judicial or administrative proceeding.

§1503.8 Board review of requests for amendment of records.

(a) The Privacy Officer shall acknowledge in writing the receipt of a request made pursuant to §1503.7 within two business days of such receipt. Such acknowledgment may include a request for additional information necessary for a decision concerning the requested amendment of a record.

(b) The Privacy Officer shall promptly review each request made pursuant to §1503.7 in light of relevant criteria of the Privacy Act, including, but not limited to, 5 U.S.C. 552a(e) (1) and (5).

(c) Upon completion of such review, the Privacy Officer shall direct amendment of the record as requested, giving notice of such action to the requester, or immediately notify the requester that the request for amendment of a record is denied. If an accounting of disclosures of such record has been made pursuant to 5 U.S.C. 552a(c), any person or agency listed in such accounting shall be informed of any amendment.

(d) If a request made pursuant to §1503.7 is denied in whole or in part, the Privacy Officer shall inform the requester of the reasons for such denial, the procedures for obtaining a review of such denial, and the name and business address of the Vice President.

§1503.9 Appeal of initial adverse determinations on access or amendment.

(a) A requester may appeal the denial of a request made pursuant to §1503.4 or §1503.7 in accordance with the provisions of this section.

(b) An appeal shall be submitted in writing to the Secretary, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, within 60 days following issuance of notice of a denial. The written appeal and the envelope in which it is mailed shall be clearly marked ''Privacy Act Appeal.'' The written appeal shall be dated and signed and shall:

(1) State clearly in summary form the request that was denied, attaching a copy of the Privacy Officer's notice of denial or giving the date of such notice; and

(2) Set forth the reasons why the requester believes that access to a record should be granted or a record should be amended.

(c) The Vice President shall complete review of an appeal and, with the advice of the General Counsel to the Board, make a final determination within 30 business days following the date on which review is requested unless, for good cause shown, the President of the Board extends such period. A requester shall be promptly notified of an extension of the review period and the reasons therefor. The Vice President shall promptly give notice to the requester of the determination to grant access to a record, to amend a record as requested, or to affirm an initial adverse determination.

(d) If on appeal a request for access to a record made pursuant to §1503.4 is granted, the Vice President's notice shall provide the information described in §1503.5(b) (3) and (4). If the initial denial of such request is affirmed, the Vice President's notice shall include a statement of the reasons for such determination and advise the requester of the provisions of the Privacy Act concerning judicial review of such determination, as set forth in 5 U.S.C. 552a(g).

(e)(1) If on appeal a request for amendment of a record made pursuant to §1503.7 is granted, the Vice President shall direct amendment of the record as requested, and the Vice President's notice shall so inform the requester. If an accounting of disclosures of the record has been made pursuant to 5 U.S.C. 552a(c), any person or agency listed in the accounting shall be informed of the amendment.

(2) If the initial adverse determination of a request pursuant to §1503.7 is affirmed, the Vice President's notice shall:

(i) Confirm, amplify, or modify the statement of reasons given by the Privacy Officer for denial of the request;

(ii) Advise the requester of the right to file with the Board a concise statement of the requester's reasons for disagreeing with the determination not to amend a record in accordance with the request, as provided by 5 U.S.C. 552a(d)(3); and

(iii) Advise the requester of the provisions of the Privacy Act concerning

judicial review of the determination, as set forth in 5 U.S.C. 552a(g).

(f) If a requester seeking amendment of a record (''disputed record'') files a concise statement of disagreement pursuant to 5 U.S.C. 552a(d)(3) and paragraph (e)(2)(ii) of this section, a copy of such statement shall be provided by the Board to any person or agency to whom the disputed record is disclosed subsequent to the filing of the requester's concise statement of disagreement. If an accounting of previous disclosures of such disputed record has been made pursuant to 5 U.S.C. 552a(c), a notation of the disagreement shall be provided by the Board to any person or agency listed in such accounting. If deemed appropriate by the President of the Board, a concise statement of the Board's reasons for not amending the disputed record shall also be provided to any person or agency to whom the disputed record is disclosed subsequent to the filing of the requester's concise statement of disagreement.

§ 1503.10 Disclosure of a record to a person other than the individual to whom it pertains.

(a) Except as provided in paragraph (b) of this section, the Board shall not disclose by any means of communication any record contained in a system of records to any person or agency except with the prior written consent of the individual to whom the record pertains or of his or her guardian.

(b) The restrictions on disclosure in paragraph (a) of this section do not apply to disclosure:

(1) To those officers and employees of the Board who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act, 5 U.S.C. 552;

(3) For a routine use;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, United States Code;

(5) To a recipient who has provided the Board with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, the record to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Board specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any joint committee;

(10) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

§ 1503.11 Fees.

(a) Records disclosed to requesters pursuant to the Privacy Act and this part shall be duplicated at a cost of $0.10 per page, except as follows:

(1) If the Privacy Officer determines that access to a record may be provided only by furnishing a copy of the record, no fee will be charged for the first copy of the record or any portion thereof;

(2) If duplication fees do not exceed $2 for one request, the fees will be waived; and

(3) If the Privacy Officer determines it to be in the public interest, the Privacy Officer may waive any duplication fees.

(b) Requesters will not be charged for search or review of a record.

(c) If it is anticipated that duplication fees will exceed $25, the requester shall be notified promptly, and processing of the request shall be suspended until an agreement to pay the requested fees has been provided by the requester.

§1503.12 Exception.

Nothing in this part shall allow access to any information compiled in reasonable anticipation of a civil action or proceeding.

PART 1505—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Sec.
1505.1 Purpose and scope.
1505.2 Definitions.
1505.3 Designated agency ethics official and alternate.
1505.4 Employee responsibility, counseling, and distribution of regulation.
1505.5 Sanctions and remedial actions.
1505.6 Review of remedial actions.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

1505.7 General rules.
1505.8 Gifts, entertainment, favors, and loans.
1505.9 Travel expenses.
1505.10 Use of official information.
1505.11 Lectures, speeches, and manuscripts.
1505.12 Employment of relatives.
1505.13 Use of property and resources owned or controlled by the Board or RTC.
1505.14 Indebtedness, gambling, and other conduct.

Subpart C—Financial Interests and Obligations; Outside Employment

1505.15 General rules.
1505.16 Extensions of credit.
1505.17 Securities of insured depository institutions.
1505.18 Other investments.
1505.19 Purchase of assets of institutions in conservatorship or receivership.
1505.20 Purchase of Board or RTC property.
1505.21 Providing goods or services to the Board or RTC.
1505.22 Outside employment and other activity.
1505.23 Employment of family members by persons other than the Board or RTC.

Subpart D—Confidential Statements of Employment and Financial Interests; Public Financial Disclosure Reports; and Report of Employment Upon Resignation

1505.24 Confidential statement of employment and financial interests.
1505.25 Public Financial Disclosure Reports.
1505.26 Report of employment upon resignation.

Subpart E—Limitations on Activities of Former Employees, Including Special Government Employees

1505.27 Limitations on representation.
1505.28 Limitations on aiding or advising.
1505.29 Consultation as to propriety of appearance before the Board or RTC.
1505.30 Suspension of appearance privilege.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

1505.31 General.
1505.32 Applicability of 18 U.S.C. 203 and 205.
1505.33 Applicability of 18 U.S.C. 207.
1505.34 Applicability of 18 U.S.C. 208.
1505.35 Use of Board employment.
1505.36 Use of inside information.
1505.37 Coercion.
1505.38 Advice on rules of conduct and conflicts of interest statutes.
1505.39 Disclosure of employment and financial interests.

Subpart G—Competence, Experience, Integrity, and Fitness of Resolution Trust Corporation Employees

1505.40 Minimum competence, experience, integrity, and fitness requirements for Resolution Trust Corporation employees.

AUTHORITY: 12 U.S.C. 1441a(a)(13) and (p)(2); 5 CFR part 735.

SOURCE: 55 FR 5358, Feb. 14, 1990, unless otherwise noted.

Subpart A—General Provisions

§1505.1 Purpose and scope.

(a) This part establishes the standards of responsibility and conduct for all employees of the Oversight Board.

(b) The following subject areas are covered:

(1) Subpart A of this part provides the definitions to be applied in implementing these standards and sets forth general procedures on employee responsibilities, counseling, distribution of the regulation, sanctions, and remedial actions;

(2) Subpart B of this part sets forth basic conflict of interest rules on receiving gifts, entertainment, favors, loans, and travel expenses and rules of conduct on speaking, publications, employment of relatives, use of Board and RTC property, and indebtedness and gambling applicable to all employees;

(3) Subpart C of this part contains rules on credit, investments, purchase of Oversight Board and Resolution Trust Corporation property and assets in conservatorship or receivership, outside employment, and employment of family members applicable to all employees;

(4) Subpart D of this part requires reports of financial interests and employment;

(5) Subpart E of this part sets forth rules on representing others before the Oversight Board and Resolution Trust Corporation;

(6) Subpart F of this part prescribes rules for special government employees; and

(7) Subpart G of this part requires the Resolution Trust Corporation to prescribe policies and procedures setting forth minimum standards of competency, experience, integrity, and fitness for its employees.

§ 1505.2 Definitions.

For the purposes of this part:

(a) *Affiliate* means any depository institution holding company, of which an insured bank or insured savings association is a subsidiary and any other subsidiary of such depository institution holding company. Any entity which is a subsidiary of an insured bank or insured savings association shall be deemed to be an affiliate of that insured bank or insured savings association.

(b) *Appearance* means an individual's physical presence before the United States, including the Board or RTC, in any formal or informal setting or conveyance of material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes, for example, correspondence or telephone calls.

(c) *Assisted entity* means (1) any insured depository institution which has received financial assistance from the RTC to prevent its failure, (2) any insured depository institution resulting from a merger or consolidation with any insured depository institution described in paragraph (k) of this section, or (3) any parent depository institution holding company of an insured depository institution described in paragraph (k) of this section; *Provided,* that an ongoing financial relationship, including, but not limited to, the repayment of a loan, the servicing of assets, or the existence of stock or warrants, exists between such insured depository institution or insured depository institution holding company and the RTC.

(d) *Assuming entity* means any insured depository institution or insured depository institution holding company which has entered into a transaction with the RTC to purchase some or all of the assets and assume some or all of the liabilities of a failed insured depository institution for a period of one year following the closing of such failed insured depository institution.

(e) *Board* means the Oversight Board.

(f) *Chairperson* means the Chairperson of the Board.

(g) *Covered employee* means any entity or employee required to file a confidential statement of employment and financial interests pursuant to § 1505.24(a) or a public Financial Disclosure Report (SF 278) pursuant to § 1505.25.

(h) *Dependent child* means a son, daughter, stepson, or stepdaughter who either:

(1) Is unmarried, under 21, and living in the employee's household; or

(2) Has received over half of his or her support from the employee in the preceding calendar year.

(i) *Employee* means any member, officer, employee of the Board, including any personnel detailed from any executive department or agency, or individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Oversight Board or RTC, under the direct supervision of an

officer or employee of the Board or RTC. The term does not include special government employees or independent contractors retained by the RTC whose conduct is regulated under 12 CFR part 1506.

(j) *Independent contractor* means the individual or entity whose work product is supervised by the Oversight or RTC, but whose employees do not perform functions or activities of the Board or RTC, under the direct supervision of board or RTC employees.

(k) *Insured depository institution* means any bank or savings association the deposits of which are insured by a federal deposit insurance fund administered by the FDIC.

(l) *FIRREA* means the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73 of August 9, 1989 (103 Stat. 183).

(m) *Member of the employee's immediate household* means a person who is related to the employee by blood, marriage, or adoption and who resides in the same household as the employee.

(n) *Person* means an individual, insured depository institution, corporation, company, association, partnership, firm, society, or any other organization or institution.

(o) *President* means the President and Chief Executive Officer of the Board or his or her delegate.

(p) *RTC* means the Resolution Trust Corporation.

(q) *Security* means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement, pre-organization certificate or subscription, investment contract, voting trust certificate, or, in general, any interest or instrument commonly known as a security, but does not include a deposit.

(r) *Senior employee* means any member or other officer or employee of the Oversight Board named in or designated by the Director of the Office of Government Ethics pursuant to 18 U.S.C. 207(d).

(s) *Special government employee* means any employee performing temporary duties either on a full time or intermittent basis, with or without compensation, for a period estimated not to exceed 130 days during any period of 365 consecutive days. Independent members of the Oversight Board and members of the National and Regional Advisory Boards who perform duties on this basis will be special government employees.

(t) *Subsidiary* means a company the voting stock of which is 50 percent or more owned or controlled by another company.

§1505.3 Designated agency ethics official and alternate.

(a) The Board's ethics program shall be coordinated and managed by the Designated Agency Ethics Official (hereinafter referred to as the DAEO) who will be appointed by the Oversight Board.

(b) An Alternate Designated Agency Ethics Official (hereinafter referred to as the Alternate DAEO) will also be appointed by the Board, to act for the DAEO when he or she is unavailable. When acting for the DAEO, the Alternate DAEO may perform all of the duties and functions of the DAEO. All references in these regulations to the DAEO shall mean the Alternate DAEO whenever he or she is acting for the DAEO.

§1505.4 Employee responsibility, counseling, and distribution of regulation.

(a) Each employee is responsible for being familiar with and complying with the provisions of this part. The DAEO shall be available for counseling and guidance as to the statutes and regulations affecting employee responsibility and conduct, including interpretation of this part.

(b) The DAEO shall assure that a copy of this part is provided to each new Board employee within 30 days of commencement of employment and each such employee shall complete and file a certification acknowledging receipt of the regulations. The DAEO shall annually distribute a reminder of the basic provisions of this part to each employee.

(c) An employee who believes that any assignment to a matter may result in a conflict of interest or the appearance of a conflict of interest shall report immediately all relevant facts to his or her immediate supervisor.

§ 1505.5 Sanctions and remedial actions.

(a) Any violation of this part by an employee, or special government employee, may be cause for disciplinary or remedial action, which may be in addition to any penalty prescribed by law.

(b) Disciplinary action may include, but is not limited to, an oral or written warning or admonishment, reprimand, suspension, or removal from office.

(c) Remedial action may include divestment of conflicting interests, change in assigned duties, or disqualification from a particular assignment or a particular matter.

(d) Unless there is a request for review, pursuant to § 1505.6, of an order of remedial action, such order of remedial action, other than disqualification, shall take effect 20 days after receipt of notice thereof, and disqualification shall take effect immediately. Any order of remedial action reviewed and approved pursuant to § 1505.6 shall take effect immediately upon receipt of notice of the determination of the President.

§ 1505.6 Review of remedial actions.

When remedial action is ordered pursuant to § 1505.5, the affected Board employee, or special government employee, may request the President to review such order. Any request for review shall be made in writing, within 20 days of receipt of notice of the order, and shall contain a statement of reasons for such request. The President will promptly review the matter and provide a written determination which shall be final.

Subpart B—Ethical and Other Conduct and Responsibilities of Employees

§ 1505.7 General rules.

Employees are expected to maintain high standards of honesty, integrity, impartiality, and conduct and to avoid misconduct and conflicts of interest, or the appearance of conflicts of interest. No employee shall engage in any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding the Board's or RTC's efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Board decision outside official channels; or

(f) Adversely affecting the public's confidence in the integrity of the Board or RTC.

§ 1505.8 Gifts, entertainment, favors, and loans.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, for himself or herself or for another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a person who:

(1) Has or seeks contractual or other business or financial relationships with the Board or RTC;

(2) Is supervised or regulated by any federal financial regulatory agency;[1]

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(4) Is an officer, director, or employee of any insured depository institution or trade organization comprised of members who seek to do business with the Board or RTC.

(b) The prohibition of paragraph (a) of this section do not apply:

(1) To the solicitation or acceptance of anything of monetary value from a friend, parent, spouse, child, or other close relative where it is clear from the circumstances that personal or family relationship rather than the business of the persons concerned are the motivating factors;

(2) To the acceptance of unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal value;

[1] A professional, trade, or business association, a substantial majority of whose members are regulated by or do or seek to do business with the Board or RTC or any federal financial regulatory agency, is itself a prohibited source for purposes of this section. (Memorandum 87 x 13, OGE, issued 1987)

(3) Except as otherwise provided in §1505.16, to the acceptance of loans from insured depository institutions or other financial institutions on the customary terms and conditions offered to the general public;

(4) To the acceptance of food, refreshments, and accompanying entertainment of nominal value on infrequent occasions in the ordinary course of a conference, meeting, or other function at which an employee is properly in attendance in his or her official capacity; and

(5) To the acceptance of food, refreshments, and accompanying entertainment of nominal value offered in the course of a group function or widely attended gathering at which the attendance of the employee is in the interest of the Board.

(c) Whenever an employee receives a gift or other item of monetary value the acceptance of which is prohibited by paragraph (a) of this section, or whenever a gift or other item of monetary value is received from a source other than a source described in paragraph (a) of this section and is given because of the employee's official position or in conjunction with official duties carried out by the employee, the employee shall notify the DAEO within ten days of receipt of such gift or item. The gift or item shall be promptly returned to the sender or otherwise disposed of as directed by the DAEO. The cost of returning such gift or item shall be borne by the Board.

(d) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself, unless it is a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement.

(e) An employee may not request or accept a gift, present, or decoration from a foreign government, except as permitted by law.

(f) Procurement officials shall not, during the conduct of a procurement of goods or services under the Federal Procurement laws and regulations, knowingly solicit or accept any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of any competing contractor for such procurement.

§1505.9 Travel expenses.

(a) Expenses of travel, lodging, and subsistence incurred by an employee while on official duty shall be paid for or reimbursed by the Board and an employee shall not accept payment or reimbursement for such expenses from any private source except as provided in this §1505.9(d).

(b) On rare occasions where there is no practical alternative to acceptance, an employee may accept travel, lodging, or subsistence from a private source while on official duty. The employee must report the acceptance, value, and circumstances thereof to his or her immediate supervisor and the DAEO within 30 days of such acceptance. When appropriate, the Board will reimburse the private source for the fair market value of such travel, lodging, or subsistence.

(c) For the purpose of this section, ''subsistence'' does not include food or refreshments accepted on infrequent occasions in the ordinary course of an official function or a widely attended gathering as permitted by §1505.8 (b)(4) and (b)(5).

(d) Under the provisions of 5 U.S.C. 4111, an employee may accept reimbursement for travel, lodging, or subsistence expenses from an organization which is exempt from taxation under 26 U.S.C. 501(c)(3), if no U.S. Government payment or reimbursement is made for the expense, and acceptance does not result in, or create the appearance of, a conflict of interest; and in the case of employees who are permanent employees of any executive department or agency, being utilized by the Board on a reimbursable basis, where acceptance would be consistent with the other federal agency's travel policies and regulations.

§1505.10 Use of official information.

(a) Except as permitted in §1505.11, an employee may not, directly or indirectly, use or allow the use of information which is obtained as a result of his or her Board employment but which is not available to the general public in

order to engage in any financial transaction or to further a private interest.

(b) An employee may not maintain, disclose, or otherwise use information in a manner which violates the Privacy Act of 1974, 5 U.S.C. 552a.

(c) An employee may not disclose confidential business information obtained in the course of his or her employment or official duties except as authorized by law. (See 18 U.S.C. 1905.)

§ 1505.11 Lectures, speeches, and manuscripts.

(a) No employee shall publish any material or speak before insured depository institutions or public organizations on matters involving the Board or RTC unless the employee receives prior approval, and prior clearance of material to be published, by the President.

(b) An employee shall not use his or her official title without specific written approval of the President. An example of title use where approval is normally appropriate is where the employee's Government position is referred to in biographical information provided in conjunction with lectures, speeches, and manuscripts.

(c) An employee shall not use in any teaching, lecturing, speaking, or writing engagement information obtained as a result of his or her Board employment unless the information is available to the general public or the President gives authorization for such use, upon the determination that the use of the information is in the public interest.

(d) No employee may receive any compensation, honorarium, or other thing of monetary value for any speech, lecture, publication, or similar engagement, the subject matter of which relates specifically to matters involving the Board or RTC or contains information that is not otherwise available to the general public. No employee may accept an honorarium of more than $2,000 for any appearance, speech, or article in connection with non-board related activities. (See 2 U.S.C. 441i.) Employees appointed by the President to full-time noncareer positions are prohibited from receiving any earned income from any outside employment or activity. (See Executive Order 12674 of April 12, 1989.)

§ 1505.12 Employment of relatives.

(a) For the purposes of this section:

(1) A *relative* is any person related to an Oversight Board official, an RTC official, or a special Government employee of the Board or RTC as parent, stepparent, child, stepchild, brother, sister, stepbrother, stepsister, half-brother, half-sister, spouse, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

(2) An *official* is any employee who has authority to appoint, employ, promote, or advance employees or who recommends anyone for appointment, employment, promotion, or advancement at the Oversight Board or the RTC.

(3) A *supervisor* is any employee whose position requires independent judgment to appoint, employ, promote, advance, assign, direct, reward, transfer, suspend, discipline, remove, adjust grievances, or furlough any person or to recommend any such action.

(b) A Board official may not:

(1) Appoint, employ, promote, or advance any relative to a position at the Oversight Board or the RTC;

(2) Advocate a relative's appointment, employment, promotion, or advancement at the Oversight Board or RTC; or

(3) Appoint, employ, promote, or advance a relative of another Oversight Board or RTC official if such other official has advocated the relative's appointment, employment, promotion, or advancement.

(c)(1) No employee may be a supervisor of any relative.

(2) Whenever any employee becomes a supervisor of a relative, the employee shall report in writing that fact to his or her supervisor. The appropriate management official, in consultation with the DAEO, shall determine whether the relative's position may be removed from the scope of the supervisor's authority, taking into consideration the nature of the supervisor's position, the operational needs of the work unit, and the potential for conflicts of interest or the appearance

thereof. If it is determined that it is not feasible to remove the relative's position from the scope of the supervisor's authority, the appropriate management officials shall determine whether the relative may be assigned to another position at the Board which is outside the scope of the supervisor's authority.

§ 1505.13 Use of property and resources owned or controlled by the Board or RTC.

An employee shall not, directly or indirectly, use or allow the use of any property or resources, owned or controlled by the Board or RTC for other than officially approved activities. An employee has a duty to protect and conserve property, including equipment, supplies, and other property entrusted or issued to the employee.

§ 1505.14 Indebtedness, gambling, and other conduct.

(a) *Indebtedness.* An employee is expected to meet all just financial obligations, whether imposed by law or contract. For the purpose of this section, a ''just financial obligation'' is one acknowledged by the employee or reduced to judgement by a court or one imposed by law such as federal, state, or local taxes.

(b) *Gambling.* An employee shall not participate in any gambling activity, including use of gambling devices, lotteries, pools, games for money or property, or numbers tickets, while on property owned or leased by the Board or the government, or while on duty for the Board.

(c) *Crimes and dishonesty.* An employee shall not engage in criminal or dishonest, or any other conduct prejudicial to the Board. Any employee who has information indicating that another employee engaged in any criminal conduct or violated any of the rules of these Standards of Conduct shall promptly convey such information to the DAEO.

(d) *Discrimination.* An employee shall not discriminate against any other employee, or applicant for employment, nor exclude any person from participating in, or deny to any person the benefits of, any program or activity administered by the Board or RTC on the basis of race, color, religion, national origin, sex, age or handicap.

(e) *Political activity.* Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates, but are forbidden to take active part in political management or campaigns except as permitted by law. Prohibitions concerning political activities may be found in 5 U.S.C. 7321 *et seq.* (the Hatch Act) and 18 U.S.C. 602, 603, and 607.

(f) *Miscellaneous.* Other provisions with which an employee should be familiar include:

(1) The ''Code of Ethics for Government Service,'' which prescribes general standards of conduct (Pub. L. 96–303, 94 Stat. 855–856);

(2) Prohibitions relating to bribery, conflicts of interest, and graft (18 U.S.C. 201 through 209);

(3) Prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918);

(4) Prohibitions against the disclosure of classified information (18 U.S.C. 798);

(5) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352);

(6) Prohibitions against the misuse of a government vehicle (31 U.S.C. 1349(b));

(7) Prohibition against the misuse of the franking privilege (*i.e.,* prepaid postage) (18 U.S.C. 1719);

(8) Prohibition against the use of deceit in an examination or personnel action in connection with government employment (18 U.S.C. 1917);

(9) Prohibition against fraud or false statements in a government matter (18 U.S.C. 1001);

(10) Prohibition against mutilating or destroying a public record (18 U.S.C. 2071);

(11) Prohibitions against embezzlement of government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654);

(12) Prohibition against unauthorized use of documents relating to claims from or by the government (18 U.S.C. 285); and

(13) Prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

Subpart C—Financial Interests and Obligations; Outside Employment

§ 1505.15 General rules.

(a) No employee shall have any direct or indirect financial interest or obligation that conflicts or appears to conflict with the employee's duties and responsibilities.

(b) No employee may negotiate or have any arrangement concerning prospective employment with a person whose financial interests may be directly and substantially affected by the employee's performance of his or her Board duties and responsibilities while the employee is personally and substantially engaged, as part of his or her official duties, in any matter affecting that person. (See 18 U.S.C. 208.)

(c) No employee may participate personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other action, in any matter in which the employee, the employee's spouse, minor child, partner, or organization in which the employee serves as an officer, director, trustee, partner, or employee, has a financial interest (other than a deposit in an insured depository institution). (See 18 U.S.C. 208.)

(d) No partner of an employee or a special government employee may act as agent or attorney for any person other than the United States before the Board or RTC in a matter in which the employee participates or has participated, personally and substantially, by decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise or which is the subject of the employee's official responsibility. (See 18 U.S.C. 207.)

(e) An employee shall disqualify himself or herself from participation in any matter in which he or she has a financial interest by notifying his or her supervisor and the DAEO in writing of such matter and financial interest.

(f) The prohibitions of paragraphs (a), (b), (c), and (e) of this section shall not apply if the employee receives the prior written determination by the President, after consultation with the DAEO and the Office of Government Ethics, that the interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Board. (See 18 U.S.C. 208(b)(1).)

§ 1505.16 Extensions of credit.

Unless the credit is extended through the use of a credit card under the same terms and conditions as are offered to the general public and the total line of credit from any one institution does not exceed $10,000:

(a) Covered employees may not knowingly, directly or indirectly, accept or become obligated on any extension of credit from any institution which the RTC manages as conservator or an assisted or assuming entity, for as long as the institution remains in conservatorship or one year following the end of the RTC's involvement with the assisted or assuming entity. Such an institution will hereafter be referred to as a ''prohibited creditor''. The DAEO for the Oversight Board will maintain a list of ''prohibited creditors'' for review by Oversight Board employees. An employee's knowledge that he was accepting or becoming obligated on an extension of credit from such an institution can be presumed if the institution was on the list of prohibited institutions and the employee had a reasonable opportunity to review the list prior to accepting or becoming obligated on an extension of credit from such an institution.

(b) If the adoption of this regulation, change in marital status, commencement of employment, or an action affecting the status of the creditor[2] results in an extension of credit prohibited by paragraph (a) of this section, such extension of credit may be retained by the covered employee if it is liquidated under its original terms, without renegotiation. If an otherwise

[2] Such actions include, but are not limited to, mergers, acquisitions, transactions under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823) or similar actions beyond the employee's control.

prohibited extension of credit is retained in accordance with this paragraph, the employee shall be disqualified from participating in any particular matter having a direct and predictable impact on the creditor; *Provided*, that the President, after consultation with the DAEO and the Office of Government Ethics, may determine that the obligation will not affect the integrity of the employee's services to the Board.

(c) A covered employee otherwise required to liquidate a non-conforming extension of credit under its original terms may request permission to renegotiate the loan. Any such request shall be made, in writing, to the President, with a copy provided to the DAEO, stating:

(1) The purpose of the renegotiation;

(2) The terms and conditions of the original loan;

(3) The terms and conditions now available to the general public;

(4) The terms and conditions now offered the employee;

(5) What action the employee has taken to move the loan to an otherwise nonprohibited creditor; and

(6) The financial hardship, if any, denial of the request will cause.

(d) No covered employee may renegotiate a loan from a prohibited creditor without the prior written approval of the President, after consultation with the DAEO.

(e) Notwithstanding the restrictions of this section, a covered employee may assume a mortgage loan made by a prohibited creditor under the following circumstances:

(1) The loan is for employee's personal residence;

(2) The employee is unable to arrange, without undue financial hardship, a loan from a nonprohibited creditor;

(3) The terms of the assumption are no more favorable than those made available to the general public by the same creditor;

(4) The employee receives the prior approval of the appropriate approving official, who shall have consulted with the DAEO; and

(5) The employee is disqualified from participating in any particular matter having a direct and predictable impact on the creditor.

(f) An extension of credit to a covered employee's spouse or dependent child shall constitute an extension of credit to the employee.

§ 1505.17 Securities of insured depository institutions.

(a) While employed by the Board an employee may not purchase, own, or control, directly or indirectly, any securities of an insured depository institution or affiliate thereof, except as permitted in this section.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee may own or control securities of an insured depository institution, or affiliate thereof, whenever:

(i) Ownership or control was acquired prior to commencement of Board employment, or after commencement of employment, through a change in marital status or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the President and DAEO, within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any particular matter having a direct and predictable impact on the insured depository institution or affiliate; *Provided*, that the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

An employee may own or control additional securities which result from a stock split, stock dividend, or the exercise of options or preemptive rights arising out of the ownership of such securities.

(2) The President, after consultation with the DAEO, may require that an employee divest his or her interest in securities whenever disqualification under paragraph (b)(1) of this section might impair the employee's ability to

perform his or her Board duties and responsibilities.

(c) An employee may have an indirect interest in securities of an insured depository institution, or affiliate thereof which arises through ownership of shares (or other investment units) of publicly held holding companies, mutual funds, or investment trusts but only if:

(1) The assets of the holding company, mutual fund, or investment trust consist primarily of securities of nonbank entities; and

(2) The employee does not own or control 5 percent or more of the shares (or other investment units) of the holding company, mutual fund, or investment trust.

Such an indirect interest in securities of an insured bank or affiliate is deemed too inconsequential to affect the integrity of the employee's services to the Board. (This provision, which represents a statutory waiver pursuant to former 18 U.S.C. 208(b)(2), is adopted from the FDIC regulations at 12 CFR 336.1–7(c).)

§ 1505.18 Other investments.

(a) While employed by the Board an employee may not purchase, own, or control, directly or indirectly, any securities issued by any bridge bank or other institution organized under section 21A(b)(11) of the Federal Home Loan Bank Board Act as added by section 501(a) of FIRREA.

(b) While employed by the Board an employee may not purchase securities of, or otherwise invest in, any open- or closed-end fund primarily designed to acquire thrifts or other insured depository institutions.

(c) While employed by the Board an employee may not knowingly acquire, directly or indirectly, any financial interest which conflicts or, appears to conflict, with his or her official duties and responsibilities.

(d)(1) Except as provided in paragraph (d)(2) of this section, an employee may own or control investments described in paragraph (c) of this section whenever:

(i) Ownership or control was acquired prior to commencement of Board employment, or after commencement of employment, through a change in marital status or through circumstances beyond the employee's control, such as inheritance, gift, or merger, acquisition or other change in corporate ownership;

(ii) The employee makes full, written disclosure on the prescribed form to the DAEO within 30 days of commencing employment or acquiring the interest; and

(iii) The employee is disqualified from participating in any decision or other action having a direct and predictable impact on the employee's financial interest; *Provided,* that the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

(2) The employee may be required to dispose of his or her interest in securities whenever disqualification under paragraph (d)(1) of this section might impair the employee's ability to perform his or her Board duties and responsibilities.

(e) An employee may have an indirect interest in otherwise prohibited investments which arises through ownership of shares (or other investment units) of publicly held companies, mutual funds, or investment trusts which have broadly diversified portfolios not specializing in any particular industry and which are:

(1) Widely held and are not under the employee's control; or

(2) Limited partnership interests in large public partnerships (i.e., one which has at least 39 partnership interests) and less than 25% of the gross revenues of the limited partnership is derived from firms doing business with the RTC.

The employee is disqualified, however, from participating in any particular matter having a direct and predictable impact on the employee's financial interest in such investments; *Provided,* that the President, after consultation with the DAEO and the Office of Government Ethics, may determine that disqualification is not necessary because the employee's interest is too inconsequential to affect the integrity of the employee's services to the Board.

§ 1505.19 Purchase of assets of institutions in conservatorship or receivership.

(a) An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase any property which, to the employee's knowledge, the RTC manages as conservator of an insured depository institution or holds in its capacity as receiver, liquidator, or liquidating agent of the assets of an insured depository institution, regardless of how the property is sold.

(b) An employee who is involved in the disposition of conservatorship or receivership assets shall disqualify himself or herself from participation in the disposition of such assets when the employee becomes aware that any relative, or any organization or partnership with which the employee, the employee's spouse or dependent child is associated, has submitted a bid for purchase of such assets. The employee shall advise the President and the DAEO in writing of the self-disqualification.

(c) An employee shall not, directly or indirectly, use or release to persons outside the Board confidential information regarding the sale or disposition of assets.

[55 FR 5358, Feb. 14, 1990; 55 FR 11719, Mar. 29, 1990]

§ 1505.20 Purchase of Board or RTC property.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, purchase or bid on any property owned by the Board or owned or held by the RTC in its corporate capacity.

§ 1505.21 Providing goods or services to the Board or RTC.

An employee, the employee's spouse or dependent child, or members of the employee's immediate household shall not, directly or indirectly, provide any goods or services for compensation to the Board or RTC unless the President determines, subject to the prohibitions in 18 U.S.C. 203 and 205, that there is a most compelling reason to do so, such as where the Board's or RTC's needs cannot be otherwise met. For the purposes of this section, the term ''services'' does not include services as required by the employee's position with the Board.

§ 1505.22 Outside employment and other activity.

(a) An employee shall not engage in employment or other activity outside the scope of his or her Board employment which is not compatible with the full and proper discharge of the employee's duties and responsibilities to the Board. Employment or activity which is not compatible with the employee's duties and responsibilities to the Board includes, but is not limited to, that which results in, or creates an appearance of, a conflict of interest or impairs the employee's physical or mental capacity to perform the duties and responsibilities of his or her position with the Board. Such employment or activity may involve:

(1) Service, with or without compensation, as an organizer, incorporator, director, officer, trustee, or representative of, or advisor or consultant to, or in any other capacity with, any insured depository institution, including a credit union;

(2) Service, with or without compensation, in any capacity with an investment advisor, investment company, investment fund, mutual fund, insurance company, stockbroker, underwriter, or any other person engaged in providing financial services; or

(3) Active participation in or conduct of a business dealing with or related to real estate including, but not limited to, real estate brokerage, management and sales, property insurance and appraisal services.

(b) An employee shall not engage in outside employment or other activity, with or without compensation, with any person or entity doing business with the Board or RTC.

(c) An employee shall not accept any money or anything of monetary value from a private source as compensation for the employee's service to the Board or RTC. (See 18 U.S.C. 209.)

(d) An employee shall not, directly or indirectly, receive compensation for representational services rendered by himself or herself or another before an

agency of the Federal or District of Columbia Government on matters in which the United States has an interest. (See 18 U.S.C. 203.)

(e) Except as provided in paragraph (f) of this section, an employee shall not represent anyone before an agency or court of the Federal or District of Columbia Government, with or without compensation, in matters in which the United States has an interest, other than in the proper discharge of the employee's official duties. (See 18 U.S.C. 205.)

(f) An employee must obtain the prior written approval of the President, after consultation with the DAEO, in order to represent a parent, spouse, child, or person or estate for which he or she serves as a guardian, executor, administrator, trustee, or personal fiduciary, with or without compensation. (See 18 U.S.C. 205.)

(g) This section does not preclude an employee from participating in the activities of:

(1) Charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organizations, so long as such participation does not violate § 1505.16 or 18 U.S.C. 203 or 205; or

(2) National or state political parties, if not prohibited by law.

(h) Any employee who engages in, or intends to engage in, outside employment or other activity must obtain the prior written approval of the President who, after consultation with the DAEO, will determine whether such employment or activity is compatible with the purposes of this part.

§ 1505.23 Employment of family members by persons other than the Board or RTC.

(a) In order to avoid a conflict of interest or the appearance of a conflict, a covered employee shall report to the President the employment of the employee's spouse, child, parent, brother, sister, or a member of the employee's immediate household, within 30 days of when the employee becomes aware of it; by:

(1) An insured depository institution or its affiliate;

(2) A firm or business with which, to the employee's knowledge, the Board or RTC has a contractual or other business or financial relationship; or

(3) A firm or business which, to the employee's knowledge, is seeking a business or contractual relationship with the Board or RTC.

(b) A covered employee will not be assigned to any matter directly involving the family member's employer unless the President, after consultation with the DAEO, makes a prior determination that the nature of the family member's employment makes it unlikely that the employee's services to the Board will be affected by participation in the matter. In making determinations under this section, significant weight shall be given to the policy-making character of the family member's position. Under most circumstances, positions which are clerical or lacking policy-making character would not require disqualification.

Subpart D—Confidential Statements of Employment and Financial Interests; Public Financial Disclosure Reports; and Report of Employment Upon Resignation

§ 1505.24 Confidential statement of employment and financial interests.

(a) *General.* All Board employees, including employees of other agencies detailed to the Board, classified at GS–13 to GS–15, or at a comparable pay level under the Board's personnel authority, shall be deemed to be covered employees for the purpose of filing confidential statements of employment and financial interests pursuant to this section. The President, after consultation with the DAEO and the Office of Government Ethics, may require the filing of such statements by employees at pay levels below GS–13, or a comparable pay level under the Board's personnel authority, when it is determined to be essential to protect the integrity of the Government and avoid possible conflict of interest situations.

(b) *Submission of statements.* (1) Covered employees will be required to file statements of employment and financial interests within 30 days of initial employment, and each reappointment thereto and annually thereafter with

information as of June 30. Covered employees who have commenced employment within 90 days of June 30 need not submit another statement for such reporting period.

(2) Statements shall be made upon forms prescribed by the Board. Instructions accompanying the forms will indicate where the statement is to be submitted. Each covered employee required to file shall be notified of their obligation.

(3) Each statement of employment and financial interests and its instructions will require the covered employee to supply information on:

(i) All other employment; and

(ii) The financial interests of the employee which have been determined to be relevant in light of the duties he or she is to perform, including, but not limited to, the name of companies in which he or she has a financial interest, and the nature of such financial interest.

(c) *Confidentiality of statements.* Statements of employment and financial interests shall be held in confidence. Statements shall be received, reviewed, and retained in the office of the DAEO, who shall be responsible for maintaining the statements in confidence.

§ 1505.25 Public Financial Disclosure Reports.

Officers and employees (including special Government employees, who are expected to serve in excess of 60 days out of a 365 day period) whose positions are classified at GS–16 or above of the General Schedule, or whose basic rate of pay (excluding ''step'' increases) under other pay schedules is equal to or greater than the rate for GS–16 (step 1), and employees whose positions are excepted from competitive service by reason of being of a confidential or policy-making character (unless otherwise excluded by the Office of Government Ethics) must file Financial Disclosure Reports (SF 278) upon appointment, termination, and annually in accordance with the regulations of the Office of Government Ethics, 5 CFR part 2634 (formerly 5 CFR part 734). Oversight Board members who are employees of other government agencies will file their reports with their employing agency, and pursuant to FIRREA, file a copy with the RTC ethics counselor.

§ 1505.26 Report of employment upon resignation.

Each covered employee shall report to the DAEO on a prescribed form his or her resignation to accept employment in the private sector. Such report shall include pertinent information regarding the prospective employment and shall be made as soon as possible but in no event less than two weeks prior to the effective date of resignation.

[55 FR 5358, Feb. 14, 1990; 55 FR 11719, Mar. 29, 1990]

Subpart E—Limitations on Activities of Former Employees, Including Special Government Employees

§ 1505.27 Limitations on representation.

(a) No former employee or special government employee, after terminating government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States:

(1) To any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which such employee or special government employee participated personally and substantially as an employee or special government employee through decision, approval, disapproval, recommendation, advice, investigation, or otherwise.

See 18 U.S.C. 207(a) and 5 CFR 2637.201 (formerly 5 CFR 737.5(a)).

(b) No former employee or special government employee, within two years after termination of employment with the Board, shall knowingly act as agent or attorney for, or otherwise represent any other person, except the

United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States:

(1) To any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) If such matter was actually pending under the employee's responsibility as an officer or employee within a period of one year prior to the termination of such responsibility.

See 18 U.S.C. 207(b)(i) and 5 CFR 2632.202 (formerly 5 CFR 737.7(a)).

(c) No former senior employee, within two years after termination of employment with the Board or RTC, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person, except the United States, by personal presence at any formal or informal appearance:

(1) Before any department, agency, or court of the United States;

(2) In connection with any particular government matter involving a specific party; and

(3) In which matter he or she participated personally and substantially while an employee.

See 18 U.S.C. 207(b)(ii) and 5 CFR 2637.203 (formerly 5 CFR 737.9(a)).

(d) The provisions of paragraphs (a), (b), and (c) of this section shall not apply to the participation of a former employee or special government employee, other than those persons described in paragraph (e) of this section, in matters of general application, such as rulemaking, proposed legislation or regulations, and the formulation of general policy standards or objectives but shall apply to rulemaking having a direct and predictable effect on a certain party or group of parties. See 5 CFR 2637.201, (formerly 5 CFR 737.5(c)).

(e) For a period of one year after termination of employment with the Board, no former senior employee (other than a special government employee who serves for fewer than sixty (60) days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent any other person except the United States, in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person other than the United States to the Board or RTC or any of its officers or employees in connection with any particular government matter, whether or not involving a specific party, which is pending before the Board or RTC, or in which the Board or RTC has a direct and substantial interest. See 18 U.S.C. 207(c) and 5 CFR 2637.204 (formerly 5 CFR 737.11).

[55 FR 5358, Feb. 14, 1990; 55 FR 11719, Mar. 29, 1990]

§ 1505.28 Limitations on aiding or advising.

(a) For a period of one year after termination of employment with the Oversight Board, no former covered employee, including a former senior employee, shall knowingly act as agent or attorney for, or otherwise aid or advise any other person (except the United States), concerning any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, or other particular matter:

(1) In which the former employee knows that the United States is a party or has a direct and substantial interest;

(2) That involves the same specific party or parties; and

(3) In which matter he or she participated personally and substantially while an employee.

(b) For purpose of paragraph (a) of this section, the limitations on aiding and advising shall only apply to particular matters about which the former employee had access to information which is exempt from disclosure under section 552 of title 5 of the United States Code, and which is so designated by the Oversight Board or RTC and which information is the basis for the aid or advice.

§ 1505.29 Consultation as to propriety of appearance before the Board or RTC.

Any former employee who wishes to appear before the Board or RTC on behalf of any person other than the United States, or an agency thereof, at any time after termination of employment

with the Board, may consult the DAEO as to the propriety of such appearance.

§ 1505.30 Suspension of appearance privilege.

Any former employee or special government employee who, knowingly fails to comply with the provisions of this subpart, may be prohibited from making an appearance before or an oral or written communication to the Board or RTC for such period of time as provided in procedures to be adopted by the Board or RTC.

Subpart F—Ethical and Other Conduct and Responsibilities of Special Government Employees

§ 1505.31 General.

(a) Special government employees are those serving the Board by performing temporary duties either on a full time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days. The two independent members of the Board and members of the National and Regional Advisory Boards are expected to be special government employees.

(b) The rules of conduct contained in subparts A, B, C, D, and E of this part shall also apply to special government employees insofar as their employment with the Board is concerned, except as otherwise indicated in this subpart F. Thus, for example, the prohibition in § 1505.14(e), concerning active participation in political management or campaigns (5 U.S.C. 7321 *et seq.*, the Hatch Act), only applies to special government employees on days that they serve the Board, and the general restrictions imposed on outside employment and investments by subpart C of this part do not apply to special government employees as long as they are disqualified from dealing with particular matters affecting their employers or financial interests.

§ 1505.32 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special government employees are less stringent than those which affect regular employees. These two sections in general operate to preclude a regular Government employee, except in the discharge of his or her official duties, from representing another person before a department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the two sections impose only the following major restrictions upon a special government employee:

(1) He or she may not, except in the discharge of his or her official duties represent anyone else (or receive compensation from another's representation) before a court or Government agency in a particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he or she has at any time participated personally and substantially in the course of his or her Government employment. What constitutes personal and substantial participation in a matter is discussed in § 1505.34(b).

(2) He or she may not, except in the discharge of his or her official duties, represent anyone else (or receive compensation from another's representation) in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if he or she has served the agency no more than 60 days during the past 365. He or she is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special government employee on the days when he or she does not serve the Government as well as on the days when he or she does.

(c) A special government employee who undertakes service with the Board, and another Federal entity, including the RTC, shall inform each of his or her arrangements with the other.

(d) There may be situations where a special government employee has a responsible position with his or her regular employer which requires the employee to participate personally in a particular matter before the Board or RTC. In this situation, assuming that such representation is not prohibited by 18 U.S.C. 203 or 205, the special government employee should participate in the matter for his or her regular employer only with the knowledge and approval of the President, after consultation with the DAEO. However, an independent member of the Oversight Board or a member of a National or Regional Advisory Board may not represent his or her regular employer in, and must be fully recused from agency deliberations or actions concerning any contract or other particular matter such employer has before or involving the Oversight Board or RTC, and must also be prohibited from sharing in any fees or profits directly attributable to such contract or other particular matter. Employers of those who serve as independent members of the Oversight Board or members of a National or Regional Advisory Board are not barred from contracting with the Oversight Board.

(e) Section 205 of title 18, U.S.C., permits a special government employee to represent, with or without compensation, a parent, spouse, child, or another person or an estate he or she serves as a fiduciary, but only if he or she has the approval of the official responsible for appointments to his or her position and the matter involved is neither one in which he or she has participated personally or substantially nor one under his or her official responsibility. What constitutes personal and substantial participation in a matter is discussed in § 1505.34(b). The term ''official responsibility'' is defined in 18 U.S.C. 202 to mean the direct administrative or operating authority, whether immediate or final and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct action in the Board or RTC.

§ 1505.33 Applicability of 18 U.S.C. 207.

Section 207 of title 18, U.S.C., applies to individuals who have left Government service, including former special government employees. It prevents a former employee or special government employee from representing another person in connection with certain matters (or making oral or written communications, with the intent to influence, to the Government or a court) in which he or she participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. What constitutes personal and substantial participation in a matter is discussed in § 1505.34(b). In addition, section 207 of title 18, U.S.C. prevents a former employee for a period of two years after his or her responsibility for a matter has ceased, from representing another person (or making oral or written communications with the intent to influence) in such matter before a court, department or agency if the matter was actually pending within the area of his or her official responsibility at any time in the last year prior to termination of the employee's responsibility.

[55 FR 5358, Feb. 14, 1990; 55 FR 11719, Mar. 29, 1990]

§ 1505.34 Applicability of 18 U.S.C. 208.

(a) Section 208 of title 18, U.S.C., bears on the activities of Government personnel, including special government employees in the course of their official duties. In general, it prevents an employee or special Government employee from participating personally and substantially as a Government officer or employee in a particular matter in which, to his or her knowledge, the employee, the employee's spouse, minor child, partner, or a profit or nonprofit organization with which the employee has or is serving as officer, director, trustee, partner or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest. Waivers may be granted by the President, after consultation with the DAEO and the Office of Government Ethics. Until a waiver is granted, special government employees are disqualified from participating in

any matter in which such a financial interest exists.

(b) For the purposes of 18 U.S.C. 208, the phrase ''participates personally and substantially in a particular matter'' applies to participation through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, change, accusation, arrest, or other particular matter. Accordingly, a special government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by section 208.

§1505.35 Use of Board employment.

A special government employee shall not use his or her Board employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or herself or another person, particularly one with whom he or she has family, business, or financial ties.

§1505.36 Use of inside information.

(a) A special government employee shall not use any inside information obtained as a result of his or her Board employment for private gain for himself or herself or another person, either by direct action on his or her part or by counsel, recommendation, or suggestion to another person, particularly one with whom he or she has family, business, or financial ties. For the purpose of this section, ''inside information'' means information obtained under Board or RTC authority which has not become part of the body of public information.

(b) The provisions of §1505.11(a) through (d) with regard to employees shall be applicable to special government employees.

§1505.37 Coercion.

A special government employee shall not use his or her Board employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or herself or another person particularly one with whom he or she has family, business, or financial ties.

§1505.38 Advice on rules of conduct and conflicts of interest statutes.

Any special government employee having any doubt as to the ethics of any conduct falling within the conflicts of interest statutes, or regulations, should confer with the DAEO. Assistance in interpreting the conflicts of interest statutes, these regulations, and any other instructions involving conduct and conflicts of interest, will also be provided by the DAEO to any special government employee, prospective special government employee, and their appointing officials and supervisors desiring it.

§1505.39 Disclosure of employment and financial interests.

Special government employees will be required to file a confidential statement of employment and financial interests in accordance with §1505.24, or a Financial Disclosure Report (SF 278) in accordance with §1505.25.

Subpart G—Competence, Experience, Integrity, and Fitness of Resolution Trust Corporation Employees

§1505.40 Minimum competence, experience, integrity, and fitness requirements for Resolution Trust Corporation employees.

(a) For the purposes of this section:

(1) *Default* has the meaning set forth in 12 CFR 1506.2(d).

(2) *Pattern or practice of defalcation* has the meaning set forth in 12 CFR 1506.2(k).

(3) *Loss* has the meaning set forth in 12 CFR 1506.2(g).

(4) *Material obligation* has the meaning set forth in 12 CFR 1506.2(i).

(5) *Substantial loss to the Federal Deposit insurance funds* has the meaning set forth in 12 CFR 1506.2(t).

(b) The RTC shall prescribe policies and procedures which, at a minimum ensure that any individual (not subject to the regulations at 12 CFR part 1506 or 12 CFR part 1606) who is performing, directly or indirectly, any function or service on behalf of the RTC meets

minimum standards of competency, experience, integrity, and fitness and that only persons meeting such minimum standards:

(1) Enter into any contract with the RTC; or

(2) Are employed by the RTC or otherwise perform any service for or on behalf of the RTC.

(c) The standards established by the RTC in its policies and procedures issued pursuant to paragraph (a) of this section shall, at a minimum, prohibit from service on its behalf any person who has:

(1) Been convicted of any felony;

(2) Been removed from, or prohibited from participation in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency;

(3) Demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or

(4) Caused a substantial loss to Federal deposit insurance funds.

(d) The RTC shall prescribe policies and procedures which require that any offer (not subject to the regulations at 12 CFR part 1506 or 12 CFR part 1606), and any employment application submitted to the RTC, include a list and description of any instance during the preceding 5 years in which the person or company under such person's control defaulted on a material obligation to an insured depository institution; and such additional information as the RTC determines to be necessary.

[55 FR 5358, Feb. 14, 1990; 55 FR 11719, Mar. 29, 1990]

PART 1506—QUALIFICATION OF, ETHICAL STANDARDS OF CONDUCT FOR, AND RESTRICTIONS ON THE USE OF CONFIDENTIAL INFORMATION BY INDEPENDENT CONTRACTORS

Sec.

1506.1 Authority, purpose, and scope.
1506.2 Definitions.
1506.3 Contractors' Conflicts Committee and Outside Counsels' Conflicts Committee.
1506.4 Qualification of contractors.
1506.5 Disqualification of contractors.
1506.6 Organizational conflicts of interest.
1506.7 Personal conflicts of interest.
1506.8 General standards for independent contractor activities.
1506.9 Limitations on concurrent and subsequent activities.
1506.10 Communications with RTC employees.
1506.11 Confidentiality of information.
1506.12 Source selection information.
1506.13 Use of consultants.
1506.14 Use of information.
1506.15 Rescission of contracts.
1506.16 Resolution Trust Corporation as conservator.

AUTHORITY: 12 U.S.C. 1441a(a)(13) and (p)(1)(B), (3), (6), and (7).

SOURCE: 55 FR 5350, 5356, Feb. 14, 1990, unless otherwise noted.

§ 1506.1 Authority, purpose, and scope.

(a) *Authority.* This part is adopted pursuant to section 21A(p) of the Federal Home Loan Bank Act, as added by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (''FIRREA''), Pub. L. 101–73, section 501, 103 Stat. 183, 363 (to be codified at 12 U.S.C. 1441a(p)); section 21A(b) (4) and (12) of the Federal Home Loan Bank Act, as added by section 501 of FIRREA, Pub. L. 101–73, section 501, 103 Stat. 183, 363 (to be codified at 12 U.S.C. 1441a(b) (4) and (12)); and section 11(d) of the Federal Deposit Insurance Act, as amended by section 212 of FIRREA, Pub. L. 101–73, section 212, 103 Stat. 183, 222 (to be codified at 12 U.S.C. 1821(d)). Pursuant to those sections, the Oversight Board and the Resolution Trust Corporation are promulgating rules and regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities, the use of confidential information consistent with the goals and purposes of titles 18 and 41 of the United States Code, and minimum standards of competence, experience, integrity, and fitness.

(b) *Purpose.* These regulations seek to ensure that contractors meet minimum standards of competence, integrity, fitness, and experience and are held to the highest standards of ethical conduct in performing services for the RTC. They are intended to prevent:

(1) The direct or indirect use of information gained through performance of a contract with the RTC for personal

gain not contemplated by the contract; and

(2) The use of personal relationships or improper influence to gain unfair competitive advantage in obtaining contracts with the RTC.

(c) *Scope*. These regulations apply to contracts for services entered into by the RTC, after the effective date of these regulations, with law firms, accounting firms, investment banking firms, real estate brokers, appraisers, asset managers, property managers, leasing agents, and others performing similar services on behalf of the RTC. Except for contracts for legal, accounting, or investment banking services, contracts with a single contractor attributable to the Corporation, a single conservatorship, or a single consolidated field office, in which payments over the course of one year are not expected to aggregate in excess of $25,000, are not subject to these regulations. Further, these regulations shall not apply to contracts for day-to-day operations, routine maintenance, or the provision of electronic data processing services for the RTC, and shall not apply to real estate brokers' commissions resulting from nonexclusive offerings.

§1506.2 Definitions.

As used in this part:

(a) *Competing property* means real property which has the same general character as an asset which is the subject of a contract between the contractor and the RTC, is in the same geographic market as defined in the solicitation, and in which the contractor or a related entity has 25 percent or greater ownership interest.

(b) *Contractor* means the individual or entity submitting an offer to perform services for the RTC or having a contractual arrangement with the RTC to perform services but does not include special government employees. For the purposes of §§1506.6, 1506.7, and 1506.8, *contractor* includes a subcontractor.

(c) *Defalcation* means:

(1) Any default on any obligation to pay principal or interest to an insured depository institution; or

(2) Any act that was intended to cause a loss to an insured depository institution; or

(3) A borrower's entering into a loan agreement with an insured depository institution, the making of which was an unsafe or unsound action of the institution on the basis of facts that the borrower knew or should have known, and the borrower's default on such loan in the amount of $50,000 or more.

(d) *Default* means:

(1) A delinquency of 90 or more days as to payment of principal or interest on a loan or advance from an insured depository institution; or

(2) A failure to comply with the terms and conditions of a contract with the FDIC, the FSLIC, or the RTC, or an insured depository institution, other than a loan or advance.

(e) *FDIC* means the Federal Deposit Insurance Corporation in its corporate or receivership capacity or as conservator of an insured depository institution.

(f) *FSLIC* means the former Federal Savings and Loan Insurance Corporation and the Federal Savings and Loan Insurance Corporation Resolution Fund.

(g) *Loss* means:

(1) An obligation as to which there is a continuing legal claim that is owed to an insured depository institution, or to Federal deposit insurance funds, FSLIC, or to the RTC that is 12 months or more delinquent as to principal or interest; or

(2) An obligation to pay an outstanding, unsatisfied, final judgment based on any legal theory in favor of any insured depository institution, Federal deposit insurance funds, FSLIC, or the RTC.

(h) *Management official* means those individuals within a contractor's organization who have substantial responsibility for the direction and control of the contractor's policies and operations. With respect to partnerships that have a management committee or executive committee which has been given such responsibilities, this means only the members of those committees and, if no such committee exists, this means each of the general partners.

(i) *Material obligation* means an obligation which, if not satisfied, would cause a loss of $50,000 or more.

(j) *Organizational conflict of interest* means a situation in which:

(1) Performance of a previous contract with the RTC or the Oversight Board, by the contractor or a related entity, may provide the contractor with an unfair competitive advantage in obtaining this contract; or

(2) The contractor or any related entity has an interest or relationship which could adversely affect the contractor's ability to perform under the contract or to represent the RTC.

(k) *Pattern or practice of defalcation* means:

(1) There are two or more instances of defalcation as defined in § 1506.2(c)(1) with respect to which there are continuing legal claims in an aggregate amount in excess of $50,000; or

(2) There are two or more instances of defalcation as defined in § 1506.2(c)(2) or § 1506.2(c)(3).

(l) *Key employee* means an individual who participates personally and substantially, through decision, approval, disapproval, recommendation, or the rendering of advice, in the negotiation and performance of, and monitoring for compliance under the contract with the RTC.

(m) *Personal conflict of interest* means a business or financial interest of an individual, his or her spouse, minor child or other person with whom the individual has a close personal relationship, which could adversely affect the individual's ability to perform under the contract or represent the interests of the RTC.

(n) *Related entity* means a contractor's management officials; any individual or entity that controls or is controlled by or is under common control with the contractor; and any other entity that it controlled by any of a contractor's management officials and that will perform work pursuant to the contract. For purposes of this part, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, or through one or more subsidiaries, owns or controls 25 percent or more of its equity, or otherwise controls its management or policies. A subfranchiser entity shall not be regarded as related to a contractor that is its master franchiser if the subfranchiser is independently owned and operated.

(o) *RTC* means, collectively, the Corporation, the Resolution Trust Corporation as receiver, and the Resolution Trust Corporation as conservator. The *Corporation* means the Resolution Trust Corporation acting as an instrumentality of the United States, and not as conservator or receiver for an insured depository institution.

(p) *RTC employee* means a director, officer, or employee of the RTC, including a special government employee, or an employee of any other government agency who is properly acting on behalf of the RTC.

(q) *Source selection information* means information related to a particular contract or contractor selection process, including any such contract or process using procedures other than competitive procedures, which, if not available to the public, and, if obtained by a contractor, would give an advantage in the contract selection process.

(r) *Special government employee* means any employee serving the RTC with or without compensation for a period not to exceed 130 days during any 365-day period on a full-time or intermittent basis.

(s) *Subcontractor* means any individual or entity with whom the contractor has entered or intends to enter into a contract to perform services within the scope of this part in order to fulfill the contractor's obligation under its contract with the RTC.

(t) *Substantial loss to the Federal deposit insurance funds* means a loss of more than $50,000 to the funds maintained by a Federal deposit insurance agency for the protection of depositors.

§ 1506.3 Contractors' Conflicts Committee and Outside Counsels' Conflicts Committee.

(a) *Designation.* The Board of Directors of the Corporation will designate officials of the FDIC or Corporation as members of a Contractors' Conflicts Committee, which will resolve issues of conflict of interest affecting independent contractors, other than law firms, which arise under these regulations.

The Outside Counsels' Conflicts Committee appointed by the General Counsel of the FDIC, or designee, will resolve issues of conflict of interest relating to law firms.

(b) *Authority.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may delegate their authority to resolve conflicts of interest issues which arise under these regulations.

(c) *Referrals to the Board of the Corporation.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may make referrals of and recommendations to the Board of Directors of the Corporation with respect to situations in which a Committee determines that a very significant conflict of interest exists but, nevertheless, the contractor should be engaged because the contractor has special expertise not otherwise available or the engagement is otherwise in the best interests of the government.

(d) *Decisions.* Decisions issued either by the Contractors' Conflicts Committee itself, or the Board of Directors of the Corporation itself on matters referred to it by the Contractors' Conflict Committee shall be in writing and shall include statements of the bases for the decisions. Such decisions shall be filed with the Executive Secretary of the Resolution Trust Corporation and shall be made available to the public upon request, with such redactions as may be required to protect the privacy interests of identifiable individuals or confidential business information.

§1506.4 Qualification of contractors.

(a) *Requirements.* The RTC shall not enter into a contract with any contractor unless the contractor and its related entities meet minimum standards of competence, integrity, fitness, and experience. In addition to presenting evidence (on a form or forms to be furnished by the RTC for that purpose) of competence and experience, the contractor shall provide a list of any instance during the preceding five years in which there was a default by the contractor or any of its related entities on any material obligation to an insured depository institution, and shall be required to certify to the following items:

(1) That neither the contractor nor any of its related entities has been convicted of a felony;

(2) That neither the contractor nor any of its related entities has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(3) That neither the contractor nor any of its related entities has demonstrated a pattern or practice of defalcation under §1506.2(k)(1);

(4) That neither the contractor nor any of its related entities has caused a substantial loss to Federal deposit insurance funds;

(5) That neither the contractor nor any of its related entities, nor any entity that during the past five years was a related entity of the contractor or those who control the contractor, has failed to satisfy an obligation to pay principal or interest at its full value owed to any Federal deposit insurance funds, FSLIC, or the RTC;

(6) That neither the contractor nor any of its related entities are currently in default on any obligation(s) to the FDIC, the FSLIC, or the RTC;

(7) That neither the contractor nor any of its related entities:

(i) Is currently a party to an administrative or judicial proceeding in which any of them is alleged to have engaged in fraudulent activity or has been charged with the commission of a felony or which seeks a remedy that would prevent or materially interfere with its ability to perform on the contract; or

(ii) Is subject, to their knowledge, to an administrative or criminal investigation relating to fraudulent activity or the commission of a felony;

(8) That, during the past five years, neither the contractor nor any of its related entities has been held liable for fraud, dishonesty, misrepresentation, or breach of fiduciary duty;

(9) That neither the contractor nor any of its related entities is currently excluded from Federal procurement or nonprocurement programs;

(10) That neither the contractor nor any of its related entities is subject to

an unsatisfied final judgment in favor of the FDIC, the FSLIC, or the RTC;

(11) That neither the contractor nor any of its related entities is a party to a lawsuit in which the FDIC, the FSLIC, or the RTC is seeking recovery in excess of $50,000 from the contractor or its related entities; and

(12) That the contractor will not employ any individual or subcontractor to perform work on the contract who:

(i) Has been convicted of any felony;

(ii) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(iii) Has demonstrated a pattern or practice of defalcation;

(iv) Has caused a substantial loss to Federal deposit insurance funds; or

(v) Is currently in default on any obligation to the FDIC, the FSLIC, an insured depository institution or the RTC.

Depending upon the nature of the contract, a contractor may be required to submit such additional certifications or information with respect to its activities and those of its related entities as the RTC deems appropriate.

(b) *Procedures.* (1) A contractor who cannot furnish any one or more of the certifications required by paragraph (a) of this section shall provide information which fully explains the circumstances giving rise to its inability to furnish the certification(s). The Contractors' Conflicts Committee, or the Outside Counsels' Conflicts Committee, will determine whether a contractor who cannot furnish any one or more of the certifications required by paragraph (a) of this section is deemed to meet minimum standards of fitness and integrity.

(2) A contractor may consolidate the responses of its related entities in furnishing the certifications required by paragraphs (a)(1) through (a)(11) of this section or in providing the information required by paragraph (b)(1) of this section. If a consolidated response is submitted, the contractor shall retain the information obtained from its related entities upon which it relied in preparing the certifications during the term of the contract and for a period of three years following the termination or expiration of the contract and shall make such information available for review by the RTC upon request.

(3) Before permitting any individual to perform work pursuant to the contract, the contractor shall obtain such information from such individual as will permit it to furnish the certification to comply with paragraph (a)(12) of this section. The contractor shall retain the information upon which it relied in preparing the certification during the term of the contract and for a period of three years following the termination or expiration of the contract and shall make such information available for review by the RTC upon request. Whenever a contractor receives information indicating that the certification or any information upon which it relied in preparing the certification is incorrect in any material respect, the contractor shall promptly notify the RTC and shall not permit the individual to whom the information relates to perform work pursuant to the contract.

(4) Before permitting any subcontractor to perform work pursuant to the contract, the contractor shall determine that the subcontractor has been determined to be qualified to provide services to the RTC.

(c) *Delay.* The RTC, in case of an emergency, to preserve assets of the RTC, may delay implementation of the certification or other requirements of this section.

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[55 FR 5350, 5356, Feb. 14, 1990; 55 FR 11720, Mar. 29, 1990]

§ 1506.5 Disqualification of contractors.

(a) *Mandatory ineligibility.* A contractor shall be deemed not to meet minimum standards of fitness and integrity, and therefore ineligible to contract with the RTC, if the contractor:

(1) Is an individual and has been convicted of a felony;

(2) Has been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any federal banking agency;

(3) Has demonstrated a pattern or practice of defalcation;

(4) Has caused a substantial loss to Federal deposit insurance funds; or

(5) Is currently in default on an obligation(s) to the FDIC, the FSLIC, or the RTC.

(b) *Discretionary disqualification.* The RTC may determine that a contractor, not subject to mandatory ineligibility pursuant to paragraph (a) of this section, nevertheless does not meet minimum standards of fitness and integrity to perform work for the RTC because the past activities of the contractor, or a related entity, warrant such determination.

(c) *Notification of disqualification.* The RTC shall notify the contractor in writing of its determination of mandatory or discretionary disqualification and the reason for such determination not later than 30 days after the determination is made. The RTC will institute procedures to provide appropriate review of discretionary disqualification decisions.

[55 FR 5350, 5356, Feb. 14, 1990; 55 FR 11720, Mar. 29, 1990]

§1506.6 Organizational conflicts of interest.

(a) *Information required about the contractor.* A contractor shall provide to the RTC with any bid, proposal, or offer in regard to the rendering of services to the RTC, or if no bid, proposal or offer is submitted, prior to entering into a contract with the RTC, sufficient information to permit the RTC to make a determination with regard to organizational conflicts of interest. The scope of the required information will depend on the nature of the contract and will be determined at the time of solicitation, or prior to entering into the contract. The following information shall be required about the contractor and its related entities:

(1) Relationships of the contractor and its related entities as controlling shareholder of any Federally insured depository institution or depository institution holding company;

(2) The names and addresses of contractor's related entities and a description of each related entity's business;

(3) The names of any contractor's related entities who have been or are directors or officers of an insured depository institution or depository institution holding company;

(4) A list of all competing property of the contractor and its related entities, if the contract relates to the valuation, disposition, or management of real estate;

(5) Information concerning any other business or financial interest of the contractor, or its related entities, which could adversely affect the contractors ability to perform under the contract or to represent the RTC;

(6) Any information required to comply with the requirements of §1506.4(b)(4); and

(7) Any other information about the contractor or its related entities which may be requested by the RTC.

(b) *Certification required.* At the time the contractor provides the information required by paragraph (a) of this section, the contractor shall also provide the following certification:

(1) That no organizational conflict exists as a result of the contractor's interests, relationships, or other RTC contracts;

(2) That the contractor has obtained a certification from each of its related entities that no organizational conflict exists as a result of the related entity's interests, relationships or other RTC contracts; and

(3) That, to the best of the contractor's knowledge, no organizational conflict exists as a result of its related entities' interests, relationships, or other RTC contracts; or, if organizational conflicts exist, provide information:

(i) Detailing those conflicts;

(ii) Requesting a waiver from the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee; and

(iii) Including with the request any information it deems appropriate to support the issuance of a waiver.

(c) *Determination required.* Prior to entering into any contract, the RTC must conclude that no organizational conflict of interest exists or that, if such conflict exists, it has been waived by the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee.

(d) *Retention of information.* Information obtained by the contractor to

comply with paragraph (a) of this section and to make the certifications required by paragraph (b) of this section shall be retained during the term of the contract and for a period of three years following termination or expiration of the contract and shall be made available for review by the RTC upon request, except to the extent that disclosure is prohibited by law.

(e) *Subsequent notification.* Within 10 days after learning of an organizational conflict of interest, the contractor shall notify the RTC of the conflict of interest and either describe the steps it has taken to eliminate the conflict or request a waiver from the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee.

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§ 1506.7 Personal conflicts of interest.

(a) *Contractor's responsibility.* A contractor shall ensure that all management officials and key employees have no personal conflicts of interest.

(b) *Information required.* A contractor shall obtain from its management officials and key employees the following information about the personal, business, and financial relationships of themselves, their spouses, and minor children;

(1) Loans from, employment by, or an ownership interest in the depository institution whose assets are the subject of the contract;

(2) Relationships within the last five years with any other insured depository institution, or depository institution holding company, as an officer, director, or controlling shareholder or employee;

(3) Financial, business, or close personal relationships with any person or entity, who to their knowledge, has an interest in the assets which are the subject of the contract, including information about negotiations or arrangements for future employment with such person or entity;

(4) A list and description of any instance during the preceding five years in which there was a default on any material obligation to an insured depository institution; and

(5) Any other information deemed necessary by the RTC.

(c) *Certification.* The contractor shall determine whether any management official or key employee has an interest which conflicts with responsibilities to the RTC. In making those determinations the contractor may rely on the information obtained pursuant to paragraph (b) of this section, unless the contractor has reason to believe that the information provided is false or inaccurate.

(d) *Disqualification.* The contractor shall disqualify persons with personal conflicts of interests from performing work pursuant to the contract. If appropriate, the contractor may seek a waiver from the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee, to allow employment of an individual with a personal conflict of interest on the contract work. In addition, the contractor shall certify to the RTC that all management officials and key employees for whom no waiver is sought, have no business, personal, or financial interest which conflicts with responsibilities to the RTC.

(e) *Contractors' Responsibilities.* The contractor shall establish a procedure to monitor for interests which conflict with the performance of contract responsibilities. The contractor shall require management officials and key employees to provide the required information prior to employment on the contract work, and to update information within 10 days of any change.

(f) *Subsequent notification.* Within 10 days after learning of a management official's or key employee's conflict of interest, the contractor shall notify the RTC of the conflict and either describe the steps it has taken to eliminate the conflict or request a waiver from the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee.

(g) *Retention of information.* Information obtained by a contractor from its management officials and key employees pursuant to paragraph (b) of this section shall be retained during the term of the contract and for a period of three years following termination or expiration of the contract and shall be made available for review by the RTC

upon request, except to the extent that disclosure is prohibited by law.

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[55 FR 5350, 5356, Feb. 14, 1990; 55 FR 11720, Mar. 29, 1990]

§1506.8 General standards for independent contractor activities.

(a) In connection with the performance of any contract and during the term of such contract, a contractor, its key employees, subcontractors, and its related entities, shall not:

(1) Act for the RTC in any matter in which either the contractor, its key employees, subcontractors, or a related entity, has a conflict of interest unless the Contractors' Conflicts Committee or the Outside Counsels' Committee has determined that such participation is appropriate;

(2) Accept or solicit for itself or others favors, gifts, or other items of monetary value from any individual or entity whom the contractor, its key employee, or subcontractor, knows is seeking official action from the RTC in connection with the contract or has interests which may be substantially affected by the performance or nonperformance of duties to the RTC;

(3) Improperly use or allow the improper use of RTC property, or property over which the contractor, its key employee, subcontractor, or related entity, has supervision or control by reason of the contract, for the personal benefit of any individual or entity other than the RTC; and

(4) Make any unauthorized promise or commitment on behalf of the RTC.

(b) Any individual who acts for or on behalf of the RTC pursuant to a contract or any other agreement shall be deemed a public official for purposes of 18 U.S.C. 201. That statute generally prohibits the direct or indirect acceptance by a public official of anything of value in return for being influenced in, or because of, an official act. Violators are subject to criminal penalties.

(c) Any individual or entity providing information or certification to the RTC is subject to 18 U.S.C. 1001.[1] Upon receipt of information indicating that any individual or entity has violated any provision of title 18 of the U.S. Code or other provision of criminal law, the RTC shall refer such information to the Department of Justice.

§1506.9 Limitations on concurrent and subsequent activities.

(a) *Avoiding undue advantage.* The Corporation has determined that contractors performing services for the RTC may have an undue advantage over competitors if they seek additional contracts with the RTC or with third parties which relate to work being performed or already performed for the RTC. To prevent such advantage, restrictions, dependent on the scope of contractual responsibilities, must be imposed on the concurrent and subsequent activities of contractors. Accordingly, the following restrictions shall apply unless waived pursuant to paragraph (b) of this section.

(1) A contractor engaged by the RTC to develop a plan of action concerning a specific insured institution cannot enter into any subsequent contract with the RTC to implement its recommendations or assist others in regard to such contract. This restriction does not bar the RTC, at its discretion, from determining to simultaneously engage a single contractor to both develop and implement a plan of action;

(2) A contractor engaged by the RTC to manage, lease, value, or establish a sales price for an asset or group of assets cannot enter into any subsequent contract with the RTC to purchase that asset or assets or assist someone other than the RTC or FDIC seeking to purchase that asset or those assets from the RTC; and

(3) A contractor cannot act for the RTC in the same particular matter in which it or a related entity has a business or financial interest.

(4) Additional limitations may be imposed on a contractor's concurrent or subsequent activities on a case-by-case basis in situations in which the RTC concludes that a contractor may gain an unfair competitive advantage or such concurrent or subsequent activity would raise a significant appearance of impropriety. These additional limitations, when imposed, will be disclosed

[1] Section 1001 of title 18 generally prohibits the making of any false or fraudulent statement to a federal officer.

to the contractor prior to entering into the contract.

(b) *Waivers.* The Contractors' Conflicts Committee and the Outside Counsels' Conflicts Committee may grant waivers from the limitations imposed by paragraph (a) of this section. Circumstances which may be sufficient to warrant the granting of a waiver are:

(1) Evidence of an established effective screening mechanism which would eliminate the likelihood of the contractor obtaining any undue advantage; or

(2) An open or competitive bidding procedure in which the contractor's work for the RTC would provide no competitive advantage.

§ 1506.10 Communications with RTC employees.

(a) *Prohibitions.* During the course of any contractor selection process by the RTC (including any contractor selection process using procedures other than competitive procedures), a competing contractor, its related entities, and employees, representatives, agents, or consultants of the competing contractor or its related entities shall not:

(1) Directly or indirectly make any offer or promise of future employment or business opportunity to, or engage directly or indirectly in any discussion of future employment or business opportunity with, any RTC employee with personal or direct responsibility for that procurement, and competing contractors who wish to discuss employment opportunities with an employee should inquire prior to engaging in such discussions whether the employee has personal or direct responsibility for the contractor selection process in which the contractor will be or is competing;[2]

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any RTC employee, except as permitted by rules of the Corporation;[3] or

(3) Solicit or obtain, directly or indirectly, from any RTC employee, prior to the award of the contract, any proprietary or source selection information regarding such contractor selection process.

(b) *Competing contractor.* For purposes of this section, ''competing contractor'' with respect to any contractor selection process (including a process using procedures other than competitive procedures) means any entity that is, or is reasonably likely to become, a competitor for or recipient of a contract or subcontract under such contractor selection process, and includes any other person acting on behalf of such entity.

(c) *Certification.* The RTC shall not award a contract or agree to a modification of a contract unless the officer or employee of the competing contractor responsible for the bid, offer, or proposal submits with it a written certification that:

(1) The officer or employee is aware of the prohibitions of paragraph (a) of this section and, to the best of that officer's or employee's knowledge and belief, he or she has no information concerning a violation or possible violation of paragraph (a) of this section; and

(2) Each officer, employee, agent, representative, and consultant of such competing contractor who participated personally and substantially in the preparation and submission of such bid, offer, proposal, or modification of such contract has certified to the responsible officer or employee that he or she:

(i) Is familiar with and will comply with the requirements of paragraph (a) of this section; and

(ii) Has no information of any violations or possible violations of paragraph (a) of this section and will report immediately to the officer or employee of the competing contractor responsible for the bid, offer, or proposal for any contract or modification of such

[2] Employees who have no personal or direct responsibility for the selection of a contractor may engage in employment discussions if they disqualify themselves from subsequent participation in any matter in which the contractor has an interest. *See* 18 U.S.C. 208(a) and 12 CFR 1605.15(b)

[3] Employees of the RTC are prohibited from soliciting or accepting anything of value from anyone having business with the RTC or the FDIC. *See* 12 CFR 1605.8.

contract any subsequently gained information concerning a violation or possible violation of paragraph (a) of this section.

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§ 1506.11 Confidentiality of information.

(a) *Nonpublic information defined.* Any information identified by the RTC as confidential or provided by the RTC to its attorneys in an attorney-client relationship, shall be deemed to be nonpublic until the RTC determines otherwise, in writing, or the information becomes part of the body of public information from a source other than the contractor.

(b) *Prohibitions.* The contractor and its related entities are prohibited from:

(1) Disclosing nonpublic information to anyone except as required to perform the contractor's obligations pursuant to the contract; and

(2) Using or allowing the use of any nonpublic information to further any private interest other than as contemplated by the contract.

(c) *Contractor's responsibility.* The contractor is required to take appropriate measures to ensure the confidentiality of nonpublic information and to prevent its inappropriate use. Such measures may include:

(1) Notifying all employees, related entities, subcontractors, and other persons to whom the contractor may need to disclose nonpublic information to perform its responsibilities under the contract of the requirement of confidentiality and limitations as to the use of nonpublic information; and

(2) Requiring each person to whom nonpublic information is provided to execute a certification that such person understands the limitations on disclosure and use and will maintain the confidentiality of the information and not use it other than as contemplated by the contract.

(d) The Corporation shall establish a recordkeeping system, which shall serve the purposes of the RTC with respect to the Privacy Act and the Freedom of Information Act. Materials designated by the RTC shall be eligible for protection under applicable law.

§ 1506.12 Source selection information.

(a) *Prohibition.* During the conduct of any contractor selection process by the RTC, no person who is given authorized or obtains unauthorized access to source selection information regarding the contractor selection process shall knowingly disclose such information, directly or indirectly, to any person other than a person authorized to receive such information by the Executive Director of the Resolution Trust Corporation or his or her designee, the General Counsel of the FDIC or his or her designee, or the RTC's contracting officer.

(b) *Permitted disclosures.* The Executive Director of the Resolution Trust Corporation or his or her designee, the General Counsel of the FDIC or his or her designee, or the RTC's contracting officer, in accordance with internal procedures developed by the Corporation, may authorize persons or classes of persons to obtain access to proprietary or source selection information when access is essential to the contractor selection process.

§ 1506.13 Use of consultants.

(a) *Contingent fees.* Contractors are prohibited from obtaining the services of a consultant or advisor to assist in obtaining a contract with the RTC pursuant to an agreement in which payment of the consultant or advisor would be contingent on the contractor obtaining the contract.

(b) *Disclosure.* When submitting any bid, offer, or proposal to the RTC, a contractor shall include information about payments, agreements to pay or arrangements for obtaining the services (other than engineering, technical, legal, and accounting services) of consultants or advisors to assist in obtaining the contract that were made by the contractor or a related entity.

§ 1506.14 Use of information.

The RTC may utilize any information from any source, including information obtained under this part, in the contractor selection process.

§ 1506.15 Rescission of contracts.

(a) *Circumstances permitting rescission.* The RTC may rescind any contract in

its entirety or with respect to a particular assignment if:

(1) There is a failure to disclose a material fact to the RTC;

(2) The contractor would be prohibited from contracting with the RTC by § 1506.5(a);

(3) Any person or related entity has been subject to a final enforcement action by any federal bank regulatory agency;

(4) There is any material change in the representations or certifications provided to the RTC under § 1506.4;

(5) There arises a personal or organizational conflict of interest not waived by the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee; or

(6) There is violation of any provision of these regulations.

(b) *Contractor liability*. In those situations in which the RTC determines to rescind a contract, the RTC may seek damages from the contractor or subcontractor whose actions were the basis for the rescission. Moreover, the RTC may pursue any rights and remedies provided by law whether or not it determines to rescind the contract.

(c) *Permanent bar*. Contractors whose contracts with the RTC have been rescinded pursuant to paragraph (a) of this section shall be deemed ineligible to enter into further contracts with the RTC. This ineligibility shall apply to related entities of the contractor, unless determined otherwise by the Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee. The Contractors' Conflicts Committee or the Outside Counsels' Conflicts Committee may determine if and when a contractor's or its related entity's ineligibility under this paragraph may be lifted, and what, if any, conditions may apply to the lifting of the ineligibility.

(d) *Written submission*. In the case of a rescission or bar that is based upon the ineligibility of the contractor under § 1506.5 (a)(1) through (a)(4) or, if upon another ground, the integrity of a contractor is called in question, the contractor may provide a written submission to the person or entity authorized to act for the RTC that has taken action to rescind a contract or bar a contractor. Such written submission shall receive prompt consideration, and the contractor shall be informed whether or not the RTC's decision or action will be reconsidered.

[55 FR 5350, 5356, Feb. 14, 1990; 55 FR 11720, Mar. 29, 1990]

§ 1506.16 Resolution Trust Corporation as conservator.

(a) Contractors of an association for which the Resolution Trust Corporation is conservator that are in effect as of the effective date of this regulation or the appointment of the conservator shall not be subject to the requirements of this part. Except as provided in paragraph (b) of this section, any such contract that may be terminated under its terms without penalty shall be terminated no later than the later of six months from the effective date of this regulation or the appointment of the conservator, and no such contract may be renewed, unless such contract is in or brought into compliance with this part.

(b) During the period that terminates on the later of the date six months from the effective date of this regulation or the date six months from the appointment of the Resolution Trust Corporation as conservator, the conservator may enter into or renew a contract that does not comply with the requirements of this part, or fail to terminate a terminable contract in accordance with paragraph (a) of this section, *provided* that the conservator determines with respect to any such contract that:

(1) It is necessary for the operations of the association; and

(2) No qualified contractor is available to contract for similar services on reasonable financial terms.

The conservator shall not authorize or permit the term of any such contract to extend beyond the close of that period during which the contractor will be necessary for the operations of the association and a qualified contract for similar services on reasonable financial terms is not available, as determined by the conservator.

(c) The Corporation shall establish a reporting system for the contracts described in this section that are not in compliance with the requirements of this part. Reports shall be forwarded to

the Board of Directors of the Corporation and the Oversight Board.

PART 1507—MINORITY AND WOMEN CONTRACTING OUTREACH PROGRAM

Sec.
1507.1 Purpose and scope.
1507.2 Definitions.
1507.3 Organizational responsibilities and staffing.
1507.4 Program components.
1507.5 Promotion.
1507.6 Solicitation and contract award guidelines.
1507.7 Oversight and monitoring.

AUTHORITY: 12 U.S.C. 1441a(a)(13); 12 U.S.C. 1833e.

SOURCE: 56 FR 43998, Sept. 6, 1991, unless otherwise noted.

§1507.1 Purpose and scope.

(a) Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73, sec. 1216(c), 103 Stat. 183, 529 (12 U.S.C. 1833e) this part establishes a minority outreach program to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in all contracts entered into by the Board.

(b) The outreach program established by this part applies only to the contracting activities of the Board. The Board and the Resolution Trust Corporation are separate and distinct entities with different legal characteristics, contracting needs, and programs to perform their respective missions. Accordingly, this program does not apply to the Resolution Trust Corporation.

§1507.2 Definitions.

For the purposes of this part:

(a) *Board* means the Oversight Board.

(b) *Minority* means any Black American, Native American, Hispanic American, or Asian American.

(c) *Minority/women owned business* or *M/WOB* or *M/WOB firm* means a firm that is at least fifty-one percent (51%) owned and controlled by one or more minority persons and/or women. If the firm is a publicly owned company, minority persons and/or women must own and control at least fifty-one percent (51%) of the firm's voting stock, and the management and daily business operations of the firm must be controlled by one or more minority persons or women.

(d) *Other firm* means a firm that is not a minority/women owned business.

§1507.3 Organizational responsibilities and staffing.

The President of the Board shall appoint an Outreach Director, who shall be a full time officer or employee of the Board performing other duties for the Board (including a contracting officer), to establish and implement the program.

§1507.4 Program components.

(a) *Identification*. The first component of the program is identifying M/WOB companies capable of providing goods and services to the Board. Because of the limited nature of the Board's contracting, this activity will be limited to the Washington, DC, area. The Board's staff shall:

(1) Obtain lists and directories of M/WOB firms maintained by other governmental agencies and instrumentalities;

(2) Participate in conventions, seminars, and professional meetings attended by M/WOB firms in order to explain Board contracting opportunities and obtain names of potential M/WOB contractors; and

(3) Publicize the Board's desire to obtain names of potential M/WOB firms for contracting in newspapers, trade journals, and other communications media specifically directed to M/WOB firms.

(b) *Solicitation*. An M/WOB firm identified by the staff as a potential contractor will be included in all Board education and information efforts concerning contracting opportunities and in a Board contracting database. The database will be used by the Board's staff to identify firms to be solicited for Board procurements.

(c) *Certification*. A firm tentatively identified as a minority/women owned business must be certified as meeting the defining standards in §1507.2(c). To preserve the integrity and foster the objectives of the program, the Board must be satisfied that the defining

standards of ownership and control are fulfilled by a tentatively identified firm. The Board's staff shall:

(1) Develop certification procedures, including procedures for certifying M/WOB firms that have previously certified their status to other government agencies and instrumentalities under criteria equivalent to the criteria under this program;

(2) If necessary, and subject to compliance with applicable requirements of law, request documentation from M/WOB firms for submission to the Board; and

(3) Review certification documents to assure that firms satisfy the definitions of § 1507.2(c).

§ 1507.5 Promotion.

(a) The promotion of the outreach program will include the following Board staff activities:

(1) Ongoing promotion of the outreach program within the minority/women owned business community; and

(2) Ongoing promotion of the outreach program to other firms to make such firms aware of the Board's outreach program.

(b) The ongoing promotion of this program within the M/WOB community is necessary to assure awareness of the outreach program by all potential M/WOB contractors, including newly formed M/WOB firms, and encourage their participation. The Board's contracting staff shall:

(1) Develop a promotional campaign to inform the M/WOB community of the Board's contracting needs and its commitment to involving M/WOB firms in Board contracting;

(2) Participate regularly in conferences attended by M/WOB firms to promote Oversight Board contracting opportunities;

(3) Cooperate with local agencies devoted to the promotion of minority/women owned businesses to promote Board contracting opportunities;

(4) Assist M/WOB firms in understanding and complying with the Board's contracting requirements;

(5) Assist M/WOB firms in understanding the Board's contracting needs; and

(6) Take measures to ensure that all Board staff are knowledgeable about and promote this program.

(c) Promotion of the Board outreach program to other firms interested in contracting with the Board is necessary to make such other firms aware that, under the outreach program, the Board will also ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the performance of all Board contracts, including contracts with other firms. All firms should be informed that Board contract provisions will require the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in contract performance. The Board's contracting staff shall:

(1) Develop a promotional campaign to inform M/WOB and other firms interested in contracting with the Board of the Board's policy to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the performance and subcontracting of all Board contracts;

(2) Assist other firms in understanding and complying with Board contracting requirements respecting the inclusion of minorities and women and entities owned by minorities and women, to the maximum extent possible, in contract performance and subcontracting;

(3) Encourage other firms to work jointly with M/WOB firms for the purpose of contracting with the Board; and

(4) Take measures to ensure that all Board staff are knowledgeable about this aspect of the program.

§ 1507.6 Solicitation and contract award guidelines.

Board contracting shall maximize the award of contracts to M/WOB firms and other firms that provide opportunities, to the maximum extent possible, for the inclusion of minorities and women and entities owned by minorities and women in the performance of Board contracts. The Board's staff shall formulate and implement guidelines directed to this objective which shall include:

(a) Consideration of the capabilities of M/WOB firms, including, but not limited to, determination of delivery schedules and the timing of offers that may facilitate offers from M/WOB firms;

(b) Inclusion of M/WOB firms in the Board's contracting database, which will identify eligible firms in each service category;

(c) Solicitation for a contract of as many bids or quotes from M/WOB firms in the database as is feasible under the circumstances; the contracting officer shall also solicit offers from other firms, but for any contract for which the contracting officer does not solicit bids from M/WOB firms, the contracting officer must document the reasons therefor;

(d) Placing notices of Board contracting in newspapers and communications media directed to
M/WOB firms, where feasible, when solicitations are publicly advertised; and

(e) Development of standard contract provisions to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in the performance and subcontracting of all Board contracts.

§1507.7 Oversight and monitoring.

(a) The Board recognizes that the success of this program involves commitment and leadership by senior management and by the staff. The Board pledges the continuing involvement of the Board's staff, at all levels, to make this program a success.

(b) The President of the Board shall establish an internal education program concerning the outreach program and the Board's commitment to the program.

(c) The President of the Board shall develop and implement such additional procedures as may facilitate reaching the goals of the outreach program.

(d) The Board's contracting staff shall report the results of the program to the Outreach Director on a periodic basis. Such reports shall include:

(1) The number of M/WOB firms that have participated in the contracting process, reporting separately minority owned or controlled firms and women owned or controlled firms;

(2) The number of contracts awarded to M/WOB firms, reporting separately awards to minority owned or controlled firms and to women owned or controlled firms; and

(3) Data concerning the inclusion of minorities and women, and entities owned by minorities and women, in the performance and subcontracting of contracts with M/WOB and other firms.

(e) The Outreach Director shall report to the President and the General Counsel of the Board on the implementation of the program. The President and the General Counsel of the Board, in turn, shall report to the members of the Board, annually or more frequently, on the implementation of the program.

SUBCHAPTER B—RESOLUTION FUNDING CORPORATION

PART 1510—RESOLUTION FUNDING CORPORATION OPERATIONS

Sec.
1510.1 Definitions.
1510.2 General authority.
1510.3 Authorization of establishment of investment policies and procedures.
1510.4 Authority to issue obligations.
1510.5 Federal Reserve banks to be depositories and fiscal agents.
1510.6 Budget and expenses.
1510.7 Billing of administrative expenses.
1510.8 Issuance expenses.
1510.9 Capitalization of Funding Corporation.
1510.10 Funding Corporation Principal Fund Reserve Account.
1510.11 Interest payments and interest reserve account.
1510.12 Request for funds for interest payments.
1510.13 Reports to Board.
1510.14 Reports to Congress.
1510.15 Review of books and records.

AUTHORITY: 12 U.S.C. 1441b.

SOURCE: 54 FR 41950, Oct. 13, 1989, unless otherwise noted.

§ 1510.1 Definitions.

General. Unless another definition is provided in this subchapter, the following definitions will apply to terms used in this subchapter.

Act means the Federal Home Loan Bank Act as amended (12 U.S.C. 1421 *et seq.*).

Administrative expenses means costs incurred as necessary to carry out the functions of the Funding Corporation, including custodian fees; but does not include any interest on, or redemption premium with respect to, any obligation of the Funding Corporation or any issuance costs.

Bank or banks means a Federal home loan bank or all the Federal home loan banks.

Board means the Oversight Board established in section 21A(a)(1) of the Act.

Custodian fees means any fee incurred by the Funding Corporation in connection with the transfer of any security to, or the maintenance of any security in, the Funding Corporation Principal Fund and any other expense incurred in connection with the establishment or maintenance of the Funding Corporation Principal Fund.

Deficient bank means a bank whose allocation under section 21B(e)(5) of the Act exceeds the amount applicable to such bank under section 21B(e)(3) of the Act as provided in section 21B(e)(6) of the Act.

Directorate means the Directorate of the Funding Corporation.

Excess amount means the amount by which a bank's required contribution pursuant to section 21B(e)(5) of the Act exceeds the maximum amount limitation applicable to such Bank pursuant to section 21B(e)(3) of the Act as provided in section 21B(e)(6) of the Act.

FDIC means the Federal Deposit Insurance Corporation established pursuant to section 1 of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811, *et seq.*

Financing Corporation means the Financing Corporation established pursuant to section 21(a) of the Act.

FSLIC Resolution Fund means the FSLIC Resolution Fund established pursuant to section 11A(a)(1) of the Federal Deposit Insurance Act, as amended 12 U.S.C. 1811, *et seq.*

Funding Corporation means the Resolution Funding Corporation established pursuant to section 21B(b) of the Act.

Funding Corporation Principal Fund means the separate account established under section 21B(g)(2) of the Act.

Issuance costs means issuance fees and commissions incurred by the Funding Corporation in connection with the issuance or servicing of any obligation of the Funding Corporation, and includes legal and accounting expenses, trustee and fiscal and paying agent charges, costs incurred in connection with preparing and printing offering materials, and advertising expenses, to the extent that any such cost or expense is incurred by the Funding Corporation in connection with the issuance of any obligation.

Net earnings means net earnings without reduction for chargeoffs or expenses incurred by a bank for the purchase of capital stock of the Financing Corporation or payments relating to

the Funding Corporation required by the Board under sections 21B (e) and (f) of the Act.

Remaining bank means a bank that is not allocated an amount under section 21B(e)(5) of the Act that exceeds its maximum amount limitation applicable to such bank under section 21B(e)(3) of the Act as provided in section 21B(e)(6) of the Act.

RTC means the Resolution Trust Corporation established pursuant to section 21A(b)(1)(A) of the Act.

§1510.2 General authority.

The Funding Corporation may exercise all authority granted to it by the Act and by its bylaws, whether or not specifically implemented by Board regulations, subject to the limitations and interpretations contained in this part and such regulations, orders and directions as the Board may prescribe.

§1510.3 Authorization of establishment of investment policies and procedures.

The Directorate may establish from time to time, with the approval of the Board, investment policies and procedures from time to time with respect to assets of the Funding Corporation which are not required to be invested in the capital certificates issued by the RTC and are not needed for current interest payments. These investment policies and procedures shall be consistent with the provisions of section 21B(g) of the Act.

§1510.4 Authority to issue obligations.

(a) Upon direction by the Board, the Directorate is authorized to cause the Funding Corporation to create and issue in one or more issues, one or more series of Funding Corporation bonds, notes, debentures or similar obligations in an aggregate principal amount up to the maximum permissible from time to time under section 21B(f)(1) of the Act and having such other terms and conditions as may be specified by the Directorate at the time or times of their issuance. Before any issue is offered for sale, the approval of the Department of Treasury shall be obtained pursuant to section 21B(h)(3) of the Act and 31 U.S.C. 9108.

(b) The net proceeds of each obligation issued by the Funding Corporation shall be used in accordance with the provisions of section 21B(f)(4) of the Act.

§1510.5 Federal Reserve bank to be depositaries and fiscal agents.

The Federal Reserve banks are to act as depositaries for or fiscal agents or custodians of the Funding Corporation. Subject to approval by the Oversight Board, the Directorate may also authorize establishment of demand deposit accounts at one or more financial institutions.

§1510.6 Budget and expenses.

(a) The Funding Corporation shall annually submit to the Directorate by November 15, a budget of its proposed expenditures, including administrative expenses for the following year.

(b) By December 1 of each year the Directorate shall submit an approved budget to the Board for final approval.

(c) After such budget has been approved by the Board, the Directorate shall transmit a copy of the budget to each bank president.

(d) In the event that the Funding Corporation projects or anticipates incurring expenses which exceed its approved budget, then an amended budget shall be submitted for approval by the Board in the same manner as the original budget.

§1510.7 Billing of administrative expenses.

(a) All administrative expenses of the Funding Corporation shall be paid by the banks.

(b) The amount each bank shall pay shall be determined in the manner provided in section 21B(c)(7)(B) of the Act.

(c) On a periodic basis but not less than semiannually, the Directorate shall determine, based upon a method approved by the Board and in accordance with section 21B(c)(7)(B) of the Act, each bank's pro rata share of the Funding Corporation's administrative expenses, as approved by the Board pursuant to §1510.6 of this part, and the Directorate shall bill each bank accordingly.

(d) Each bank shall remit its pro rata share of the administrative expenses

within ten (10) business days after receipt of the bill as provided by paragraph (c) of this section.

(e) The aggregate amount of administrative expenses for which the banks may be billed for any period, under a budget approved pursuant to § 1510.6 of this part, shall be adjusted as necessary to reflect any differences between such aggregate expenses projected for the period and those actually incurred in prior periods during the calendar year or to reflect any changes in the estimate of such aggregate expenses expected to be incurred in the coming period; however, in no event shall the aggregate of all bills issued to the banks exceed the budget, or the amended budget approved pursuant to § 1510.6 of this part.

§ 1510.8 Issuance expenses.

After receipt of the proceeds (less any discount, plus any premium) of any obligation issued by the Funding Corporation and prior to the purchase of capital certificates issued by the RTC, pursuant to section 21A of the Act, or refunding any previously issued obligation, pursuant to section 21B(f)(1) of the Act, the Funding Corporation shall deduct its issuance costs as budgeted in the budget approved by the Board.

§ 1510.9 Capitalization of Funding Corporation.

(a) *Funding projections.* (1) Not later than December 15 and June 15 of each year, the Directorate shall project how it will raise funds for the Funding Corporation (including the amount of funds needed from the banks) and pay interest on outstanding obligations of the Funding Corporation during the following year, specifically including the projected dollar amount to be raised and the projected settlement date(s). Not later than March 15, June 15, September 15, and December 15 of each year, the Directorate shall update its projections for the remainder of the year and confirm the dollar amount raised and the settlement dates and amount of interest paid in the preceding period.

(2) Not later than December 15 of each year, each bank shall submit to the Directorate a statement prepared by an officer at such bank containing such bank's earning projections for the following year. Not later than March 15, June 15, September 15 and December 15 of each year, such officer shall provide to the Directorate an updated report containing the previous quarter's earnings and updating the projections for the remainder of the year.

(3) Not later than each December 20 and June 20, the Directorate shall submit the funding projections to the Board for review. Not later than March 20, June 20, September 20 and December 20 of each year, the Directorate shall submit the updated projections to the Board for review.

(4) Not later than December 31 and June 30, the Directorate shall notify each bank of the amount of projected funds needed by the Directorate from the banks, the aggregate amount available from all the banks and each bank's projected pro rata share calculated in accordance with the provisions of section 21B of the Act. In no event shall the amount projected to be requested from the banks in any given calendar year exceed the three hundred million dollar ($300,000,000) maximum amount limitation set forth in sections 21B(e)(3)(B) and (C) of the Act, plus applicable amounts in section 21B(e)(3)(A) of the Act.

(5) Once the funding projections are approved by the Board, not later than December 31 and June 30 of each year, the Directorate shall provide the banks with projections of how it will raise funds for the Funding Corporation (including the amount of funds needed from the banks) and pay interest on outstanding obligations of the Funding Corporation during the following year, specifically including the projected dollar amount to be raised and the projected settlement date(s). Once the updated projections are approved by the Board, not later than March 31, June 30, September 30, and December 31 of each year, the Directorate shall provide the banks with a report updating its projections for the remainder of the year and confirming the dollar amount raised and the settlement dates and amount of interest paid in the preceding quarter.

(6) The projections required by this subsection shall not apply to amounts

required to capitalize the Funding Corporation prior to October 31, 1989.

(b) *Capital assessments of Federal home loan banks*—(1) *General.* (i) Upon direction by the Board, the Directorate shall require each bank to invest in nonvoting capital stock of the Funding Corporation so that the Funding Corporation may defease its obligations proposed to be issued pursuant to section 21B of the Act.

(ii) The banks collectively are directed to purchase, when and as instructed by the Directorate, in one or more issues, Funding Corporation nonvoting capital stock at a purchase price of $1.00 per share. Such stock shall be subject to such terms and conditions as are prescribed in the bylaws of the Funding Corporation, as the same may be amended from time to time. The amount of stock which each bank shall be required to purchase within each issue shall be:

(A) As to the amount of Funding Corporation stock purchased pursuant to section 21B(e)(3) of the Act and Financing Corporation stock purchased pursuant to section 21(d)(3) of the Act, in the aggregate, up to the initial one billion dollars ($1,000,000,000) in accordance with the ratios prescribed in section 21B(e)(4) of the Act.

(B) As to the amount of Funding Corporation stock purchased pursuant to section 21B(e)(3) of the Act and Financing Corporation stock purchased pursuant to section 21(d)(3) of the Act, in the aggregate, in excess of one billion dollars ($1,000,000,000), in accordance with the ratios prescribed in section 21B(e)(5) of the Act.

(iii) (A) If the amount any bank is required to invest in capital stock of the Funding Corporation exceeds its maximum investment limitation as determined pursuant to section 21B(e)(3) of the Act, the Directorate is authorized to require each remaining bank to invest in such additional capital stock of the Funding Corporation as provided for in section 21B(e)(6) of the Act.

(B) The amount of Funding Corporation stock required to be purchased by the banks shall be determined by deducting, pursuant to sections 21B(e)(3)(A) and (B) of the Act, the amount of Financing Corporation capital stock that the banks are required to purchase pursuant to section 21 of the Act. If the amount of Financing Corporation capital stock that the banks are required to purchase exceeds the annual three hundred million dollar ($300,000,000) limitation on purchases of Funding Corporation capital stock prescribed by sections 21B(e)(3)(B) and (C) of the Act, then the amount of Financing Corporation capital stock purchased in excess of such limitations shall be credited in the following year or years, as the case may be.

(iv) The shares shall have a par value of $1.00 per share and may be transferable at not less than par value only among the banks.

(v) Shares of Funding Corporation stock shall be issued in certificate or in book entry form. The Directorate shall establish procedures for appointing a registrar and a transfer agent.

(2) *Request for funds to capitalize the Funding Corporation.* (i) Approximately forty-five (45) days in advance of the date that funds are needed by the RTC, the Board shall advise the Directorate in writing of the amount of funds required and the due date.

(ii) The Directorate shall determine, according to a method approved by the Board, and in accordance with sections 21B(e)(4) and (5) of the Act, each bank's pro rata share of the amount needed to defease the obligations issued by the Funding Corporation in accordance with the provisions of section 21B of the Act. The Directorate shall notify each bank, in writing, at least 15 days in advance of the amount and due date of its pro rata share.

(iii) Each bank shall wire immediately available and finally collected funds to the Funding Corporation on the due date.

(iv) The time for the notice requirements shall not apply to requests for funds to capitalize the Funding Corporation made prior to October 31, 1989.

(c) *Industry assessments.* (1) The Funding Corporation is authorized to collect, with the approval of the Board of Directors of the FDIC, the assessments of SAIF members, pursuant to section 21B(e)(7)(A) of the Act, through a joint collection agent.

(2) The Funding Corporation, based upon projections of the amount needed

for the Funding Corporation Principal Fund and projections of the amounts available from the banks and from SAIF members' assessments, shall determine the amount of available bank funds pursuant to sections 21B(e) (3), (4), (5), and (6) of the Act and shall also determine the percentage of assessments on SAIF members needed, if any, to fund the Funding Corporation Principal Fund. In making the determination of the percentage of assessments needed from SAIF members, the Funding Corporation shall deduct the amount assessed, if any, by the Financing Corporation, pursuant to section 21B(e)(7)(A)(iii) of the Act and the limitations prescribed in section 21B(e)(7)(A) of the Act.

(3) Based upon the determination made under paragraph (c)(2) of this section, the Funding Corporation shall notify the FDIC, the Financing Corporation and the joint collection agent of the percentage of assessments from SAIF members it needs.

(d) *Receivership proceeds.* To the extent the amounts available pursuant to paragraphs (b) and (c) of this section are insufficient to fund the Funding Corporation Principal Fund, upon written request from the Directorate, the FDIC shall transfer funds to the Funding Corporation representing proceeds from liquidating dividends and payments made on claims received by the FSLIC Resolution Fund from receiverships. Such written request shall state the amount of funds needed and the date by which the funds are needed.

§ 1510.10 Funding Corporation Principal Fund Reserve Account.

(a) Upon becoming a deficient bank, a bank shall set aside in a reserve account the amounts required by section 21B(e)(6)(D) of the Act.

(b) The balance in the reserve account, which shall not exceed the amount of the total deficiency of the deficient bank, shall be available for the sole purpose of purchasing capital stock from the remaining banks that was purchased on behalf of the deficient bank.

(c) Each quarter, each deficient bank shall, prior to any payment of dividends, set aside in the reserve account from net earnings and any reimbursements received from other deficient banks an amount that shall be used to make the purchases of stock required under section 21B(e)(6)(C) of the Act. Pursuant to section 21A(e)(6)(D)(ii) of the Act, the Board shall not require that such amount exceed an amount equal to twenty percent (20%) of the net earnings of the deficient bank. Such limitation, however, shall not prohibit a deficient bank from reserving additional amounts, from reimbursements received from other deficient banks or from other sources, for the purpose of purchasing stock purchased on its behalf by remaining banks.

(d) Interest shall begin to accrue two (2) years after the investments under section 21B(e)(6)(A) of the Act are made on behalf of a deficient bank. Interest shall accrue on the deficient amount at a rate equal to the annual average cost of funds of all banks in the most recent year. Interest payments shall be made annually or quarterly in the manner described in paragraph (e) of this section. Such interest payments are not subject to the limitations on reserve accounts set forth in paragraph (c) of this section.

(e) Annually, not later than each January 31, all amounts set aside in the reserve account shall be remitted to the remaining banks in the amounts determined by the Directorate, in accordance with a method approved by the Board and in accordance with section 21B of the Act, and shall be remitted in the order that each investment was made on behalf of a deficient bank. Notwithstanding the first sentence of this paragraph (e), however, amounts set aside in the reserve account may be remitted quarterly, not later than the close of the month following each quarter, provided that the total amounts remitted with respect to any year shall be equal to what would have been remitted if a single annual payment were made as set forth in the first sentence of this paragraph (e).

(f) When appropriate, the Directorate shall direct a remaining bank to transfer the necessary shares of Funding Corporation stock to a deficient bank

upon receipt of funds disbursed from the deficient bank's reserve account.

[54 FR 41950, Oct. 13, 1989, as amended at 56 FR 57483, Nov. 12, 1991]

§ 1510.11 Interest payments and interest reserve account.

(a) The Directorate shall make a written request for funds to pay interest on obligations of the Funding Corporation from the following sources and in the following order:

(1) Earnings of the Funding Corporation not invested in the Funding Corporation Principal Fund.

(2) Proceeds from:

(i) The liquidating dividends and payments made on claims received by the RTC from receiverships to the extent such proceeds are determined by the Board to be in excess of funds presently necessary for resolution costs; and

(ii) Warrants and participations acquired by the RTC.

(3) To the extent funds from paragraphs (a)(1) and (2) of this section are not sufficient to cover the amount of interest payments due on obligations of the Funding Corporation, the banks shall pay the Funding Corporation each calendar year the aggregate amount as set forth in section 21B(f)(2)(C) of the Act.

(i) Each bank's individual share of such amount shall be as prescribed in sections 21B(f)(2)(C) (i) and (ii) of the Act. In instances where any bank(s) is (are) unable to fund interest payments in the amounts prescribed by section 21B(f)(2)(C)(ii) of the Act, out of retained earnings, the banks which have no such deficiency shall fund the amount of the aggregate deficiencies in accordance with the calculation set forth in sections 21B(f)(2)(C)(ii) (I) and (II) of the Act. Notwithstanding the preceding sentence, a bank's contributions for such interest payments on behalf of other bank(s) shall not be made to the extent it causes such bank to have deficit retained earnings.

(ii) Any bank on whose behalf interest payments were made under paragraph (a)(3)(i) of this section shall quarterly, prior to the payment of dividends, and after making the payments required by § 1510.10, excluding any interest payments made pursuant to § 1510.10(d), set aside in a reserve account separate from the reserve account required for reimbursements of capital contributions to the Funding Corporation, twenty percent (20%) of net earnings, or the amount of the deficiency if such deficiency is less than twenty percent (20%) of net earnings, which funds will be used to reimburse the banks that made payments on behalf of the bank(s) which was unable to fund its interest payments. Until such time as the deficiency amount has been repaid, the bank on whose behalf interest payments were made shall continue to set aside twenty percent (20%) of net earnings on a quarterly basis. Notwithstanding the foregoing, the amounts set aside in the reserve account pursuant to this paragraph (a)(3)(ii) and § 1510.10 of this part and pursuant to section 21(d) of the Act, in the aggregate, are not required to exceed twenty percent (20%) of net earnings.

(iii) Annually, not later than each January 31, all amounts set aside in the reserve account shall be remitted to the banks that made interest payments on behalf of another bank(s) in amounts determined by the Directorate. Banks which have made interest expense payments on behalf of other banks shall receive reimbursement in the order of the interest expense contributions made by such banks. In determining the amount due to each bank for interest payments made on behalf of another bank, the Directorate shall multiply the available funds in the reserve account by the percentage arrived at by dividing, for each separate deficiency—

(A) The cumulative amount of interest expenses paid by a bank on behalf of such bank; by

(B) The cumulative amount of interest expenses paid by all the banks on behalf of such bank for that deficiency.

(4) Any net proceeds from the sale of assets received from the RTC by the FSLIC Resolution Fund.

(b) To the extent that the funds from the sources identified in paragraph (a) of this section are insufficient, the Department of Treasury shall pay to the Funding Corporation such additional amounts as may be necessary to pay such interest, upon receipt of a certification from the Directorate, in a form satisfactory to the Department of the

Treasury. The certification at a minimum shall state the total amounts paid by the Funding Corporation from the sources listed in paragraph (a) of this section and the amounts necessary to make up the deficiency. Any amount paid by the Department of Treasury shall become a liability of the Funding Corporation to be repaid to the Department of Treasury upon the dissolution of the Funding Corporation, to the extent of its remaining assets.

§ 1510.12 Request for funds for interest payments.

(a) Prior to the date that funds are needed by the Funding Corporation for interest payments pursuant to section 21B(f)(2) of the Act, the Directorate shall determine each bank's pro rata share in accordance with the provisions of section 21B(f)(2) of the Act and a methodology approved by the Board. The Directorate shall notify each bank in writing at least three business days in advance of such date of the amount and due date of payment of its pro rata share.

(b) Each bank shall wire immediately available and finally collected funds to the Funding Corporation on the due date.

[54 FR 41950, Oct. 13, 1989, as amended at 56 FR 57483, Nov. 12, 1991]

§ 1510.13 Reports to Board.

Within ten (10) business days of the close of each calendar quarter commencing with the quarter ended September 30, 1989, the Directorate shall submit to the Board a report for the previous calendar quarter stating:

(a) The number of shares of the capital stock of the Funding Corporation which the banks were required to purchase and the dates of the purchases;

(b) The types and amounts of securities purchased pursuant to section 21B(g) of the Act;

(c) The amount of any obligations issued during the quarter pursuant to section 21B(f)(1) of the Act and the basic terms and conditions of such obligations; the amount of any obligations proposed to be issued during the current quarter and any anticipated significant differences in the basic terms and conditions of those obligations from previously issued obligations; and the aggregate amount of obligations issued as of the end of the last quarter and the maximum amount of obligations which the Funding Corporation was permitted to issue as of that date pursuant to section 21B(f)(1) of the Act;

(d) The amount of capital certificates purchased from the RTC during the last quarter and the aggregate amount purchased during all previous quarters and the percentage of all proceeds from obligations which the Funding Corporation had invested in the RTC as of the end of the last quarter;

(e) The aggregate amount assessed against the banks, the aggregate amount assessed against the SAIF members, and the aggregate amounts collected from the other specified sources;

(f) Any significant changes in the Funding Corporation's investment policies or any other developments that the Directorate deems significant which occurred during the last quarter or are expected to occur during the current quarter;

(g) The amount of funds distributed to remaining banks from the reserve accounts established pursuant to §§ 1510.10 and 1510.11 of this part; and

(h) Such other information as the Board may require.

§ 1510.14 Reports to Congress.

The Directorate and the Board shall prepare such reports as are necessary to enable the Board to comply with the reporting requirements set forth in section 21B(i) of the Act for submission of the reports to Congress and the President.

§ 1510.15 Review of books and records.

An office designated by the Board shall review the books and records of the Funding Corporation at least annually to determine whether the Funding Corporation is performing its functions in accordance with the provisions of section 21B of the Act and this part.

PART 1511—BOOK-ENTRY PROCEDURE

Sec.

1511.0 Applicability.
1511.1 Definition of terms.

1511.2 Law governing rights and obligations of the Funding Corporation and Federal Reserve Banks; rights of any Person against the Funding Corporation and the Federal Reserve Banks.
1511.3 Law governing other interests.
1511.4 Creation of Participant's Security Entitlement; security interests.
1511.5 Obligations of Funding Corporation; no adverse claims.
1511.6 Authority of Federal Reserve Banks.
1511.7 Liability of the Funding Corporation and Federal Reserve Banks.
1511.8 Notice of attachment.

AUTHORITY: 12 U.S.C. 1441b.

SOURCE: 61 FR 66875, Dec. 19, 1996, unless otherwise noted.

§1511.0 Applicability.

The regulations in this part apply to Book-entry Funding Corporation Securities.

§1511.1 Definitions of terms.

In this part, unless the context indicates otherwise:

Act means the Federal Home Loan Bank Act as amended (12 U.S.C. 1421 *et seq.*).

Adverse Claim means a claim that a claimant has a property interest in a Book-entry Funding Corporation Security and that it is a violation of the rights of the claimant for another Person to hold, transfer, or deal with the Book-entry Funding Corporation Security.

Book-entry Funding Corporation Security means a Funding Corporation Security in book-entry form that is issued or maintained in the Book-entry System. Solely for the purposes of this Part, it also means the separate interest and principal components of a Book-entry Funding Corporation Security if such security has been divided into such components as authorized by the Securities Documentation and the components are maintained separately on the books of one or more Federal Reserve Banks.

Book-entry System means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for the Funding Corporation, on which Book-entry Funding Corporation Securities are issued, recorded, transferred and maintained in book-entry form.

Entitlement Holder means a Person to whose account an interest in a Book-entry Funding Corporation Security is credited on the records of a Securities Intermediary.

Federal Reserve Bank or Reserve Bank means a Federal Reserve Bank or Branch.

Federal Reserve Bank Operating Circular means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains book-entry Securities accounts (including Book-entry Funding Corporation Securities) and transfers book-entry Securities (including Book-entry Funding Corporation Securities).

Funding Corporation means the Resolution Funding Corporation established pursuant to section 21B(b) of the Act.

Funding Corporation Security or *Security* means a Funding Corporation bond, note, debenture and similar obligations issued under section 21B of the Act.

Funds Account means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, book-entry securities transaction fees, or principal and interest payments.

Participant means a Person that maintains a Participant's Securities Account with a Federal Reserve Bank.

Participant's Securities Account means an account in the name of a Participant at a Federal Reserve Bank to which Book-entry Funding Corporation Securities held for a Participant are or may be credited.

Person means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, the Funding Corporation, or a Federal Reserve Bank.

Revised Article 8 means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text. Revised Article 8 of the Uniform Commercial Code is incorporated by reference in this Part pursuant to 5 U.S.C. 552(a) and 1 CFR Part 51. Article 8 was adopted by the American Law Institute

and the National Conference of Commissioners on Uniform State laws and approved by the American Bar Association on February 14, 1995. Copies of this publication are available from the Executive Office of the American Law Institute, 4025 Chestnut Street, Philadelphia, PA 19104, and the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, IL 60611. Copies are also available for public inspection at the Department of the Treasury Library, Room 5030, main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington DC 20220, and in the Office of the Federal Register, 800 North Capitol St., NW., Suite 700, Washington DC.

Securities Documentation means the applicable offering circular, supplement, or other documents establishing the terms of a Book-entry Funding Corporation Security.

Securities Intermediary means:

(1) A Person that is registered as a ''clearing agency'' under the Federal securities laws; a Federal Reserve Bank; any other Person that provides clearance or settlement services with respect to a Book-entry Funding Corporation Security that would require it to register as a clearing agency under the Federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a Federal or State governmental authority; or

(2) A Person (other than an individual, unless such individual is registered as a broker or dealer under the federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

Security Entitlement means the rights and property interest of an Entitlement Holder with respect to a Book-entry Funding Corporation Security.

State means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

Transfer message means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Funding Corporation Security, as set forth in Federal Reserve Bank Operating Circulars.

§ 1511.2 Law governing rights and obligations of the Funding Corporation and Federal Reserve Banks; rights of any Person against the Funding Corporation and the Federal Reserve Banks.

(a) Except as provided in paragraph (b) of this section, the following are governed solely by the regulations contained in this part 1511, the Securities Documentation and Federal Reserve Bank Operating Circulars:

(1) The rights and obligations of the Funding Corporation and the Federal Reserve Banks with respect to:

(i) A Book-entry Funding Corporation Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Funding Corporation Securities; and

(2) The rights of any Person, including a Participant, against the Funding Corporation and the Federal Reserve Banks with respect to:

(i) A Book-entry Funding Corporation Security or Security Entitlement; and

(ii) The operation of the Book-entry System as it applies to Funding Corporation Securities.

(b) A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1511.4(c)(1), is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the Participant's Securities Account is located. A security interest in a Security Entitlement that is in favor of a Federal Reserve Bank from a Person that is not a Participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 1511.4(c)(1), is governed by the law determined in the manner specified in § 1511.3.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted

Revised Article 8 (incorporated by reference, see §1511.1), then the law specified in paragraph (b) shall be the law of that State as though Revised Article 8 had been adopted by that State.

§1511.3 Law governing other interests.

(a) To the extent not inconsistent with the regulations in this part, the law (not including the conflict-of-law rules) of a Securities Intermediary's jurisdiction governs:

(1) The acquisition of a Security Entitlement from the Securities Intermediary;

(2) The rights and duties of the Securities Intermediary and Entitlement Holder arising out of a Security Entitlement;

(3) Whether the Securities Intermediary owes any duties to an adverse claimant to a Security Entitlement;

(4) Whether an Adverse Claim can be asserted against a Person who acquires a Security Entitlement from the Securities Intermediary or a Person who purchases a Security Entitlement or interest therein from an Entitlement Holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection and priority of a security interest in a Security Entitlement.

(b) The following rules determine a ''Securities Intermediary's jurisdiction'' for purposes of this section:

(1) If an agreement between the Securities Intermediary and its Entitlement Holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(2) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the Securities Intermediary's jurisdiction.

(3) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the Entitlement Holder's account.

(4) If an agreement between the Securities Intermediary and its Entitlement Holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the Entitlement Holder's account as provided in paragraph (b)(3) of this section, the Securities Intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the Securities Intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the Person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted Revised Article 8 (incorporated by reference, see §1511.1), then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though Revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the Securities Account is a clearing corporation, and the Participant's interest in a Book-entry Funding Corporation Security is a Security Entitlement.

§1511.4 Creation of Participant's Security Entitlement; security interests.

(a) A Participant's Security Entitlement is created when a Federal Reserve Bank indicates by book-entry that a Book-entry Funding Corporation Security has been credited to a Participant's Securities Account.

(b) A security interest in a Security Entitlement of a Participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute,

regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a Security Entitlement of a Participant is marked on the books of a Federal Reserve Bank, such Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United States directing the transfer of the security. For purposes of this paragraph, an ''authorized representative of the United States'' is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Funding Corporation and the Federal Reserve Banks have no obligation to agree to act on behalf of any Person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any Person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the Participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a Security Entitlement that is in favor of a Federal Reserve Bank, the Funding Corporation, or a Person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a Security Entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest in a Security Entitlement, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 1511.2(b) or § 1511.3. The perfection, effect of perfection or non-perfection and priority of a security interest are governed by such applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under such law, including with respect to the effect of perfection and priority of such security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule adopted by a clearing corporation for such purposes.

§ 1511.5 Obligations of Funding Corporation; no adverse claims.

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 1511.4(c)(1), for the purposes of this part 1511, the Funding Corporation and the Federal Reserve Banks shall treat the Participant to whose Securities Account an interest in a Book-entry Funding Corporation Security has been credited as the Person exclusively entitled to issue a Transfer Message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such Security, notwithstanding any information or notice to the contrary. Neither the Federal Reserve Banks nor the Funding Corporation is liable to a Person asserting or having an Adverse Claim to a Security Entitlement or to a Book-entry Funding Corporation Security in a Participant's Securities Account, including any such claim arising as a result of the transfer or disposition of a Book-entry Funding Corporation Security by a Federal Reserve Bank pursuant to a Transfer Message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Funding Corporation to make payments of interest and principal with respect to Book-entry Funding Corporation Securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest on Book-entry Funding Corporation Securities is either credited by a Federal Reserve Bank to a Funds Account maintained at such Bank or otherwise paid as directed by the Participant.

(2) Book-entry Funding Corporation Securities are redeemed in accordance

with their terms by a Federal Reserve Bank withdrawing the securities from the Participant's Securities Account in which they are maintained and by either crediting the amount of the redemption proceeds, including both principal and interest where applicable, to a Funds Account at such Bank or otherwise paying such principal and interest, as directed by the Participant. The principal of such Securities shall be paid using the proceeds of the noninterest bearing instruments maintained by the Funding Corporation for such purpose.

§1511.6 Authority of Federal Reserve Banks.

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Funding Corporation to perform functions with respect to the issuance of Book-entry Funding Corporation Securities offered and sold by the Funding Corporation, in accordance with the Securities Documentation, and Federal Reserve Bank Operating Circulars; to service and maintain Book-entry Funding Corporation Securities in accounts established for such purposes; to make payments of principal and interest with respect to such Book-entry Funding Corporation Securities as directed by the Funding Corporation; to effect transfer of Book-entry Funding Corporation Securities between Participants' Securities Accounts as directed by the Participants; and to perform such other duties as fiscal agent as may be requested by the Funding Corporation.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this Part, governing the details of its handling of Book-entry Funding Corporation Securities, Security Entitlements, and the operation of the Book-Entry System under this Part.

§1511.7 Liability of the Funding Corporation and Federal Reserve Banks.

The Funding Corporation and the Federal Reserve Banks may rely on the information provided in a Transfer Message, or other documentation, and are not required to verify the information. The Funding Corporation and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a Transfer Message, other documentation, or evidence submitted in support thereof.

§1511.8 Notice of attachment.

The interest of a debtor in a Security Entitlement may be reached by a creditor only by legal process upon the Securities Intermediary with whom the debtor's securities account is maintained, except where a Security Entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. The regulations in this part do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Part		*Page*
1700	Organization and functions	810
1750	Capital	812

SUBCHAPTER A—ADMINISTRATIVE PROVISIONS

PART 1700—ORGANIZATION AND FUNCTIONS

Sec.
1700.1 Office of Federal Housing Enterprise Oversight.
1700.2 Organization of the Office of Federal Housing Enterprise Oversight.
1700.3 Official seal.
1700.4 Official logo.

AUTHORITY: 5 U.S.C. 552; 12 U.S.C 4513, 4526.

SOURCE: 59 FR 62304, Dec. 5, 1994, unless otherwise noted.

§ 1700.1 Office of Federal Housing Enterprise Oversight.

(a) *Scope and authority*. The Office of Federal Housing Enterprise Oversight (referred to as OFHEO) is an independent office within the Department of Housing and Urban Development. OFHEO was created by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act), Title XIII of the Housing and Community Development Act of 1992 (Pub. L. 102–550, October 28, 1992; 106 Stat. 3943; 12 U.S.C. 4501, *et seq.*). OFHEO is responsible for the examination and financial regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). OFHEO is charged with ensuring that the Enterprises are adequately capitalized and operating in a safe and sound manner. OFHEO's costs and expenses are funded by annual assessments paid by the Enterprises. OFHEO is headed by a Director, who is appointed by the President and confirmed by the Senate for a five-year term.

(b) *Location*. OFHEO is located at 1700 G Street NW, 4th Floor, Washington, DC 20552. OFHEO's hours of business are 8:30 a.m.–5:00 p.m. (eastern standard time), Monday through Friday, excluding Federal holidays.

§ 1700.2 Organization of the Office of Federal Housing Enterprise Oversight.

(a) *Director*. The Director has exclusive authority under the Act with respect to the management of OFHEO, and is responsible for directing the development, implementation, and review of all OFHEO programs and functions. The Director appoints such personnel as may be necessary to carry out the functions of OFHEO. The Director may delegate to OFHEO officers and employees any of the functions, powers, and duties of the Director, as the Director considers appropriate. The Director may establish and fix the responsibilities of the offices within OFHEO as the Director deems necessary for the efficient functioning of OFHEO.

(b) *Deputy Director*. The Deputy Director of OFHEO is appointed by the Director in accordance with the Act. In the event of the absence, sickness, death or resignation of the Director, the Deputy Director serves as acting Director until the Director's return or the appointment of a successor. The Deputy Director performs such functions, powers and duties as the Director determines are necessary with respect to OFHEO's management and the development and implementation of OFHEO's programs and functions.

(c) *Offices and functions*. (1) *Office of Examination and Oversight*. The Office of Examination and Oversight plans and conducts examinations of the Enterprises, as required by the Act, prepares and issues reports of examination summarizing examination findings, and recommends corrective action as appropriate. This office is also responsible for developing appropriate off-site monitoring procedures.

(2) *Office of Research, Analysis and Capital Standards*. The Office of Research, Analysis and Capital Standards conducts research and ongoing financial and economic analyses on issues related to the activities of the Enterprises. This office is responsible for determining the ongoing capital classifications and establishing a risk-based capital test for the Enterprises as required by the Act, to ensure the adequacy of capital levels for the Enterprises.

(3) *Office of Finance and Administration*. The Office of Finance and Administration provides support services in

the financial and administrative management of OFHEO. This office is responsible for establishing and implementing policies and procedures in the following areas: human resources management, contracting and procurement, office automation, general office management, records management and security, travel and transportation, budget systems, accounting and related transactions systems, internal control systems, financial reporting systems, and other related services.

(4) *Office of General Counsel.* The Office of General Counsel advises the Director and OFHEO staff on all legal matters concerning the functions, activities, and operations of OFHEO and of the Enterprises under the Act. This office is responsible for interpreting the Act and other applicable law, including financial institutions regulatory issues, securities and corporate law principles, and administrative and general legal matters. This office also coordinates the preparation of legislation and agency regulations.

(5) *Office of Congressional and Public Affairs.* The Office of Congressional and Public Affairs is responsible for ensuring appropriate coordination and communication by OFHEO with the Congress, for monitoring relevant legislative developments and for analyzing and developing legislative proposals. This office is also responsible for directing and coordinating communication with the news media and the public. The Director for Public Affairs serves as spokesperson for OFHEO.

(6) *Office of the Chief Economist.* The Office of the Chief Economist is responsible for directing, planning and conducting research and economic and policy analyses to assess and project the short- and long-term impact of issues and trends in the housing and mortgage finance industries on OFHEO's financial regulatory and supervisory responsibilities.

(d) *Additional information.* Current information on the organization of the Office of Federal Housing Enterprise Oversight may be obtained from the Office of Congressional and Public Affairs, 1700 G Street NW, 4th Floor, Washington, DC 20552.

§1700.3 Official seal.

This section describes and displays the official seal of the Office of Federal Housing Enterprise Oversight.

(a) *Description.* A disc consisting of two concentric circles enclosing the words ''Office of Federal Housing Enterprise Oversight'' and the inaugural year, 1993. In the center of the disc is a stylized image of a structure consisting of a solid trapezoidal base topped by a solid triangular shape. Placed between the base and the top is the acronym for the organization, ''OFHEO.'' Encircling this stylized building shape are twelve five-pointed stars.

(b) *Display.*

§ 1700.4 Official logo.

This section describes and displays the logo adopted by the Office of Federal Housing Enterprise Oversight as the official symbol representing OFHEO. It is displayed on correspondence and selected documents.

(a) *Description.* A stylized image of a structure consisting of a solid trapezoid-shaped base that becomes increasingly wider at the bottom. At the top is a triangular shape which represents the roof of the structure. Placed between the triangle and the trapezoid are the letters ''OFHEO.'' These letters spell out the acronym of the Office of Federal Housing Enterprise Oversight and act as a visual link between the top and bottom of the structure.

(b) *Display.*

PART 1750—CAPITAL

Subpart A—Minimum Capital

Sec.
1750.1 General.
1750.2 Definitions.
1750.3 Procedure and timing.
1750.4 Minimum capital requirement computation.
1750.5 Notice of capital classification.

APPENDIX A TO SUBPART A OF PART 1750—MINIMUM CAPITAL COMPONENTS FOR INTEREST RATE AND FOREIGN EXCHANGE RATE CONTRACTS

Subpart B [Reserved]

AUTHORITY: 12 U.S.C. 4513, 4514, 4612, 4614, 4618.

SOURCE: 61 FR 35620, July 8, 1996, unless otherwise noted.

Subpart A—Minimum Capital

§ 1750.1 General.

The regulation contained in this subpart A sets forth the methodology for computing the minimum capital requirement for each Enterprise. The board of directors of each Enterprise is responsible for ensuring that the Enterprise maintains capital at a level that is sufficient to ensure the continued financial viability of the Enterprise and that equals or exceeds the minimum capital requirement contained in this subpart A.

§ 1750.2 Definitions.

For purposes of this subpart A, the following definitions shall apply:

Affiliate means any entity that controls, is controlled by, or is under common control with, an Enterprise, except as otherwise provided by the Director.

Commitment means any contractual, legally binding agreement that obligates an Enterprise to purchase or to securitize mortgages.

Core Capital—(1) Means the sum of (as determined in accordance with generally accepted accounting principles)—

(i) The par or stated value of outstanding common stock;

(ii) The par or stated value of outstanding perpetual, noncumulative preferred stock;

(iii) Paid-in capital; and

(iv) Retained earnings; and

(2) Does not include debt instruments or any amounts the Enterprise could be required to pay at the option of an investor to retire capital instruments.

Director means the Director of OFHEO.

Enterprise means the Federal National Mortgage Association and any affiliate thereof or the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Foreign exchange rate contracts—

(1) Means cross-currency interest rate swaps, forward foreign exchange contracts, currency options purchased (including currency options purchased over-the-counter), and any other instrument that gives rise to similar credit risks; and

(2) Does not mean foreign exchange rate contracts with an original maturity of 14 calendar days or less and foreign exchange rate contracts traded on exchanges that require daily payment of variation margins.

Interest rate contracts—

(1) Means single currency interest rate swaps, basis swaps, forward rate agreements, interest rate options purchased (including caps, collars, and floors purchased), over-the-counter options purchased, and any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted); and

(2) Does not mean such instruments traded on exchanges that require daily payment of variation margins.

Mortgage-backed security means a security, investment, or substantially equivalent instrument that represents an interest in a pool of loans secured by mortgages or deeds of trust where the principal or interest payments to the investor in the security or substantially equivalent instrument are guaranteed or effectively guaranteed by an Enterprise.

Multifamily credit enhancement means any guarantee, pledge, purchase arrangement, or other obligation or commitment provided or entered into by an Enterprise with respect to multifamily mortgages to provide credit enhancement, liquidity, interest rate support, and other guarantees and enhancements for revenue bonds issued by a state or local governmental unit (including a housing finance agency) or other bond issuer.

1992 Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, found at Title XIII of the Housing and Community Development Act of 1992, Pub. L. 102–550, 12 U.S.C. 4501 *et seq.*

Notional amount means the face value of the underlying financial instrument(s) on which an interest rate or foreign exchange rate contract is based.

Off-balance sheet obligation means a binding agreement, contract, or similar arrangement that requires or may require future payment(s) in money or kind by another party to an Enterprise, or that effectively guarantees all or part of such payment(s) to third parties (including commitments), where such agreement or contract is a source of credit risk that is not included on its balance sheet.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Other off-balance sheet obligations means all off-balance sheet obligations of an Enterprise that are not mortgage-backed securities or substantially equivalent instruments and that are not resecuritized mortgage-backed securities, such as real estate mortgage investment conduits or similar resecuritized instruments.

Perpetual, noncumulative preferred stock means preferred stock that—

(1) Does not have a maturity date;

(2) Provides the issuer the ability and the legal right to eliminate dividends and does not permit the accruing or payment of impaired dividends;

(3) Cannot be redeemed at the option of the holder; and

(4) Has no other provisions that will require future redemption of the issue, in whole or in part, or that will reset the dividend periodically based, in whole or in part, on the Enterprise's current credit standing, such as auction rate, money market, or remarketable preferred stock, or that may cause the dividend to increase to a level that could create an incentive for the issuer to redeem the instrument, such as exploding rate stock.

Qualifying collateral means cash on deposit; securities issued or guaranteed by the central governments of the OECD-based group of countries,[1] United States Government agencies, or United States Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks.

§ 1750.3 Procedure and timing.

(a) Each Enterprise shall file with the Director a minimum capital report each quarter or at such other times as the Director requires, in his or her sole discretion. The report shall contain the information that responds to all of the items required by OFHEO in written instructions to the Enterprise, including, but not limited to:

(1) Estimate of the minimum capital requirement;

(2) Estimate of core capital overage or shortfall relative to the estimated minimum capital requirement;

(3) Such other information as may be required by the Director.

(b) The quarterly minimum capital report shall be submitted not later than April 30, July 30, October 30, and January 30 of each year.

(c) Each minimum capital report shall be submitted in writing and in such other format as may be required by the Director.

(d) In the event an Enterprise makes an adjustment to its financial statements for a quarter or a date for which the information was requested, which would cause an adjustment to a minimum capital report, the Enterprise shall file with the Director an amended

[1] The OECD-based group of countries comprises full members of the Organization for Economic Cooperation and Development (OECD) regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow, but excludes any country that has rescheduled its external sovereign debt within the previous 5 years. A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's mobility or unwillingness to meet its external debt service obligations, but generally not include any renegotiation to allow the borrower to take advantage of a decline in interest rate or other change in market conditions. As of November 1995, the OECD countries included the following countries: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States; and Saudi Arabia has concluded special lending arrangements with the IMF associated with the IMF's General Arrangements to Borrow.

minimum capital report not later than 3 business days after the date of such adjustment.

(e) Each minimum capital report or any amended minimum capital report shall contain a declaration by an officer authorized by the board of directors of the Enterprise to make such a declaration, including, but not limited to a president, vice president, or treasurer, that the report is true and correct to the best of such officer's knowledge and belief.

§1750.4 Minimum capital requirement computation.

(a) The minimum capital requirement for each Enterprise shall be computed by adding the following amounts:

(1) 2.50 percent times the aggregate on-balance sheet assets of the Enterprise;

(2) 0.45 percent times the unpaid principal balance of mortgage-backed securities and substantially equivalent instruments that were issued or guaranteed by the Enterprise;

(3) 0.45 percent of 50 percent of the average dollar amount of commitments outstanding each quarter over the preceding four quarters;

(4) 0.45 percent of the outstanding principal amount of bonds with multifamily credit enhancements;

(5) 0.45 percent of the dollar amount of sold portfolio remittances pending;

(6)(i) 3.00 percent of the credit equivalent amount of interest rate contracts and foreign exchange rate contracts, except to the extent of the current market value of posted qualifying collateral, computed in accordance with appendix A to this subpart;

(ii) 1.50 percent of the market value of qualifying collateral posted to secure interest rate and foreign exchange rate contracts, not to exceed the credit equivalent amount of such contracts, computed in accordance with appendix A to this subpart; and

(7) 0.45 percent of the outstanding amount, credit equivalent amount, or other measure determined appropriate by the Director, of other off-balance sheet obligations (excluding commitments, multifamily credit enhancements, sold portfolio remittances pending, and interest rate contracts and foreign exchange rate contracts), except as adjusted by the Director to reflect differences in the credit risk of such obligations in relation to mortgage-backed securities.

(b) Any asset or financial obligation that is properly classifiable in more than one of the categories enumerated in paragraphs (a) (1) through (7) of this section shall be classified in the category that yields the highest minimum capital requirement.

(c) As used in this section, the term ''preceding four quarters'' means the last day of the quarter just ended (or the date for which the minimum capital report is filed, if different), and the three preceding quarter-ends.

§1750.5 Notice of capital classification.

(a) Pursuant to section 1364 of the 1992 Act (12 U.S.C. 4614), OFHEO is required to determine the capital classification of each Enterprise on a not less than quarterly basis.

(b) The determination of the capital classification shall be made following a notice to, and opportunity to respond by, the Enterprise.

(1) Not later than 60 calendar days after the date for which the minimum capital report is filed, OFHEO will provide each Enterprise with a notice of proposed capital classification in accordance with section 1368 of the 1992 Act (12 U.S.C. 4618). The notice shall contain the following information—

(i) The proposed capital classification;

(ii) The proposed minimum capital requirement; and

(iii) The summary computation of the proposed minimum capital requirement.

(2) Each Enterprise shall have a period of 30 calendar days following receipt of a notice of proposed capital classification to submit a response regarding the proposed capital classification. The response period may be extended for up to 30 additional calendar days at the sole discretion of the Director. The Director may shorten the response period with the consent of the Enterprise, or without such consent if the Director determines that the condition of the Enterprise requires a shorter period.

(3) The Director shall take into consideration any response to the notice of

proposed capital classification received from the Enterprise and shall issue a notice of final capital classification for each Enterprise not later than 30 calendar days following the end of the response period in accordance with section 1368 of the 1992 Act (12 U.S.C. 4618).

APPENDIX A TO SUBPART A OF PART 1750—MINIMUM CAPITAL COMPONENTS FOR INTEREST RATE AND FOREIGN EXCHANGE RATE CONTRACTS

1. The minimum capital components for interest rate and foreign exchange rate contracts are computed on the basis of the credit equivalent amounts of such contracts. Credit equivalent amounts are computed for each of the following off-balance sheet interest rate and foreign exchange rate contracts:

a. Interest Rate Contracts

i. Single currency interest rate swaps.
ii. Basis swaps.
iii. Forward rate agreements.
iv. Interest rate options purchased (including caps, collars, and floors purchased).
v. Any other instrument that gives rise to similar credit risks (including when-issued securities and forward deposits accepted).

b. Foreign Exchange Rate Contracts

i. Cross-currency interest rate swaps.
ii. Forward foreign exchange rate contracts.
iii. Currency options purchased.
iv. Any other instrument that gives rise to similar credit risks.

2. Foreign exchange rate contracts with an original maturity of 14 calendar days or less and foreign exchange rate contracts traded on exchanges that require daily payment of variation margins are excluded from the minimum capital requirement computation. Over-the-counter options purchased, however, are included and treated in the same way as the other interest rate and foreign exchange rate contracts.

3. Calculation of Credit Equivalent Amounts

a. The minimum capital components for interest rate and foreign exchange rate contracts are computed on the basis of the credit equivalent amounts of such contracts. The credit equivalent amount of an off-balance sheet interest rate and foreign exchange rate contract that is not subject to a qualifying bilateral netting contract in accordance with this appendix A is equal to the sum of the current exposure (sometimes referred to as the replacement cost) of the contract and an estimate of the potential future credit exposure over the remaining life of the contract.

b. The current exposure is determined by the mark-to-market value of the contract. If the mark-to-market value is positive, then the current exposure is the mark-to-market value. If the mark-to-market value is zero or negative, then the current exposure is zero. Mark-to-market values are measured in United States dollars, regardless of the currency or currencies specified in the contract, and should reflect changes in the relevant rates, as well as counterparty credit quality.

c. The potential future credit exposure of a contract, including a contract with a negative mark-to-market value, is estimated by multiplying the notional principal amount of the contract by a credit conversion factor. The effective rather than the apparent or stated notional amount must be used in this calculation. The credit conversion factors are:

Remaining maturity	Interest rate contracts (percent)	Foreign exchange rate contracts (percent)
1 year or less	0.0	1.0
Over 1 year	0.5	5.0

d. Because foreign exchange rate contracts involve an exchange of principal upon maturity, and foreign exchange rates are generally more volatile than interest rates, higher conversion factors have been established for foreign exchange rate contracts than for interest rate contracts.

e. No potential future credit exposure is calculated for single currency interest rate swaps in which payments are made based upon two floating rate indexes, so-called floating/floating or basis swaps. The credit exposure on these contracts is evaluated solely on the basis of their mark-to-market values.

4. Avoidance of Double Counting

In certain cases, credit exposures arising from the interest rate and foreign exchange instruments covered by this appendix A may already be reflected, in part, on the balance sheet. To avoid double counting such exposures in the assessment of capital adequacy, counterparty credit exposures arising from the types of instruments covered by this appendix A may need to be excluded from balance sheet assets in calculating the minimum capital requirement.

5. Collateral

a. The sufficiency of collateral for off-balance sheet items is determined by the market value of the collateral in relation to the credit equivalent amount. Collateral held against a netting contract is not recognized for minimum capital standard purposes unless it is legally available to support the single legal obligation created by the netting contract. Excess collateral held against one contract or a group of contracts for which a

recognized netting agreement exists may not be considered.

b. The only forms of collateral that are formally recognized by the minimum capital standard framework are cash on deposit; securities issued or guaranteed by the central governments of the OECD-based group of countries, United States Government agencies, or United States Government-sponsored agencies; and securities issued by multilateral lending institutions or regional development banks.

6. Netting

a. For purposes of this appendix A, netting refers to the offsetting of positive and negative mark-to-market values in the determination of a current exposure to be used in the calculation of a credit equivalent amount. Any legally enforceable form of bilateral netting (that is, netting with a single counterparty) of interest rate and foreign exchange rate contracts is recognized for purposes of calculating the credit equivalent amount provided that the following criteria are met:

i. Netting must be accomplished under a written netting contract that creates a single legal obligation, covering all included individual contracts, with the effect that the Enterprise would have a claim to receive, or obligation to pay, only the net amount of the sum of the positive and negative mark-to-market values on included individual contracts in the event that a counterparty, or a counterparty to whom the contract has been validly assigned, fails to perform due to default, insolvency, liquidation, or similar circumstances.

ii. The Enterprise must obtain a written and reasoned legal opinion(s) representing that in the event of a legal challenge—including one resulting from default, insolvency, liquidation, or similar circumstances—the relevant court and administrative authorities would find the Enterprise's exposure to be such a net amount under—

A. The law of the jurisdiction in which the counterparty is chartered or the equivalent location in the case of noncorporate entities, and if a branch of the counterparty is involved, then also under the law of the jurisdiction in which the branch is located;

B. The law that governs the individual contracts covered by the netting contract; and

C. The law that governs the netting contract.

iii. The Enterprise must establish and maintain procedures to ensure that the legal characteristics of netting contracts are kept under review in the event of possible changes in relevant law.

iv. The Enterprise must maintain in its files documentation adequate to support the netting of rate contracts, including a copy of the bilateral netting contract and necessary legal opinions.

b. A contract containing a walkaway clause is not eligible for netting for purposes of calculating the credit equivalent amount.[1]

c. By netting individual contracts for the purpose of calculating its credit equivalent amount, the Enterprise represents that it has met the requirements of this appendix A and all the appropriate documents are in the Enterprise's files and available for inspection by OFHEO. OFHEO may determine that an Enterprise's files are inadequate or that a netting contract, or any of its underlying individual contracts, may not be legally enforceable under any one of the bodies of law described in this appendix A. If such a determination is made, the netting contract may be disqualified from recognition for minimum capital standard purposes or underlying individual contracts may be treated as though they are not subject to the netting contract.

d. The credit equivalent amount of interest rate and foreign exchange rate contracts that are subject to a qualifying bilateral netting contract is calculated by adding the current exposure of the netting contract and the sum of the estimates of the potential future credit exposures on all individual contracts subject to the netting contract, estimated in accordance with paragraph 3 of this appendix A. Offsetting contracts in the same currency maturing on the same date will have lower potential future exposure as well as lower current exposure. Therefore, for purposes of calculating potential future credit exposure to a netting counterparty for foreign exchange rate contracts and other similar contracts in which notional principal is equivalent to cash flows, total notional principal is defined as the net receipts falling due on each value date in each currency.

e. The current exposure of the netting contract is determined by summing all positive and negative mark-to-market values of the individual contracts included in the netting contract. If the net sum of the mark-to-market values is positive, then the current exposure of the netting contract is equal to that sum. If the net sum of the mark-to-market values is zero or negative, then the current exposure of the netting contract is zero. OFHEO may determine that a netting contract qualifies for minimum capital standard

[1] A walkaway clause is a provision in a netting contract that permits a non-defaulting counterparty to make lower payments than it would make otherwise under the contract, or no payment at all, to a defaulter or to the estate of a defaulter, even if the defaulter or the estate of the defaulter is a net creditor under the contract.

netting treatment even though certain individual contracts may not qualify. In such instances, the nonqualifying contracts should be treated as individual contracts that are not subject to the netting contract.

f. In the event a netting contract covers contracts that are normally excluded from the minimum capital requirement computation—for example, foreign exchange rate contracts with an original maturity of 14 calendar days or less, or instruments traded on exchanges that require daily payment of variation margin—an Enterprise may elect consistently either to include or exclude all mark-to-market values of such contracts when determining net current exposure.

Subpart B [Reserved]

CHAPTER XVIII—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND, DEPARTMENT OF THE TREASURY

Part		*Page*
1805	Community Development Financial Institutions Program	820
1806	Bank Enterprise Award Program	840
1815	Environmental quality	848

PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

Subpart A—General Provisions

Sec.
1805.100 Purpose.
1805.101 Summary.
1805.102 Relationship to other Fund programs.
1805.103 Awardee not instrumentality.
1805.104 Definitions.
1805.105 Waiver authority.
1805.106 OMB control number.

Subpart B—Eligibility

1805.200 Applicant eligibility.
1805.201 Certification as a Community Development Financial Institution.

Subpart C—Target Markets

1805.300 Target markets—general.
1805.301 Investment Area.
1805.302 Targeted Population.

Subpart D—Use of Funds/Eligible Activities

1805.400 Purposes of financial assistance.
1805.401 Eligible activities.
1805.402 Restrictions on use of assistance.
1805.403 Technical assistance.

Subpart E—Investment Instruments

1805.500 Investment instruments—general.
1805.501 Forms of investment instruments.
1805.502 Assistance limits.
1805.503 Authority to sell.

Subpart F—Matching Funds Requirements

1805.600 Matching funds—general.
1805.601 Comparability of form and value.
1805.602 Severe constraints waiver.
1805.603 Time frame for raising match.
1805.604 Retained earnings.

Subpart G—Applications for Assistance

1805.700 Notice of funds availability.
1805.701 Application contents.

Subpart H—Rating and Selection of Applications

1805.800 Rating and selection—general.
1805.801 Geographic diversity.
1805.802 Tiered review process.

Subpart I—Terms and Conditions of Assistance

1805.900 Safety and soundness.
1805.901 Assistance Agreement; sanctions.
1805.902 Disbursement of funds.
1805.903 Data collection and reporting.
1805.904 Information.
1805.905 Compliance with government requirements.
1805.906 Conflict of interest requirements.
1805.907 Lobbying restrictions.
1805.908 Criminal provisions.
1805.909 Fund deemed not to control.
1805.910 Limitation on liability.
1805.911 Fraud, waste and abuse.

AUTHORITY: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

SOURCE: 60 FR 54115, Oct. 19, 1995, unless otherwise noted.

Subpart A—General Provisions

§ 1805.100 Purpose.

The purpose of the Community Development Financial Institutions Program is to facilitate the creation of a national network of financial institutions that is dedicated to community development.

§ 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical assistance through a competitive application process. Each financial assistance Awardee will enter into an Assistance Agreement which will require it to achieve financial, organizational development, and community impact goals.

§ 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.* (1) No Insured CDFI may receive assistance from the Bank Enterprise Award Program (part 1806 of this chapter) if it has:

(i) An application for assistance pending under the Community Development Financial Institutions Program;

(ii) Received assistance under the Community Development Financial Institutions Program within the preceding 12-month period; or

(iii) Received assistance under the Community Development Financial Institutions Program for the same activities as proposed under an application for the Bank Enterprise Award Program.

(2) An Equity Investment (as defined in part 1806 of this chapter) in, or a loan to, a CDFI made by a Bank Enterprise Award Program Awardee may be used to meet the matching fund requirements described in subpart F of this part. Receipt of such Equity Investment or loan does not disqualify a CDFI from receiving assistance under this part.

(b) *Liquidity enhancement program.* No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive assistance under the Community Development Financial Institutions Program.

§ 1805.103 Awardee not instrumentality.

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1805.104 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*);

(b) *Affiliate* means any company or entity that controls, is controlled by, or is under common control with another company;

(c) *Applicant* means any entity submitting an application for assistance under this part;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), and also includes the National Credit Union Administration with respect to Insured Credit Unions;

(e) *Assistance Agreement* means a contract between the Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(f) *Awardee* means an Applicant selected by the Fund to receive assistance pursuant to this part;

(g) *Community Development Financial Institution* (or *CDFI*) means an entity currently meeting the eligibility requirements under § 1805.200;

(h) *Community Development Financial Institutions Program* means the program authorized by sections 105–108 of the Act (12 U.S.C. 4704–4707) and implemented under this part;

(i) *Community Facility* means a facility where health care, child care, educational, cultural, or social services are provided;

(j) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(k) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(l) *Community Partner* means a person (other than an individual) that provides loans, equity investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(m) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide loans, equity investments, or Development Services to an Investment Area(s) or a Targeted Population(s);

(n) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described under § 1805.701(d);

(o) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*);

(p) *Development Investment* means an equity investment made by an Applicant which, in the judgment of the Fund, directly supports or enhances activities that serve an Investment

Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate;

(q) *Development Services* means activities that promote community development and are integral to lending and Development Investment activities. Such services shall prepare or assist potential borrowers or investees to utilize the lending or investment products of the Awardee, its Affiliates, or its Community Partners. Such services include:

(1) Financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or

(2) Technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(r) *Financial Services* means checking, check-cashing, money orders, certified checks, automated teller machines, deposit-taking, and safe deposit box services;

(s) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) (12 U.S.C. 4703(a)) of the Act;

(t) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(u) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

(v) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

(w) *Insured CDFI* means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

(x) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

(y) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(z) *Investment Area* means a geographic area meeting the requirements of § 1805.301;

(aa) *Low-Income* means an income (as reported by the Bureau of the Census in the 1990 decennial census), adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and

(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(bb) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(cc) *Non-Regulated CDFI* means any entity meeting the eligibility requirements of § 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, or Insured Credit Union;

(dd) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;

(ee) *Subsidiary* means any company which is owned or controlled directly or indirectly by another company and

includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in §1805.200(h)(4); and

(ff) *Targeted Population* means individuals or an identifiable group meeting the requirements of §1805.302.

[60 FR 54115, Oct. 19, 1995, as amended at 61 FR 1701, Jan. 23, 1996]

§1805.105 Waiver authority.

The Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notice of granted waivers in the FEDERAL REGISTER.

§1805.106 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0153 (expires September 30, 1998).

Subpart B—Eligibility

§1805.200 Applicant eligibility.

(a) *General requirements.* (1) An entity that meets the requirements described in paragraphs (b) through (h) of this section will be considered a CDFI and will be eligible to apply for assistance under this part. Criteria to establish compliance with such requirements are set forth in §1805.701(b).

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund determines that such entity's Comprehensive Business Plan provides a realistic course of action to ensure that it will meet the requirements described in this section within three years of entering into an Assistance Agreement with the Fund.

(3) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and as set forth in §1805.701(b).

(b) *Primary mission.* A CDFI shall have a primary mission of promoting community development.

(c) *Target market.* A CDFI shall serve an Investment Area(s) or Targeted Population(s).

(d) *Financing entity.* A CDFI shall be an entity whose predominant business activity is the provision of loans or Development Investments.

(e) *Development Services.* A CDFI, directly or through an Affiliate, shall provide Development Services in conjunction with loans or Development Investments.

(f) *Accountability.* A CDFI must maintain accountability to its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise.

(g) *Non-government entity.* A CDFI shall not be an agency or instrumentality of the government of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided that it is not controlled by such entities and maintains independent decision-making power over its activities.

(h) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in paragraphs (a) through (g) of this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in paragraphs (a) through (g) of this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in paragraphs (a) through (g) of this section.

(4) For the purposes of paragraphs (h)(1), (2) and (3) of this section, an Applicant will not be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls less than 25 percent of any class of its voting shares, and which does not, in any manner, otherwise control the election of a majority of directors of the Applicant.

§ 1805.201 Certification as a Community Development Financial Institution.

An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements (as described under § 1805.200) regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information described under § 1805.701(b). Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such a certification shall not constitute an opinion by the Fund as to the financial viability of the entity that obtains such certification. The Fund, at its sole discretion, retains the right to revoke a certification for good cause.

[60 FR 54115, Oct. 19, 1995, as amended at 61 FR 1701, Jan. 23, 1996]

Subpart C—Target Markets

§ 1805.300 Target markets—general.

An Applicant shall designate one or more Investment Area(s) or Targeted Population(s) that it proposes to serve. An Applicant may also choose to serve both an Investment Area(s) and a Targeted Population(s). An Investment Area shall meet specific geographic and other criteria discussed in § 1805.301. A Targeted Population shall consist of Low-Income persons or those who otherwise lack adequate access to loans or equity investments.

§ 1805.301 Investment Area.

(a) *General.* A geographic area will be considered eligible for designation as an Investment Area if it:

(1)(i) Meets at least one of the objective criteria of economic distress as set forth in paragraph (d) of this section and has significant unmet needs for loans or equity investments as described in paragraph (e) of this section; or

(ii) Encompasses or is located in an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391); and

(2) Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(b) *Geographic units.* An Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). An Applicant can designate one or more Investment Areas as part of a single application.

(c) *Designation.* An Applicant can designate an Investment Area by selecting:

(1) A geographic unit(s) which individually meets one of the criteria in paragraph (d) of this section; or

(2) A group of contiguous geographic units which together meet one of the criteria in paragraph (d) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(d) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the 1990 (or subsequent) decennial Census and published by the U.S. Bureau of the Census):

(1) The percentage of the population living in poverty is at least 20 percent;

(2) In the case of an Investment Area located:

(i) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(ii) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(3) The unemployment rate is at least 1.5 times the national average;

(4) The percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent; or

(5) In areas located outside of a Metropolitan Area, the county population loss between 1980 and 1990 is at least 10 percent.

(e) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or equity investments if studies or other analyses provided by the Applicant adequately demonstrate a pattern of unmet needs for loans and equity investments within such area(s).

§1805.302 Targeted Population.

(a) A Targeted Population shall mean individuals, or an identifiable group of individuals, who: Are Low-Income persons; or lack adequate access to loans or equity investments. An Applicant can serve the members of a Targeted Population directly or through borrowers or investees that directly serve or provide significant benefits to such members.

(b) The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands).

(c) An Applicant shall provide its products and services in a manner that is consistent with the Equal Credit Opportunity Act (15 U.S.C. 1691), to the extent that the Applicant is subject to the requirements of such Act.

Subpart D—Use of Funds/Eligible Activities

§1805.400 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart E of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to make loans and Development Investments and provide Financial Services.

§1805.401 Eligible activities.

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted Population(s) by developing or supporting:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Enhance the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate home ownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of Consumer Loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

§ 1805.402 Restrictions on use of assistance.

(a) An Awardee shall only use assistance provided by the Fund and its corresponding matching funds for the eligible activities approved by the Fund and described in the Assistance Agreement.

(b) An Awardee shall consult with, and obtain the approval of, the Fund for any significant changes in its activities from those approved by the Fund and described in the Assistance Agreement.

(c) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.

(d) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

§ 1805.403 Technical assistance.

(a) *General.* The Fund may provide technical assistance to build the capacity of a CDFI. Such technical assistance may include training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community impact; or other activities deemed appropriate by the Fund. The Fund, in its sole discretion, may provide technical assistance in amounts, or under terms and conditions that are different from those requested by an Applicant. The Fund may not provide any technical assistance to an Applicant for the purpose of assisting in the preparation of an application. The Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

(b) The Fund may provide technical assistance regardless of whether or not the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.502.

(c) An Applicant seeking technical assistance must meet the eligibility requirements of § 1805.200 and submit an application as described in § 1805.701.

(d) The Fund, in its sole discretion, may select Applicants to receive technical assistance.

Subpart E—Investment Instruments

§ 1805.500 Investment instruments—general.

The Fund's primary objective in awarding financial assistance is to enhance the stability, performance and capacity of an Awardee. The Fund will require each Awardee to utilize such financial assistance and its corresponding matching funds to achieve the performance goals established in its Assistance Agreement. The Fund will provide financial assistance to an Awardee through one or more of the investment instruments described in § 1805.501, and under such terms and conditions as described in this subpart. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

§ 1805.501 Forms of investment instruments.

(a) *Equity.* The Fund may purchase non-voting stock in a for-profit Awardee. The stock shall be transferable and may convert to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

(b) *Capital grants.* The Fund may award grants.

(c) *Loans.* The Fund may make loans, if permitted by applicable law.

(d) *Deposits and credit union shares.* The Fund may make deposits (which shall include credit union shares) in Insured CDFIs. Deposits in an Insured CDFI shall not be subject to any requirement for collateral or security.

§ 1805.502 Assistance limits.

(a) *General.* Except as provided in paragraph (b) of this section, the Fund may not provide more than $5 million, in the aggregate, in financial and technical assistance to an Awardee and its Affiliates during any three-year period.

(b) *Additional amounts.* If an Awardee proposes to establish a new Affiliate to

serve an Investment Area(s) or Targeted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Awardee or its Affiliates, the Awardee may receive additional financial assistance up to a maximum of $3.75 million during the same three-year period. Such additional assistance:

(1) Shall only be used to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Affiliate that meets the eligibility requirements described in §1805.200 and is selected for assistance pursuant to subpart H of this part.

(c) An Awardee may only receive the financial assistance described in paragraph (b) of this section if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) has been selected by the Fund within the previous one-year period, and no other application which meets the minimum requirements of §1805.802(a) and (b) was submitted within the current funding round.

§1805.503 Authority to sell.

The Fund may, at any time, sell its equity investments and loans. Subsequent to such disposition, the Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

Subpart F—Matching Funds Requirements

§1805.600 Matching funds—general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in §1805.602, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under another Federal grant or award program cannot be used to satisfy the matching requirements described in this section. Community Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement.

[60 FR 54115, Oct. 19, 1995, as amended at 61 FR 1701, Jan. 23, 1996]

§1805.601 Comparability of form and value.

(a) Matching funds shall be at least comparable in form (e.g., equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in §1805.602). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of an Awardee that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) An Awardee may meet all or part of its matching requirements by committing available earnings retained from its operations.

§1805.602 Severe constraints waiver.

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the Fund, in its sole discretion, may permit such Applicant to comply with the matching requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:

(i) Has total assets of less than $100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than $25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) An Applicant may request a ''severe constraints waiver'' as part of its application for assistance. An Applicant shall provide a narrative justification for its request, indicating:

(1) The cause and extent of the constraints on raising matching funds;

(2) Efforts to date, results, and projections for raising matching funds;

(3) A description of the matching funds expected to be raised; and

(4) Any additional information requested by the Fund.

(d) The Fund will grant a ''severe constraints waiver'' only in exceptional circumstances when it has been demonstrated, to the satisfaction of the Fund, that an Investment Area(s) or Targeted Population(s) would not be adequately served without the waiver.

§ 1805.603 Time frame for raising match.

Applicants may use monies that have been obtained or legally committed for up to one year prior to the publication of a Notice of Funds Availability (NOFA) for an applicable funding round to meet the matching requirements. An Applicant shall raise the balance of its matching requirements within the period set forth in the applicable NOFA.

§ 1805.604 Retained earnings.

(a) An Applicant that proposes to meet all or a portion of its matching funds requirements as set forth in this part by committing available earnings retained from its operations pursuant to § 1805.601(c) shall be subject to the restrictions described in this section.

(b)(1) In the case of a for-profit Applicant, retained earnings that can be used for matching funds purposes shall consist of:

(i) The increase in retained earnings (excluding the after-tax value to an Applicant of any grants and other donated assets) that has occurred over the Applicant's most recent fiscal year (e.g., retained earnings at the end of fiscal year 1995 less retained earnings at the end of fiscal year 1994); or

(ii) The annual average of such increases that have occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings can be used to match a request for an equity investment. The terms and conditions of financial assistance will be determined by the Fund.

(c)(1) In the case of a non-profit Applicant (other than an Insured Credit Union), retained earnings that can be used for matching funds purposes shall consist of:

(i) The increase in an Applicant's fund balance (excluding the amount of any grants and value of other donated assets) that has occurred over the Applicant's most recent fiscal year; or

(ii) The annual average increases in an Applicant's fund balance that has occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings can be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(d)(1) In the case of an Insured Credit Union Applicant, retained earnings that can be used for matching funds purposes shall consist of:

(i) The increase in net capital that has occurred over the Applicant's most recent fiscal year;

(ii) The annual average of increases in net capital that has occurred over the Applicant's three most recent fiscal years; or

(iii) The entire net capital that has been accumulated since the inception of the Applicant provided that the conditions described in paragraph (d)(4) of this section are satisfied.

(2) For the purpose of paragraph (d)(4) of this section, net capital shall be comprised of ''Regular Reserves'', ''Other Reserves'' (excluding reserves specifically dedicated for losses), and ''Undivided Earnings'' as such terms are used in the National Credit Union Administration's accounting manual.

(3) Such retained earnings can be used to match a request for a capital grant. The terms and conditions of financial assistance will be determined by the Fund.

(4) If the option described in paragraph (d)(1)(iii) of this section is used:

(i) An Applicant's performance goals described in § 1805.901(a) shall provide that:

(A) An Awardee increase its member and/or non-member shares by an amount that is at least equal to four times the amount of net capital that is committed as matching funds;

(B) Such increase be achieved within one year of entering into an Assistance Agreement; and

(C) Such increase be maintained for the period of time covered by the Comprehensive Business Plan;

(ii) The Applicant's Comprehensive Business Plan shall discuss its strategy for raising the required shares and the activities associated with such increased shares;

(iii) The level from which the increases in shares described in paragraph (d)(4)(i) of this section will be measured shall be the greater of the level of shares as of:

(A) The end of the calendar year immediately preceding the applicable application deadline; or

(B) The time that an Applicant is selected to receive assistance; and

(iv) Financial assistance shall be disbursed by the Fund only as the amount of shares described in paragraph (d)(4)(i)(A) of this section is increased.

(5) The Fund will allow an Applicant to utilize the option described in paragraph (d)(1)(iii) of this section for matching funds only if it determines, in its sole discretion, that the Applicant will have a high probability of success in increasing its shares to the specified amounts.

(e) An Applicant may only use retained earnings to meet the matching funds requirements if it has liquidity (as determined by the Fund) in amounts that are equal to or greater than the amount of retained earnings that is proposed for use as matching funds. In assessing an Applicant's liquidity for the purposes of this paragraph (e), the Fund may exclude any amounts that it determines are not available to promote an Awardee's performance goals and the purposes of the CDFI Program.

(f) Retained earnings accumulated after the end of the Applicants most recent fiscal year ending prior to the appropriate application deadline may not be used as matching funds.

[61 FR 1701, Jan. 23, 1996]

Subpart G—Applications for Assistance

§1805.700 Notice of funds availability.

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with these regulations and a NOFA published in the FEDERAL REGISTER. The NOFA will advise Applicants on how to obtain an application packet and will establish deadlines and other requirements. The NOFA may specify any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the Fund may request clarifying or technical information on the materials submitted as part of such application.

§1805.701 Application contents.

Each application must contain the information specified in the application packet including the items specified in this section.

(a) *Award request.* An Applicant shall indicate:

(1) The dollar amount, form, rates, terms and conditions of financial assistance requested; and

(2) Any technical assistance needs for which it is requesting assistance.

(b) *Eligibility verification.* An Applicant shall provide information necessary to establish that it is, or will be, a CDFI. An Applicant shall demonstrate whether it meets the eligibility requirements described in §1805.200 by providing the information requested in this paragraph. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph.

(1) *Primary mission.* (i) A CDFI shall have a primary mission of promoting community development. The Fund will consider an Applicant to have such a mission if the activities of the Applicant and its Affiliates are principally directed:

(A) Within the geographic boundaries of an Investment Area(s);

(B) To members of a Targeted Population(s);

(C) To projects that provide significant benefits to residents of an Investment Area(s) or members of a Targeted Population(s); or

(D) To any combination of the above.

(ii) Using indicators selected by the Applicant that are appropriate given the nature of the products and services it (and its Affiliates) offers, an Applicant shall be deemed to satisfy the requirements of paragraph (b)(1)(i) of this section if it demonstrates that the activities of the Applicant and each Affiliate, when viewed collectively (as a whole), principally benefit such area(s) or population(s).

(iii) An Applicant shall provide the information requested in paragraph (b)(1)(ii) of this section in accordance with paragraph (c) of this section.

(2) *Target markets.* Using the information in paragraph (b)(1) of this section that is submitted for the Applicant (excluding information on any Affiliates), an Applicant shall demonstrate that its total activities predominantly serve Investment Area(s), Targeted Population(s) or both.

(3) *Designation.* An Applicant shall provide a description of the Investment Area(s) or Targeted Population(s) to be served. If an Applicant is serving:

(i) An Investment Area(s), it shall submit:

(A) A completed Investment Area Designation worksheet contained in the application packet;

(B) A map of the designated area(s); and

(C) Studies or other analyses as described in § 1805.301(e);

(ii) A Targeted Population(s), it shall submit:

(A) A completed Targeted Population Designation worksheet contained in the application packet; or

(B) Studies or other analyses that provide adequate evidence of lack of adequate access to loans or equity investments.

(4) *Financing entity.* (i) A CDFI shall be an entity whose predominant business activity is the provision of loans or Development Investments. An Applicant can demonstrate that it is such an entity if it is a:

(A) Depository Institution Holding Company;

(B) Insured Depository Institution or Insured Credit Union; or

(C) Organization which is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, annual reports, organizing documents, and any other information submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's institutional type, total asset size, and stage of organizational development.

(ii) An Applicant described under:

(A) Paragraph (b)(4)(i)(A) of this section shall submit a copy of its organizing documents that indicate that it is a Depository Institution Holding Company;

(B) Paragraph (b)(4)(i)(B) of this section shall submit a copy of its current certificate of insurance issued by the Federal Deposit Insurance Corporation or the National Credit Union Administration; and

(C) Paragraph (b)(4)(i)(C) of this section shall submit a copy of its balance sheets and income and expense statements (and any notes or other supplemental information to its financial statements) as described in paragraph (d)(2)(i) of this section which clearly document its assets, liabilities, and net worth that are dedicated to lending and Development Investments and an explanation of how such assets, liabilities and net worth support these activities. An Applicant shall provide the information specified in this paragraph (b)(4)(ii)(C) for such periods as specified in paragraph (c) of this section.

(5) *Development Services.* An Applicant shall submit a summary description of the Development Services to be offered, the expected provider of such services, and information on the persons expected to use such services.

(6) *Accountability.* An Applicant shall describe how it has and will maintain accountability to the Investment Area(s) or Targeted Population(s) it serves.

(7) *Non-government.* An Applicant shall submit articles of incorporation (or comparable organizing documents), charter, by-laws, or other legal documentation or opinions sufficient to verify that it is not a government entity.

(8) *Ownership.* An Applicant shall submit information indicating the portion of shares of all classes of voting

stock that are held by each Insured Depository Institution or Depository Institution Holding Company investor (if any).

(9) *Previous Awardees.* In the case of an Applicant that has previously received assistance under this part, the Applicant shall demonstrate that it:

(i) Has substantially met its performance goals and other requirements described in its previous Assistance Agreement(s); and

(ii) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer new products and services, or increase the volume of its activities.

(10) *Previous history.* An Applicant with a prior history of serving Investment Area(s) or Targeted Population(s) shall describe its activities, operations and community benefits created for such periods as described in paragraph (c) of this section.

(c) *Time of operation.* At the time of submission of an application, an Applicant that has been in operation for:

(1) Three years or more shall submit information on its activities (as described in paragraphs (b) (1), (2) and (10) of this section) and financial statements (as described in paragraph (d)(2)(i) of this section) for the three most recent fiscal years;

(2) For more than one year, but less than three years, shall submit information on its activities (as described in paragraphs (b) (1), (2) and (10) of this section) and financial statements (as described in paragraph (d)(2)(i) of this section) for each full fiscal year since its inception; or

(3) For less than one year (including a start up organization), shall submit information on its activities and financial statements as described in paragraph (d) of this section.

(d) *Comprehensive Business Plan.* An Applicant shall submit a five-year Comprehensive Business Plan that addresses the items described in this paragraph. The Comprehensive Business Plan shall provide that an Applicant is a CDFI and will maintain such status throughout the five-year period, or will become a CDFI within three years of entering into an Assistance Agreement and maintain such status for the balance of the five-year period. The Plan should include projections that are appropriate given an Applicant's current and anticipated organizational type, total asset size, and stage of organizational development.

(1) *Executive summary.* An Applicant shall provide an executive summary of the Comprehensive Business Plan which includes a description of the institution (including relationships to any Affiliates), markets served or to be served, community needs, and other pertinent information.

(2) *Financial performance*—(i) *Historic performance.* An Applicant shall submit historic financial statements for such periods as specified in paragraph (c) of this section. Such statements should include balance sheets, income and expense statements, and a capitalization statement (which includes information on changes in capital structure and funding from outside sources) for the Applicant. The Applicant shall provide information necessary to assess trends in financial and operating performance (e.g., portfolio delinquencies, defaults and charge-offs, origination volume and volume of loans closed, annual or cumulative operating ratios).

(ii) *Future projections.* An Applicant shall submit projections for each of the next five years which includes balance sheet projections, income and expense projections, operating budgets, capitalization projections, estimates of the volume of new activity to be achieved with assistance provided by the Fund and matching funds, and describe any assumptions that underlie its projections.

(iii) *Financial statements.* (A) An Applicant shall submit:

(*1*) Audited financial statements;

(*2*) Financial statements that have been reviewed by a certified public accountant; or

(*3*) Financial statements that have been reviewed by the Applicant's Appropriate Federal Banking Agency.

(B) All financial statements must utilize accrual based accounting methods. All historic financial statements shall be reported on the basis of the Applicant's fiscal year.

(iv) *Financial management policies.* An Applicant shall submit information on its financial management policies that

describe its methodologies for underwriting and approving loans and investments and managing and monitoring its portfolio, internal operations, and capitalization needs.

(3) *Management capacity*. An Applicant shall provide information on the background and capacity of its management team, including the relevant background and expertise of management (such as resumes or statements of personal history), key personnel and governing board members, if appropriate. The Applicant shall also provide information on any training or technical assistance needed to enhance the capacity of the organization to successfully carry out its Comprehensive Business Plan.

(4) *Market analysis*. An Applicant shall provide an analysis of its target markets. An Applicant must:

(i) Describe its proposed target market(s), including a description of the characteristics of the Investment Area(s) (e.g., location, boundaries, economic characteristics, relationships to Metropolitan, non-Metropolitan, or regional markets) or Targeted Population(s) (e.g., number of persons, income, and other socio-economic characteristics), its methodology for selecting such target market(s), the size of the market(s), and any relevant market trends;

(ii) Describe the products and services (and corresponding pricing) it proposes to provide and analyze the competitiveness of such products and services in the target market(s); and

(iii) Identify and analyze any characteristics of the target market(s) that will create opportunities or present impediments for its products, services and overall market strategy (e.g., economic conditions, perceived or documented credit needs or Financial Service needs, market activity, neighborhood perceptions, government services or delivery systems, community institutions, or the strength of the employment base).

(5) *Strategy*. An Applicant shall describe its strategy for delivering its products and services to its target market(s). An Applicant may also describe any product or service development activities that are necessary before undertaking its strategy including the nature, scope, cost, timing, and risks of such activities. An Applicant shall also describe anticipated incremental increases in activity to be achieved with assistance provided by the Fund and matching funds.

(6) *Coordination strategy*. An Applicant shall describe:

(i) Its plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs and private sector resources;

(ii) How its proposed activities are consistent with existing economic, community and housing development plans adopted for an Investment Area(s) or Targeted Population(s); and

(iii) How it will coordinate with community organizations, financial institutions, and Community Partners which will provide loans, equity investments, secondary markets, or other services to an Investment Area(s) or a Targeted Population(s).

(7) *Projected community impact*. An Applicant shall provide an estimate of the benefits expected to be created within its Investment Area(s) or Targeted Population(s) over the next five years, as indicated by the extent to which:

(i) The Applicant will concentrate its activities within an Investment Area(s) or among Targeted Population(s);

(ii) The Applicant's activities will expand economic opportunity (e.g., number of jobs created, jobs retained, businesses financed, business ownership opportunities facilitated, residents of Investment Area(s) or members of Targeted Population(s) employed, number or dollar amount of business loans and investment originations);

(iii) The Applicant's activities will facilitate revitalization (e.g., number of square feet of commercial space financed, dollar amount of commercial real estate loan originations, indicators of demand for such commercial space (e.g., market vacancy rates, preleased tenants, number of long term leases), number and square feet of Community Facility space financed, number of long term leases, and dollar amount of Community Facility loan originations);

(iv) The Applicant's activities will promote affordable housing (e.g., number of affordable rental units, dollar

amount of affordable rental housing loans originated, information on the demand for such housing (e.g., market vacancy rates, number of people on public and assisted housing waiting lists), information on the type of size of units and the people who will reside in such units (e.g., families, special needs populations), number of homes purchased and dollar amount of home ownership loan originations));

(v) The Applicant will provide Development Services (as measured by the number of individuals that will receive Development Services);

(vi) The Applicant will provide Financial Services (as measured by the number of new customers of Financial Services (e.g., individuals opening checking and savings accounts)); and

(vii) Such other indicators as deemed appropriate by the Applicant or the Fund.

(8) *Community need.* An Applicant may provide information on the extent of economic distress within its Investment Area(s) or needs of its Targeted Population(s) to supplement the data required pursuant to subpart C of this part and paragraph (b)(3) of this section. Such information may be from sources other than the 1990 decennial census.

(9) *Funding sources.* An Applicant shall provide information:

(i) On its current and projected sources of capital and other financial support;

(ii) To demonstrate that it has a plan for achieving or maintaining financial viability within the five-year period; and

(iii) To demonstrate that it will, to the maximum extent appropriate, increase self-sufficiency. Such information shall demonstrate that the Applicant will not be dependent upon future awards from the Fund for continued viability.

(10) *Risks and assumptions.* An Applicant shall identify and discuss critical risks (including strategies to mitigate risk) and assumptions contained in its Comprehensive Business Plan, and any significant impediments to the Plan's implementation.

(11) *Schedule.* An Applicant shall provide a schedule indicating the timing of major events necessary to realize the objectives of its Comprehensive Business Plan.

(12) *Community Partnership.* In the case of an Applicant submitting an application with a Community Partner, the Applicant shall:

(i) Describe how the Applicant and the Community Partner will participate in carrying out the Community Partnership and how the partnership will enhance activities serving the Investment Area(s) or Targeted Population(s);

(ii) Demonstrate that the Community Partnership activities are consistent with the Comprehensive Business Plan;

(iii) Provide information necessary to evaluate such an application as described under § 1805.802(c)(4);

(iv) Include a copy of any written agreement between the Applicant and the Community Partner related to the Community Partnership; and

(v) Provide information to demonstrate that the Applicant meets the eligibility requirements described in § 1805.200 and satisfies the selection criteria described in subpart H of this part. (A Community Partner shall not be required to meet the eligibility requirements described in § 1805.200.)

(e) *Matching funds.* (1) An Applicant shall submit a detailed description of its plans for raising matching funds and likely or committed sources of funds to match the amount of financial assistance requested from the Fund. An Applicant shall indicate the extent to which such matching funds will be derived from private, non-government sources.

(2) An Applicant shall submit a description of any matching funds previously obtained or legally committed. Such description shall include the name of the source, total amount of such match, the date the matching funds were obtained or legally committed, percentage that remains available to serve as match, and terms and restrictions on use for each matching source. The Application shall include copies of any agreements, memoranda of understanding, letters of intent, or similar documents pertaining to matching funds. The Applicant shall provide documentation to indicate that

the matching fund source(s) has approved the use of the funds for matching purposes and the name, address and telephone number of a contact person for each entity providing matching funds.

(3) If an Applicant intends to use retained earnings to meet the matching funds requirements, it shall provide the information described in paragraph (d)(2)(iii) of this section and a copy of its tax returns for the same period, or, in the case of an Insured Credit Union, a copy of its most recent Form 5300 that has been submitted to the National Credit Union Administration. The Applicant shall submit a certification from its governing body:

(i) As to the amount and form of retained earnings available as matching funds; and

(ii) That such earnings will be used for the purposes described in its application.

(4) If the Applicant is requesting a ''severe constraint waiver'' of any matching requirements, it shall submit the information requested in § 1805.602.

(f) *Support.* An Applicant shall provide information to demonstrate the extent of support (if any) within the Investment Area(s) or Targeted Population(s) for its activities.

(g) *Community Ownership and Governance.* An Applicant shall provide information to demonstrate whether it is Community-Owned or Community-Governed.

(h) *Conflict of interest.* An Applicant shall submit a copy of its conflict of interest policies that are consistent with the requirements of § 1805.906.

(i) *Environmental information.* The Applicant shall provide sufficient information regarding the potential environmental impact of its proposed activities in order for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter.

(j) *Applicant certification.* The Applicant and Community Partner (if applicable) shall certify that:

(1) It possesses the legal authority to apply for assistance from the Fund;

(2) The application has been duly authorized by its governing body and duly executed;

(3) It will not use any Fund resources for lobbying activities as set forth in § 1805.907; and

(4) It will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements.

[60 FR 54115, Oct. 19, 1995, as amended at 61 FR 1702, Jan. 23, 1996]

Subpart H—Rating and Selection of Applications

§ 1805.800 Rating and selection—general.

Applicants will be rated and selected, at the sole discretion of the Fund, to receive assistance based on a multi-tiered review process that is intended to:

(a) Screen out Applicants that do not meet the basic program requirements or possess adequate capacity to be a successful CDFI;

(b) Take into consideration the unique characteristics of institutions that vary by institution type, total asset sizes, stage of organizational development, markets served, products and services provided, and location; and

(c) Evaluate and select Applicants.

§ 1805.801 Geographic diversity.

In selecting Awardees, the Fund shall seek to fund a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States.

§ 1805.802 Tiered review process.

(a) *Tier I Review.* Tier I of the review process is intended to ensure that an Applicant meets the eligibility requirements described under § 1805.200 and has submitted complete application materials. An Applicant that fails to meet the basic eligibility and application requirements will be notified of the reasons for such determination.

(b) *Tier II Review.* Tier II of the review process is intended to ensure that an Applicant meeting the Tier I requirements possesses the financial and organizational capacity to be a successful CDFI.

(1) The Fund will examine several criteria in evaluating financial and organizational capacity and an Applicant's likelihood of success in meeting the goals of its Comprehensive Business Plan. These criteria will include the strength and background of an Applicant's management team and other key personnel, the quality of its financial management policies and practices, breadth and depth of its financial resources, the depth of its market analysis, and trends in financial and operating performance.

(2) An Applicant that fails to meet the minimum requirements of Tier II will be notified of the reasons for such determination.

(c) *Tier III Review*. Tier III of the review process is intended to examine other qualitative aspects of an application. The Fund will rate each application meeting the Tier I and II requirements based on the selection criteria set forth in this part. The selection criteria and ratings will be considered in the following categories:

(1) *Organizational capacity*. The Fund will evaluate the information described in the Tier II review to rate an Applicant's organizational and financial strength and capacity.

(2) *External resources*. The Fund will evaluate the extent of external resources available to an Applicant based on:

(i) The amount of firm commitments to meet or exceed the matching requirements and the likely success of the plan for raising the balance of the matching funds in a timely manner;

(ii) The extent to which the matching funds are, or will be, derived from private sources or new investments;

(iii) Whether an Applicant is, or will become, an Insured CDFI; and

(iv) The extent to which an Awardee will use assistance to expand the funds available for lending and equity investments beyond the sum of the award and the matching funds.

(3) *Community impact*. The Fund will evaluate an application's community impact based on:

(i) The extent of economic distress within the designated Investment Area(s) or the extent to which the designated Targeted Population(s) is Low-Income;

(ii) The extent to which an Applicant will concentrate its activities on serving Investment Area(s) or Targeted Population(s);

(iii) The extent of need for loans, equity investments, Development Services, and Financial Services within the designated Investment Area(s) or Targeted Population(s);

(iv) The extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities within the designated Investment Area(s) or Targeted Population(s);

(v) The extent of support from the designated Investment Area(s) or Targeted Population(s);

(vi) The extent to which an Applicant is, or will be, Community-Owned or Community-Governed;

(vii) The extent to which an Applicant will increase its resources through such means as a Community Partnership, participation in the secondary market, and coordination with other institutions (e.g., a local Empowerment Zone or Enterprise Community coordinating entity), particularly other CDFIs; and

(viii) In the case of an Applicant with a prior history of serving Investment Area(s) or Targeted Population(s), the extent of success in serving them.

(4) *Community Partnerships*. Community Partnerships will be rated based on the extent to which the Applicant and Community Partner meet the factors described in paragraphs (c) (1), (2) and (3) of this section and giving consideration to the extent to which:

(i) The Community Partner will participate in carrying out the activities of the Community Partnership;

(ii) The Community Partnership will enhance the likelihood of success of the Comprehensive Business Plan; and

(iii) Service to an Investment Area(s) or Targeted Population(s) will be better performed by a Community Partnership than by an Applicant alone.

(5) *Other factors*. The Fund may consider any other factors with respect to any application as it deems appropriate.

(6) *Priorities*. The Fund may give additional consideration to Applicants that:

(i) Have secured firm commitments for all of the matching funds at the time of submission of an application;

(ii) Concentrate their activities within an Investment Area(s) or Targeted Population(s); or

(iii) Dedicate the greatest portion of their total resources to lending, Development Investments, and Development Services.

(d) *Consultation with Appropriate Federal Banking Agencies.* The Fund shall consult with, and consider the views of, the Appropriate Federal Banking Agency prior to providing assistance to:

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency; and

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

(e) *Awardee selection.* The Fund will select Awardees based on the criteria described in paragraph (c) of this section and any other criteria set forth in this part or the applicable NOFA.

Subpart I—Terms and Conditions of Assistance

§ 1805.900 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement, shall affect any authority of an Appropriate Federal Banking Agency to supervise and regulate any institution or company.

(b) *Non-Regulated CDFIs.* The Fund will, to the extent practicable, ensure that Awardees that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

§ 1805.901 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. If a Community Partner is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement if deemed appropriate by the Fund.

(b) An Awardee shall comply with performance goals that have been negotiated with the Fund and which are based upon the Comprehensive Business Plan submitted as part of the Awardee's application. Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Fund's regulations or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee (or the Community Partner, if applicable), the Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Require changes in the Awardee's Comprehensive Business Plan;

(3) Revoke approval of the Awardee's application;

(4) Reduce or terminate the Awardee's assistance;

(5) Require repayment of any assistance that has been distributed to the Awardee;

(6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or

(7) Take any other action as permitted by the terms of the Assistance Agreement.

(d) In the case of an Insured Depository Institution, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under section 8 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The Fund shall notify the Appropriate Federal Banking Agency before

imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the institution; or

(ii) Impede or interfere with an enforcement action against that institution by that agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of an Awardee in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the Fund shall consult with, and seek input from, the appropriate Tribal Government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§1805.902 Disbursement of funds.

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the Fund. The Fund shall not provide any assistance (other than technical assistance) under this part until an Awardee has satisfied any conditions set forth in its Assistance Agreement and has secured firm commitments for the matching funds required for such assistance. At a minimum, a firm commitment must consist of a binding written agreement between an Awardee and the source of the matching funds that is conditioned only upon the availability of the Fund's assistance and such other conditions as the Fund, in its sole discretion, may deem appropriate. Such agreement must provide for disbursal of the matching funds to an Awardee prior to, or simultaneously with, receipt by an Awardee of the Federal funds.

§1805.903 Data collection and reporting.

(a) *Data—general.* An Awardee (and a Community Partner, if appropriate) shall maintain such records as may be prescribed by the Fund which are necessary to:

(1) Disclose the manner in which Fund assistance is used; and

(2) Demonstrate compliance with the requirements of this part and an Assistance Agreement.

(b) *Customer profiles.* An Awardee (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served.

(c) *Access to records.* An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free

access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable).

(e) *Review.* (1) At least annually, the Fund will review the progress of an Awardee (and a Community Partner, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement. During such review, the Fund may consider requests to modify Comprehensive Business Plans or performance goals.

(2) An Awardee shall submit a report within:

(i) 45 days of the end of each calendar quarter with information on the performance of its loans, Development Investments, Development Services, and Financial Services in the previous quarter, and unaudited financial statements. Such report shall include key indicators of portfolio performance, including volume of originations, delinquencies, and defaults, and charge-offs for the previous quarter; and

(ii) 60 days at the end of each Federal fiscal year with:

(A) Information on its customer profile and the performance of its loans, Development Investments, Development Services, and Financial Services for the previous year;

(B) Information on its portfolio performance, including volume of originations, delinquencies, and defaults and charge-offs for the previous year;

(C) Qualitative and quantitative information on an Awardee's compliance with its performance goals and (if appropriate) an analysis of factors contributing to any failure to meet such goals;

(D) Information describing the manner in which Fund assistance and any corresponding matching funds were used. The Fund will use such information to verify that assistance was used in a manner consistent with the Assistance Agreement;

(E) Certification that an Awardee continues to meet the eligibility requirements described in § 1805.200; and

(F) Its most recent audited financial statements prepared by an independent certified public accountant. Such statements shall cover the operations of the Awardee's most recently completed fiscal year. The audit shall be conducted in accordance with generally accepted Government Auditing Standards set forth in the General Accounting Office's Government Auditing Standards (1994 Revision) issued by the Comptroller General and OMB Circular A–133 (''Audits of Institutions of Higher Education and Other Nonprofit Institutions''), as applicable. The independent certified public accountant shall review and attest that an Awardee's use of Federal assistance is in compliance with the Assistance Agreement.

(3) The Fund shall make reports described in paragraph (e)(2) of this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies.* (1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the Fund.

(2) If the information, reports, or records requested by the Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The Fund shall use any information provided by the Appropriate Federal Banking Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the Fund may require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency to provide information with respect to the institution's implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI or other institution that is examined by or subject to the reporting requirements of a Appropriate Federal Banking Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or records contained in or related to such report.

(6) The Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about an Awardee that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the Fund nor the Appropriate Federal Banking Agency shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The Fund, the Appropriate Federal Banking Agency, and any other party providing information under this paragraph (f) of this section shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., room 2200, New Executive Office Building, Washington, DC 20503; and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., suite 1100, Washington, DC 20548.

§1805.904 Information.

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of the Insured CDFIs or other institution that is examined by or subject to the reporting requirements of an appropriate Federal banking agency.

§1805.905 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

§1805.906 Conflict of interest requirements.

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Development Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The Board of Directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) For credit of $10,000 or more, the Awardee shall provide written notice

to the Fund at least 30 days prior to initial disbursement and shall receive written approval from the Fund prior to any disbursement.

(2) An Awardee that is an Insured CDFI or a Depository Institution Holding Company shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency.

(b) *Awardee standards of conduct.* An Awardee shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Development Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

§ 1805.907 Lobbying restrictions.

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms as are defined in 31 U.S.C. 1352.

§ 1805.908 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all Awardees and Insiders.

§ 1805.909 Fund deemed not to control.

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

§ 1805.910 Limitation on liability.

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1805.911 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

PART 1806—BANK ENTERPRISE AWARD PROGRAM

Subpart A—General Provisions

Sec.
1806.100 Purpose.
1806.101 Summary.
1806.102 Relationship to the Community Development Financial Institutions Program.
1806.103 Definitions.
1806.104 Waiver authority.
1806.105 OMB control number.

Subpart B—Awards

1806.200 Community eligibility and designation.
1806.201 Qualified activities.
1806.202 Measuring activities.
1806.203 Estimated award amounts.
1806.204 Selection process.
1806.205 Actual award amounts.
1806.206 Applications for Bank Enterprise Awards.

Subpart C—Terms and Conditions of Assistance

1806.300 Award Agreement; sanctions.
1806.301 Records, reports and audits of Awardees.
1806.302 Compliance with government requirements.
1806.303 Fraud, waste and abuse.
1806.304 Books of account, records and government access.
1806.305 Retention of records.

AUTHORITY: 12 U.S.C. 4703, 4717; chapter X, Pub. L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

SOURCE: 60 FR 54126, Oct. 19, 1995, unless otherwise noted.

Subpart A—General Provisions

§1806.100 Purpose.

The purpose of the Bank Enterprise Award Program is to encourage insured depository institutions to make Equity Investments and engage in Eligible Development Activities.

§1806.101 Summary.

(a) Under the Bank Enterprise Awards Program, the Fund makes awards to selected Applicants that:

(1) Invest in Community Development Financial Institutions;

(2) Increase lending activities within Distressed Communities; or

(3) Increase the provision of certain services and assistance.

(b) Distressed Communities must meet minimum poverty and unemployment criteria. Applicants are selected to participate in the program through a competitive application process. Generally, awards are based on increases in Qualified Activities that are carried out by the Applicant during an Assessment Period. Bank Enterprise Awards are distributed after successful completion of projected Qualified Activities. All awards shall be made subject to the availability of funding.

§1806.102 Relationship to the Community Development Financial Institutions Program.

(a) *Prohibition against double funding.* No CDFI may receive a Bank Enterprise Award if it has:

(1) An application pending for assistance under the Community Development Financial Institutions Program (part 1805 of this chapter);

(2) Received assistance from the Community Development Financial Institutions Program within the preceding 12-month period; or

(3) Ever received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(b) *Matching funds.* Equity Investments and loans provided to a CDFI under this part can be used by the CDFI to meet the matching funds requirements of the Community Development Financial Institutions Program.

(c) *CDFI certification.* Any entity receiving a CDFI certification under §1805.201 of this chapter within two years of the filing an application for a Bank Enterprise Award shall qualify as a CDFI for the purposes of this part. If an Applicant is proposing to make an Equity Investment in an entity that has not been certified as a CDFI, the application submitted by the Applicant under this part shall include a letter from the entity requesting certification and the information described in §1805.701(b) of this chapter.

§1806.103 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*);

(b) *Agricultural Loan* means a new origination (including refinancing) of a loan secured by farm land (including farm residential and other improvements), a loan to finance agricultural production, or a loan to a farmer (other than a Single Family Loan or Consumer Loan);

(c) *Applicant* means any insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813)) that is applying for a Bank Enterprise Award;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act;

(e) *Assessment Period* means an annual or semi-annual period specified in the applicable Notice of Funds Availability (NOFA) in which an Applicant will carry out Qualified Activities;

(f) *Award Agreement* means a contract between the Fund and an Awardee pursuant to §1806.300;

(g) *Awardee* means an Applicant selected by the Fund to receive a Bank Enterprise Award;

(h) *Bank Enterprise Award* means an award made to an Applicant pursuant to this part;

(i) *Bank Enterprise Award Program* means the program authorized by section 114 of the Act and implemented under this part;

(j) *Baseline Period* means an annual or semi-annual period specified in the applicable NOFA in which an Applicant has previously carried out Qualified Activities;

(k) *Business Loan* means a new origination (including refinancing) of a loan used for commercial or industrial activities (other than an Agricultural Loan, Commercial Real Estate Loan, Multi-Family Loan or Single Family Loan);

(l) *Commercial Real Estate Loan* means a new origination (including refinancing) of a loan (other than a Multi-Family Loan or a Single Family Loan) used to finance:

(1) Construction and land development; or

(2) Commercial real estate in amounts of more than one million dollars and which is secured by real estate;

(m) *Community Development Financial Institution* (or *CDFI*) means an entity certified under § 1805.201 of this chapter and that meets the eligibility requirements under § 1805.200 of this chapter;

(n) *Consumer Loan* means a new origination (including refinancing) of a loan to one or more individuals for household, family, or other personal expenditures;

(o) *Distressed Community* means a geographic community which meets the minimum area eligibility requirements specified in § 1806.200;

(p) *Eligible Development Activities* means activities described in § 1806.201(b)(4) that are carried out by the Applicant or its Subsidiary;

(q) *Equity Investment* means new financial assistance provided by an Applicant or its Subsidiary to a CDFI in the form of a stock purchase, a grant (excluding grants used to support operating costs), a purchase of any type of partnership interest, a loan made on such terms that it has characteristics of equity (and is considered as such by the Fund and is consistent with requirements of the Applicant's Appropriate Federal Banking Agency), or any other investment deemed to be an equity investment by the Fund.

(r) *Financial Services* means check-cashing, providing money orders and certified checks, automated teller machines, safe deposit boxes, and other services as may be specified by the Fund;

(s) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) of the Act (12 U.S.C. 4703(a));

(t) *Geographic Units* means counties (or equivalent areas), incorporated places, minor civil divisions that are units of local government, census tracts, block numbering areas, and American Indian or Alaska Native areas (as each is defined by the U.S. Bureau of the Census) or other areas deemed appropriate by the Fund);

(u) *Indian Reservation* means a geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporation, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), public domain Indian allotments, and former Indian Reservations in the State of Oklahoma;

(v) *Low- and Moderate-Income* means income that does not exceed 80 percent of the median income of the area involved, as determined by the Secretary of Housing and Urban Development with adjustments for smaller and larger families pursuant to section 102(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20);

(w) *Metropolitan Area* means an area designated as such (as of the date of the application) by the Office of Management and Budget pursuant to 44 U.S.C. 3504(d)(3), 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(x) *Multi-Family Loan* means a new origination (including refinancing) of a loan secured by a five- or more family residential property;

(y) *Qualified Activities* means Equity Investments and Eligible Development Activities;

(z) *Resident* means an individual domiciled in a Distressed Community;

(aa) *Single Family Loan* means a new origination (including refinancing) of a loan secured by a one-to-four family residential property;

(bb) *Subsidiary* has the same meaning as in section 3 of the Federal Deposit Insurance Act, except that a CDFI shall not be considered a subsidiary of any insured depository institution or any depository institution holding

company that controls less than 25 percent of any class of the voting shares of such corporation and does not otherwise control, in any manner, the election of a majority of directors of the corporation; and

(cc) *Unit of General Local Government* means any city, county, town, township, parish, village, or other general purpose political subdivision of a State or Commonwealth of the United States, or general purpose subdivision thereof, and the District of Columbia.

(dd) *Investment* means, for the purpose of §1806.201(b)(4)(xiv), the purchase of stock, limited partnership interest, or other ownership instrument, or a grant in a commercial real estate, single family housing, multi-family housing, business or agriculture project or activity.

[60 FR 54126, Oct. 19, 1995, as amended at 61 FR 1702, Jan. 23, 1996; 61 FR 59828, Nov. 25, 1996]

§1806.104 Waiver authority.

The Fund may waive any requirement of this part that is not required by law, upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis of the waiver. For a waiver in any individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notice of granted waivers in the FEDERAL REGISTER.

§1806.105 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0153 (expires September 30, 1998).

Subpart B—Awards

§1806.200 Community eligibility and designation.

(a) *General.* If an Applicant proposes to carry out Eligible Development Activities, or Equity Investments that support efforts of a CDFI in a Distressed Community, the Applicant shall designate one or more Distressed Communities in which it proposes to carry out those activities.

(b) *Minimum area eligibility requirements.* A Distressed Community must meet the minimum area eligibility requirements contained in this paragraph.

(1) *Geographic requirements.* A Distressed Community must be a geographic area:

(i) That is located within the boundaries of a Unit of General Local Government;

(ii) The boundaries of which are contiguous; and

(iii)(A) The population of which must be at least 4,000 if any portion of the area is located within a Metropolitan Area with a population of 50,000 or greater;

(B) The population must be at least 1,000 if no portion of the area is located within such a Metropolitan Area; or

(C) Is located entirely within an Indian Reservation.

(2) *Distress requirements.* A Distressed Community must be a geographic area where:

(i) At least 30 percent of the Residents have incomes which are less than the national poverty level, as determined by the U.S. Bureau of the Census in the 1990 decennial census; and

(ii) The unemployment rate is at least 1.5 times greater than the national average, as determined by the U.S. Bureau of Labor Statistics' most recent data (including estimates of census tract unemployment developed using the Bureau of Labor Statistics' Census Share calculation method).

(c) *Area designation.* An Applicant shall designate an area as a Distressed Community by:

(1) Selecting Geographic Units which individually meet the minimum area eligibility requirements; or

(2) Selecting two or more Geographic Units which, in the aggregate, meet the minimum area eligibility requirements set forth in paragraph (b) of this section provided that no Geographic Unit selected by the Applicant within the area has a poverty rate of less than 20 percent.

(d) *Designation and notification process.* Upon request, the Fund will provide a prospective Applicant with data

to help it identify areas eligible to be a Distressed Community. A prospective Applicant may contact the Fund prior to filing an application to determine if an area meets the minimum area eligibility requirements.

[60 FR 54126, Oct. 19, 1995, as amended at 61 FR 1702, Jan. 23, 1996]

§ 1806.201 Qualified activities.

(a) *Equity Investment.* An Applicant may receive a Bank Enterprise Award for making an Equity Investment during an Assessment Period.

(b) *Eligible Development Activities*—(1) *General.* An Applicant may receive a Bank Enterprise Award for carrying out Eligible Development Activities during an Assessment Period.

(2) *Service.* The Eligible Development Activities listed in paragraphs (b)(4)(i) through (vii) and (b)(4)(xiv) of this section must serve a Distressed Community. An activity is considered to serve a Distressed Community if it is:

(i) Undertaken in the Distressed Community; or

(ii) Provided to Low and Moderate Income Residents or enterprises integrally involved in the Distressed Community.

(3) *Priority factors.* Each Eligible Development Activity is assigned a priority factor. A priority factor represents the Fund's assessment of the degree of difficulty, the extent of innovation, and the extent of benefits accruing to the Distressed Community for each type of activity.

(4) *Eligible Development Activities.* Eligible Development Activities are listed in this paragraph with their corresponding priority factors:

(i) Consumer Loans (priority factor=1.2);

(ii) Commercial Real Estate Loans (priority factor=1.6);

(iii) Single Family Loans (priority factor=1.4);

(iv) Multi-Family Loans (priority factor=1.6);

(v) Business Loans and Agricultural Loans of $100,000 or less (priority factor=1.9);

(vi) Business Loans and Agricultural Loans of more than $100,000 through $250,000 (priority factor=1.8);

(vii) Business Loans of more than $250,000 through $1,000,000 and Agricultural Loans of more than $250,000 through $500,000 (priority factor=1.7);

(viii) Deposit liabilities in the form of savings or other demand or time accounts accepted from Residents at offices located within the Distressed Community (priority factor=1.0);

(ix) Financial Services provided to Low- and Moderate-Income persons in the Distressed Community or provided to enterprises integrally involved in the Distressed Community (priority factor=1.2);

(x) Provision of technical assistance to Residents in managing their personal finances through consumer education programs (either sponsored or offered by the Applicant) (priority factor=1.4);

(xi) Provision of technical assistance and consulting services to newly formed small businesses located in the Distressed Community (priority factor=1.4);

(xii) Provision of technical assistance to, or servicing the loans of, Low- and Moderate-Income home owners and home owners located in the Distressed Community (priority factor=1.4);

(xiii) Grants used to support the operating costs of, new origination (including refinancing) of loans to, or technical assistance provided to:

(A) A CDFI that supports efforts in the Distressed Community (priority factor=2.2); and

(B) Any other CDFI (priority factor=2.0); and

(xiv) Investments (the same priority factor and reported in the category of Eligible Development Activity described in paragraphs (b)(4)(ii) through (vii) of this section that most accurately describes the type project or activity in which an Investment is made (e.g., an Investment in a multi-family housing project should be reported under Multi-family Loans)).

[60 FR 54126, Oct. 19, 1995, as amended at 61 FR 1702, Jan. 23, 1996]

§ 1806.202 Measuring activities.

(a) *General.* Qualified Activities shall be measured by comparing the Qualified Activities carried out during the Baseline Period with the Qualified Activities projected to be carried out during the Assessment Period. Increases in

the values of Qualified Activities between the Baseline Period and Assessment Period will be used in determining award amounts. Applicants shall report their activities in all categories of Qualified Activities in which they engage for the Baseline Period and Assessment Period or provide an explanation satisfactory to the Fund for not reporting in all categories and provide any certification reasonably deemed necessary by the Fund, including, without limitation, a certification that during the Assessment Period the Applicant did not reduce its total activity in any unreported categories. The form and content of any certification shall be determined by the Fund. The dates of the Baseline Period and Assessment Period will be published in the NOFA for each funding round.

(b) *Value.* The Fund will assess the value of:

(1) Equity Investments, loans and grants at the original amount of such investments, loans or grants;

(2) Deposit liabilities at the face dollar amount of monies deposited;

(3) Financial Services and technical assistance based on the administrative costs of providing such services; and

(4) Investments at the original amount of the purchase of stock, limited partnership interest, other ownership interest, or grant.

(c) *Reporting.* An Applicant shall report Qualified Activities:

(1) That were carried out during the Baseline Period; and

(2) Proposed to be carried out during the Assessment Period.

(d) *Deposit liabilities.* (1) Deposit liabilities shall be measured by comparing the net change in the amount of applicable funds (as described in §1806.201(b)(4)(viii)) on deposit at the Applicant institution during the periods described in paragraphs (d)(2) and (d)(3) of this section.

(2) An Applicant shall measure the net change in deposit liabilities during the Baseline Period by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Baseline Period and at the close of business on the last day of the Baseline Period.

(3) An Applicant shall measure the net change in deposit liabilities during the Assessment Period by comparing the amount of applicable funds on deposit at the close of business the day before the beginning of the Assessment Period and at the close of business on the last day of the Assessment Period.

[60 FR 54126, Oct. 19, 1995, as amended at 61 FR 1702, Jan. 23, 1996; 61 FR 7690, Feb. 29, 1996; 61 FR 59828, Nov. 25, 1996]

§1806.203 Estimated award amounts.

Award amounts will be determined at the sole discretion of the Fund and estimated as described in this section.

(a) *Equity Investments.* The estimated award amount for an Equity Investment will be equal to 15 percent (or such lower percentage as may be requested by the Applicant) of the anticipated increase in the value of such investment between the Baseline and Assessment Periods.

(b) *Eligible Development Activities.* The estimated award amount for Eligible Development Activities will be calculated as follows:

(1) *Step 1.* For each type of Eligible Development Activity, subtract the value in the Baseline Period from the estimated value for the Assessment Period to yield a remainder;

(2) *Step 2.* Multiply the remainder for each Eligible Development Activity by the assigned priority factor to yield a weighted value for each activity;

(3) *Step 3.* Add the weighted values for deposit liabilities and Financial Services to yield a service score;

(4) *Step 4.* Add the weighted values for all other categories of Eligible Development Activities to yield a development score. If the development score is negative, an Applicant will be ineligible to receive a Bank Enterprise Award. If the development score is positive, go to Step 5;

(5) *Step 5.* If the service score is greater than the development score, reduce the service score to equal the same amount as the development score to yield an adjusted service score. (The Act prohibits an Applicant from receiving more assistance for its deposit taking activities than for other Qualified Activities.);

(6) *Step 6.* Add the service score (or adjusted service score if applicable) and the development score to yield a total score; and

(7) *Step 7.* If the Applicant is:

(i) A CDFI, multiply the total score by 15 percent to yield an estimated award amount; or

(ii) Not a CDFI, multiply the total score by 5 percent to yield an estimated award amount.

§ 1806.204 Selection process.

(a) *Availability of funds.* All awards are subject to the availability of funds. If the amount of funds available during a funding round is insufficient for all estimated award amounts, Awardees will be selected based on the process described in this section.

(b) *Priority of categories*—(1) *General.* The Fund will rank an Applicant's estimated award amount for Qualified Activities according to the following priority categories:

(i) *First priority.* Equity Investments that support efforts of CDFIs in the Distressed Community;

(ii) *Second priority.* Other Equity Investments; and

(iii) *Third priority.* Eligible Development Activities.

(2) *Ranking among categories.* All Applicants in the first priority category will be selected as Awardees before Applicants in the second priority category, and Applicants in the second priority category will be selected as Awardees before Applicants in the third priority category. Selections within each priority category will be based on the relative rankings within such category, subject to the availability of funds.

(3) *Combined awards.* If an Applicant receives an award for more than one priority category described in paragraph (b)(1) of this section, the award amounts will be combined into a single Bank Enterprise Award.

(c) *Ranking Equity Investments.* Estimated awards for Equity Investments will be ranked within each applicable priority category based on the extent to which an Applicant proposes to reduce the percentage used to calculate its award amount (e.g., an Applicant that chooses to reduce its award to 13 percent will be ranked higher than an Applicant that reduces its award to 14 percent). For Applicants that propose the same percentage, estimated awards will be ranked by the ratio of the proposed Equity Investment to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of submission of an application.

(d) *Ranking Eligible Development Activities.* Estimated awards for Eligible Development Activities will be ranked by the ratio of the total score to the asset size of the Applicant (as reported in the Applicant's most recent Report of Condition or Thrift Financial Report) at the time of the submission of an application. If the ratios of two Applicants are the same, the estimated awards will be ranked based on the degree of the poverty of each Applicant's Distressed Community.

§ 1806.205 Actual award amounts.

(a) *General.* The Fund will assess an Applicant's success in achieving the Qualified Activities projected in its application. The extent of such success will be measured based on the activities that were actually carried out during the Assessment Period. Subject to § 1806.204, the actual award amount that an Awardee shall receive will be equal to the estimated award previously calculated and (if necessary) adjusted pursuant to this section.

(b) *Substantial achievement.* If an Awardee carries out 90 percent or more of its projected activities, it will be deemed to have substantially achieved those activities. Such Awardee will receive the full estimated award amount.

(c) *Partial achievement*—(1) *General.* If an Awardee carries out less than 90 percent of its projected Qualified Activities, it may be deemed to have partially achieved those activities. In such cases, the Fund may, in its sole discretion, provide a partial award based upon (among other things) the Awardee's satisfactory explanation for its failure to substantially achieve the activities projected in its application. Any estimated award amount will be adjusted on a pro-rata basis to reflect the activities actually performed.

(2) *Adverse change in condition.* In the case of an adverse change in national or regional economic conditions, the Fund may adjust the percentages used to define partial achievement.

(d) *Non-achievement.* If an Awardee does not satisfy the conditions necessary for substantial or partial achievement, it will be ineligible to receive any award amount.

(e) *Unobligated or deobligated funds.* The Fund, in its sole discretion, may use any deobligated funds or funds not obligated during a funding round:

(1) Using the calculation and selection process contained in this part—

(i) To increase an award amount of an Awardee for achievement in excess of the projected Qualified Activities; or

(ii) To select Applicants not previously selected;

(2) To make additional monies available for a subsequent funding round; or

(3) As otherwise authorized by the Act.

[60 FR 54126, Oct. 19, 1995, as amended at 61 FR 59828, Nov. 25, 1996]

§1806.206 Applications for Bank Enterprise Awards.

(a) *Notice of Funds Availability.* An Applicant shall submit an application for a Bank Enterprise Award in accordance with this section and the applicable NOFA published by the Fund in the FEDERAL REGISTER. The NOFA will advise potential Applicants on how to obtain an application packet and will establish submission deadlines. The NOFA also will establish any other requirements or restrictions applicable for the funding round including any restrictions on award amounts. After receipt of an application, the Fund may request clarifying or technical information on materials submitted as part of such application.

(b) *Application contents.* Each application must contain the information required in the application packet, which may include:

(1) A completed Bank Enterprise Award Rating and Calculation worksheet (If an Applicant intends to complete a merger with another institution during the Assessment Period, it shall submit a separate Baseline Period worksheet for each subject institution and one Assessment Period worksheet that represents the projected activities of the merged institutions. If such a merger is unexpectedly delayed beyond the end of the Assessment Period, the Fund reserves the right to withhold distribution of an award until the merger has been completed.);

(2) A narrative description of each of the Qualified Activities expected to be performed in the Assessment Period;

(3) If applicable, a completed Distressed Community Designation worksheet and a map and narrative description of the Distressed Community;

(4) If applicable:

(i) A narrative description of each CDFI that the Applicant proposes to provide an Equity Investment in and the amount, terms, and conditions of the investment; or

(ii)(A) A projection of the aggregate dollar amount of Equity Investments it proposes to make during the Assessment Period;

(B) A list of potential investees; and

(C) A description of its investment criteria;

(5) The asset size of the Applicant, as reported in its most recent Report of Condition or Thrift Financial Report to its Appropriate Federal Banking Agency;

(6) Information necessary for the Fund to complete its environmental review requirements pursuant to part 1815 of this chapter; and

(7) Certifications that the Applicant will comply with all relevant provisions of this chapter and all applicable Federal, State, and local laws, ordinances, regulations, policies, guidelines, and requirements.

[60 FR 54126, Oct. 19, 1995, as amended at 61 FR 1702, Jan. 23, 1996]

Subpart C—Terms and Conditions of Assistance

§1806.300 Award Agreement; sanctions.

(a) *General.* After the Fund selects an Awardee, the Fund and the Awardee will enter into an Award Agreement. The Award Agreement shall provide that an Awardee:

(1) Carry out its Qualified Activities in accordance with applicable law, the approved application, and all other applicable requirements;

(2) Shall comply with such other terms and conditions (including record keeping and reporting requirements) that the Fund may establish; and

(3) Not receive any monies until the Fund has determined that the Awardee has fulfilled all applicable requirements.

(b) *Sanctions.* In the event of any fraud, misrepresentation, or noncompliance with the terms of the Award Agreement by the Awardee, the Fund may terminate, reduce, or recapture the Award and pursue any other available legal remedies.

(c) *Notice.* Prior to imposing any sanctions pursuant to this section or an Award Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1806.301 Records, reports and audits of Awardees.

(a) At the end of an Assessment Period, each Awardee shall submit to the Fund:

(1) *Worksheet.* A Bank Enterprise Award worksheet that reports the Qualified Activities actually carried out during the Assessment Period;

(2) *Estimate of benefits.* An estimate of the benefits generated within the Distressed Community by the Qualified Activities that were carried out during the Assessment Period, as measured by the:

(i) Number of jobs created or retained;

(ii) Type of new financial and technical assistance services available;

(iii) Number and type of businesses created and retained;

(iv) Number of home owners assisted;

(v) Number of affordable housing units financed;

(vi) Number and type of new deposit accounts opened at offices located within the Distressed Community; and

(vii) Other measures deemed appropriate by the Awardee that convey the nature or extent of the benefits created by the Qualified Activities; and

(3) *Certification.* A certification that the information provided to the Fund is true and accurately reflects the Qualified Activities carried out during an Assessment Period.

(b) *Additional information.* At the request of the Fund, the Applicant shall make available any records necessary to assess the validity of the information provided to the Fund.

§ 1806.302 Compliance with government requirements.

In carrying out its responsibilities pursuant to an Award Agreement, the Awardee shall comply with all applicable Federal, state and local laws, regulations and ordinances, OMB Circulars, and Executive Orders.

§ 1806.303 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

§ 1806.304 Books of account, records and government access.

An Awardee shall submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such supporting data, as required by the Fund and the U.S. Department of the Treasury to ensure compliance with the requirements of this part. The United States Government, including the U.S. Department of the Treasury, the Comptroller General, and its duly authorized representatives, shall have full and free access to the Awardee's offices and facilitates and all books, documents, records, and financial statements relevant to the award of the Federal funds and may copy such documents as they deem appropriate.

§ 1806.305 Retention of records.

An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable). This circular may be obtained from Office of Administration, Publications Office, 725 17th Street, NW., room 2200, New Executive Office Building, Washington, DC 20503.

PART 1815—ENVIRONMENTAL QUALITY

Sec.

1815.100 Policy.

1815.101 Purpose.
1815.102 Definitions.
1815.103 Designation of responsible Fund official.
1815.104 Specific responsibilities of the designated Fund official.
1815.105 Major decision points.
1815.106 Supplemental environmental review.
1815.107 Determination of review requirement.
1815.108 Actions that normally require an EIS.
1815.109 Preparation of an EIS.
1815.110 Categorical exclusion.
1815.111 Actions that require an environmental assessment.
1815.112 Preparation of an environmental assessment.
1815.113 Public involvement.
1815.114 Fund decisionmaking procedures.
1815.115 OMB control number.

AUTHORITY: 12 U.S.C. 4703, 4717; 42 U.S.C. 4332; Chapter X, Pub L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

SOURCE: 60 FR 54130, Oct. 19, 1995, unless otherwise noted.

§1815.100 Policy.

The Community Development Financial Institution Fund's policy is to ensure that environmental factors and concerns are given appropriate consideration in decisions and actions by the Fund and to reduce any possible adverse effects of Fund decisions and actions upon the quality of the human environment.

§1815.101 Purpose.

This part supplements Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended, and describe how the Community Development Financial Institutions Fund intends to consider environmental factors and concerns in the Fund's decisionmaking process. This part applies only to the Fund and not to any other bureau, office or organization within the Department of the Treasury.

§1815.102 Definitions.

(a) For the purpose of this part:

(1) *Act* means the Community Development Banking and Financial Institutions Act (12 U.S.C. 4701 et seq.);

(2) *Application* means a request for assistance from the Fund submitted pursuant to parts 1805 or 1806 of this chapter;

(3) *CEQ regulations* means the regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969 as promulgated by the Council on Environmental Quality, Executive Office of the President, appearing at 40 CFR parts 1500–1508 and to which this part is a supplement;

(4) *Comprehensive Business Plan* means a document submitted as part of an Application pursuant to part 1805 of this chapter which describes an organization's proposed process for offering products or services to a particular market, including organizational requirements needed to serve that market effectively;

(5) *Consumer Loans* means loans to one or more individuals for household, family or other personal expenditures;

(6) *Decisionmaker* means the Director of the Fund, unless an appropriate delegation of authority has been made;

(7) *EIS* means an environmental impact statement as defined in 40 CFR 1508.11 of the CEQ regulations;

(8) *Fund* means the Community Development Financial Institutions Fund, established under section 104(a) of the Act (12 U.S.C. 4703(a));

(9) *NEPA* means the National Environmental Policy Act, as amended, 42 U.S.C. 4321–4335; and

(10) *Project* means all closely related actions relating to a specific site.

(b) Other terms used in this part are defined in 40 CFR part 1508 of the CEQ regulations.

§1815.103 Designation of responsible Fund official.

The Director of the Fund is the designated Fund official responsible for implementation and operation of the Fund's policies and procedures on environmental quality and control.

§1815.104 Specific responsibilities of the designated Fund official.

The designated Fund official shall:

(a) Coordinate the formulation and revision of Fund policies and procedures on matters pertaining to environmental quality and control;

(b) Establish and maintain working relationships with relevant government agencies (including Federal, state and local) concerned with environmental matters;

(c) Develop procedures within the Fund's planning and decisionmaking processes to ensure that environmental factors are properly considered in all proposals and decisions in accordance with this part;

(d) Develop, monitor, and review the Fund's implementation of standards, procedures, and working relationships for protection and enhancement of environmental quality and compliance with applicable laws and regulations;

(e) Monitor processes to ensure that the Fund's procedures regarding consideration of environmental quality are achieving their intended purposes;

(f) Advise the officers and employees of the Fund of technical and management requirements of environmental analysis, of appropriate expertise available, and, with the assistance of the Department of the Treasury's Office of the General Counsel, of relevant legal developments;

(g) Monitor the consideration and documentation of the environmental aspects of Fund planning and decisionmaking processes by appropriate officers and employees of the Fund;

(h) Ensure that all environmental assessments and, where required, all EISs are prepared in accordance with the appropriate regulations adopted by the Council on Environmental Quality and the Fund;

(i) Ensure that, as required, a legislative EIS is submitted with all proposed legislation;

(j) Consolidate and transmit to appropriate parties the Fund's comments on EISs and other environmental reports prepared by other agencies;

(k) Acquire information and prepare appropriate reports on environmental matters required of the Fund; and

(l) Coordinate the Fund's efforts to make available to other parties information and advice on the Fund's policies for protecting and enhancing the quality of the environment.

§ 1815.105 Major decision points.

(a) The possible environmental effects of an Application, including any Comprehensive Business Plan, must be considered along with technical, economic, and other factors throughout the decisionmaking process. For most Fund actions there are two distinct stages in the decisionmaking process:

(1) Preliminary approval stage, at which point applications are selected for funding; and

(2) Final approval and funding stage.

(b) Environmental review shall be integrated into the decisionmaking process of the Fund as follows:

(1) During the preliminary approval stage, the designated Fund official shall determine whether the Application proposes actions which are categorically excluded, or normally require an environmental assessment or an EIS;

(2) If the designated Fund official determines that the Application proposes actions which normally require an environmental assessment or an EIS, the applicant shall be informed that the final approval and funding, in addition to any other conditions, is contingent upon:

(i) The applicant supplying to the Fund all information necessary for the Fund to perform or have performed any environmental review required by this part;

(ii) The applicant not using any Fund financial assistance to perform any of such proposed actions in the Application that affect the physical environment until Fund approval is received; and

(iii) The outcome of the environmental review required by this part;

(3) The Fund will perform or have performed the environmental reviews required by this part;

(4) A preliminary approval of an Application may be withdrawn or further conditions may be imposed based upon the outcome of an environmental review required by this part; and

(5) If the designated Fund official determines that the Application proposes actions that require an environmental assessment or an EIS, the environmental assessment and/or EIS must be completed and circulated prior to the use of Federal funds for any activity that triggers the need for an environmental assessment and/or EIS.

§1815.106 Supplemental environmental review.

(a) The designated Fund official shall determine whether the proposed actions in the Application are sufficiently definite to perform a meaningful environmental review during the preliminary approval stage.

(b) If the designated Fund official determines that the Application is sufficiently definite to perform a meaningful environmental review during the preliminary approval stage, no conditions for supplemental environmental review shall be imposed.

(c) If the designated Fund official determines that the Application, or any part of the Application, is not sufficiently definite to complete a meaningful environmental review during the preliminary approval stage, the Fund shall require a supplemental environmental review prior to the taking of any action directly using Fund financial assistance that is not categorically excluded from environmental review or for which an environmental assessment or EIS has not been approved by the Fund. The applicant shall notify the designated Fund official when proposing any action requiring a supplemental environmental review and shall supply to the Fund all information necessary for the Fund to perform the supplemental environmental review. The Fund shall perform or have performed such a supplemental environmental review. The applicant shall not use any Fund financial assistance to perform any of the proposed actions requiring a supplemental environmental review that affect the physical environment until Fund approval for such action is received.

§1815.107 Determination of review requirement.

In deciding whether to prepare an EIS, the designated Fund official shall determine whether the proposal is one that normally:

(a) Requires an EIS;

(b) Requires an environmental assessment, but not necessarily an EIS; or

(c) Does not require either an EIS or an environmental assessment (categorical exclusion).

§1815.108 Actions that normally require an EIS.

(a) If necessary, the Fund shall perform or have performed an environmental assessment to determine if an Application, or any portion of an Application, requires an EIS. However, it may be readily apparent that a proposed action in an Application will have a significant impact on the environment; in such cases, an environmental assessment is not required and the Fund shall immediately begin to prepare, or have prepared, an EIS.

(b) An EIS normally is required where an Application proposes to directly use financial assistance from the Fund for any Project that would:

(1) Remove, demolish, convert, or substantially rehabilitate 2,500 or more existing housing units, or would result in the construction or installation of 2,500 or more new housing units, or which would provide sites for 2,500 or more new housing units; or

(2) Remove, demolish, convert, or substantially rehabilitate 1,500,000 square feet or more of commercial space, or would result in the construction or installation of 1,500,000 square feet or more of new commercial space, or which would provide sites for 1,500,000 square feet or more of new commercial space.

§1815.109 Preparation of an EIS.

(a) If the Fund determines that an EIS should be prepared, it shall publish a notice of intent in the FEDERAL REGISTER in accordance with 40 CFR 1501.7 and 1508.22 of the CEQ regulations. After publishing the notice of intent, the Fund shall begin to prepare or have prepared the EIS. Procedures for preparing the EIS are set forth in 40 CFR part 1502 of the CEQ regulations.

(b) The Fund may supplement a draft or final EIS at any time. The Fund shall prepare or have prepared a supplement to either the draft or final EIS when:

(1) Substantial changes are proposed to an action contained in the draft or final EIS that are relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; or

(2) Actions are proposed which relate or are similar to other action(s) taken or proposed and that together have a cumulatively significant impact on the environment.

§ 1815.110 Categorical exclusion.

The CEQ regulations provide for the categorical exclusion of actions that do not individually or cumulatively have a significant effect on the human environment (40 CFR 1508.4). Therefore, neither an environmental assessment nor an EIS is required for such actions. An action which falls into one of the categories below may still require the preparation of an EIS or environmental assessment if the designated Fund official determines it meets the criteria stated in § 1815.109 or involves extraordinary circumstances that may have a significant environmental effect. The Fund has determined the following categorical exclusions:

(a) Actions directly related to the administration or operation of the Fund (e.g. personnel actions, including, but not limited to, staff recruitment and training; purchase of goods and services for the Fund, including, but not limited to, furnishings, equipment, supplies and services; space acquisition; property management; and security);

(b) Actions directly related to and implementing proposals for which an environmental assessment or an environmental assessment and EIS have been prepared;

(c) Actions directly related to the granting or receipt of Bank Enterprise Act awards pursuant to part 1806 of this chapter;

(d) Actions directly related to training and/or technical assistance;

(e) Projects for the acquisition, disposition, rehabilitation and/or modernization of 500 existing housing units or less when all the following conditions are met:

(1) Unit density is not increased more than 20 percent;

(2) The Project does not involve changes in land use from nonresidential to residential;

(3) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and

(4) The Project does not involve the demolition of one or more buildings containing the primary use served by the project that, together, have more than 20 percent of the square footage of the Project;

(f) Projects for the construction of 200 housing units or less when all the following conditions are met:

(1) The Project does not involve changes in existing land use from nonresidential to residential; and

(2) The Project does not involve the demolition of one or more buildings containing the primary use served by the project that, together, have more than 20 percent of the square footage of the Project;

(g) Projects for the acquisition, disposition, rehabilitation and/or modernization of 200,000 square feet or less of existing commercial space when all the following conditions are met:

(1) The Project does not involve changes in existing land use from residential to nonresidential;

(2) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation; and

(3) The Project does not involve the demolition of more than 10,000 square feet of commercial space containing the primary use served by the Project;

(h) Projects for the construction of 100,000 square feet or less of commercial space when all the following conditions are met:

(1) The Project does not involve changes in existing land use from residential to nonresidential: and

(2) The Project does not involve the demolition of more than 10,000 square feet of commercial space containing the primary use served by the Project;

(i) Projects for the acquisition of an existing structure, provided that the property to be acquired is in place and will be retained in the same use;

(j) Projects involving Fund financial assistance of $1,000,000 or less;

(k) Actions directly related to the provision of residential tenant-based rental assistance, Consumer Loans, health care, child care, educational, cultural and/or social services;

(l) Actions involving Fund financial assistance that is used to increase the

permanent capital and/or liquidity of an applicant;

(m) Actions where no use of Federal funds is involved in the activity or Project; and

(n) Actions directly related to the provision of working capital, the acquisition of machinery and equipment or the purchase of inventory, raw materials or supplies.

§1815.111 Actions that require an environmental assessment.

If a Project or action is not one that normally requires an EIS and does not qualify for categorical exclusion, the Fund shall prepare, or have prepared, an environmental assessment.

§1815.112 Preparation of an environmental assessment.

(a) The Fund shall begin the preparation of an environmental assessment as early as possible after the designated Fund official has determined that it is required. The Fund may prepare an environmental assessment at any time to assist planning and decisionmaking.

(b) An environmental assessment is a concise public document used to determine whether to prepare an EIS. An environmental assessment aids in complying with the NEPA when no EIS is necessary, and it facilitates the preparation of an EIS, if one is necessary. The environmental assessment shall contain brief discussions of the following topics:

(1) Purpose and need for the proposed action;

(2) Description of the proposed action;

(3) Alternatives considered, including the no action alternative;

(4) Environmental effects of the proposed action and alternative actions; and

(5) Listing of agencies, organizations or persons consulted.

(c) The most important or significant environmental consequences and effects on the areas listed below should be addressed in the environmental assessment. Only those areas which are specifically relevant to the particular proposal should be addressed. Those areas should be addressed in as much detail as is necessary to allow an analysis of the alternatives and the proposal. The areas to be considered are the following:

(1) Natural/ecological features (such as floodplain, wetlands, coastal zones, wildlife refuges, and endangered species);

(2) Air quality;

(3) Sound levels;

(4) Water supply, wastewater treatment and water runoff;

(5) Energy requirements and conservation;

(6) Solid waste;

(7) Transportation;

(8) Community facilities and services;

(9) Social and economic;

(10) Historic and aesthetic; and

(11) Other relevant factors.

(d) If the Fund completes an environmental assessment and determines that an EIS is not required, then the Fund shall prepare a finding of no significant impact. The finding of no significant impact shall be made available to the public by the Fund as specified in 40 CFR 1506.6 of the CEQ regulations.

§1815.113 Public involvement.

All information collected by the Fund pursuant to this part shall be available to the public consistent with the CEQ regulations. Interested persons may obtain information concerning any pending EIS or any other element of the environmental review process of the Fund by contacting the Community Development Financial Institutions Fund, Department of the Treasury, 1500 Pennsylvania Avenue N.W., room 5116, Washington, DC 20220, or such other contact entity designated by the Fund.

§1815.114 Fund decisionmaking procedures.

To ensure that at major decisionmaking points all relevant environmental concerns are considered by the Decisionmaker, the following procedures are established:

(a) An environmental document, i.e., the EIS, environmental assessment, finding of no significant impact, or notice of intent, in addition to being prepared at the earliest point in the decisionmaking process, shall accompany the relevant proposal or action through the Fund's decisionmaking process to

ensure adequate consideration of environmental factors;

(b) The Decisionmaker shall consider in its decisionmaking process only those alternatives discussed in the relevant environmental documents. Also, where an EIS has been prepared, the decisionmaker shall consider all comments received during any comment process and all alternatives described in the EIS. A written record of the consideration of alternatives during the decisionmaking process shall be maintained; and

(c) Any environmental document prepared for a proposal or action shall be made part of the record of any formal rulemaking by the Fund.

§ 1815.115 OMB control number.

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control number 1505–0153 (expires September 30, 1998).

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
Redesignation Table
List of CFR Sections Affected—Transferred Regulations Formerly Appearing in Title 12 CFR, Chapter V
List of CFR Sections Affected

Table of CFR Titles and Chapters

(Revised as of January 1, 1997)

Title 1—General Provisions

I Administrative Committee of the Federal Register (Parts 1—49)
II Office of the Federal Register (Parts 50—299)
IV Miscellaneous Agencies (Parts 400—500)

Title 2—[Reserved]

Title 3—The President

I Executive Office of the President (Parts 100—199)

Title 4—Accounts

I General Accounting Office (Parts 1—99)
II Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100—299)

Title 5—Administrative Personnel

I Office of Personnel Management (Parts 1—1199)
II Merit Systems Protection Board (Parts 1200—1299)
III Office of Management and Budget (Parts 1300—1399)
IV Advisory Committee on Federal Pay (Parts 1400—1499)
V The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI Federal Retirement Thrift Investment Board (Parts 1600—1699)
VII Advisory Commission on Intergovernmental Relations (Parts 1700—1799)
VIII Office of Special Counsel (Parts 1800—1899)
IX Appalachian Regional Commission (Parts 1900—1999)
XI Armed Forces Retirement Home (Part 2100)
XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XV Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI Office of Government Ethics (Parts 2600—2699)
XXI Department of the Treasury (Parts 3100—3199)
XXII Federal Deposit Insurance Corporation (Part 3202)
XXIII Department of Energy (Part 3301)

Title 5—Administrative Personnel—Continued

Chap.	
XXIV	Federal Energy Regulatory Commission (Part 3401)
XXVI	Department of Defense (Part 3601)
XXVIII	Department of Justice (Part 3801)
XXIX	Federal Communications Commission (Parts 3900—3999)
XXX	Farm Credit System Insurance Corporation (Parts 4000—4099)
XXXI	Farm Credit Administration (Parts 4100—4199)
XXXIII	Overseas Private Investment Corporation (Part 4301)
XXXV	Office of Personnel Management (Part 4501)
XL	Interstate Commerce Commission (Part 5001)
XLI	Commodity Futures Trading Commission (Part 5101)
XLII	Department of Labor (Part 5201)
XLIII	National Science Foundation (Part 5301)
XLV	Department of Health and Human Services (Part 5501)
XLVI	Postal Rate Commission (Part 5601)
XLVII	Federal Trade Commission (Part 5701)
XLVIII	Nuclear Regulatory Commission (Part 5801)
L	Department of Transportation (Part 6001)
LII	Export-Import Bank of the United States (Part 6201)
LIII	Department of Education (Parts 6300—6399)
LIV	Environmental Protection Agency (Part 6401)
LVII	General Services Administration (Part 6701)
LVIII	Board of Governors of the Federal Reserve System (Part 6801)
LIX	National Aeronautics and Space Administration (Part 6901)
LX	United States Postal Service (Part 7001)
LXII	Equal Employment Opportunity Commission (Part 7201)
LXIII	Inter-American Foundation (Part 7301)
LXV	Department of Housing and Urban Development (Part 7501)
LXVI	National Archives and Records Administration (Part 7601)
LXIX	Tennessee Valley Authority (Part 7901)
LXXI	Consumer Product Safety Commission (Part 8101)
LXXIV	Federal Mine Safety and Health Review Commission (Part 8401)
LXXVI	Federal Retirement Thrift Investment Board (Part 8601)
LXXVII	Office of Management and Budget (Part 8701)

Title 6—[Reserved]

Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0—26)

SUBTITLE B—Regulations of the Department of Agriculture

I	Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)
II	Food and Consumer Service, Department of Agriculture (Parts 210—299)
III	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

Title 7—Agriculture—Continued

Chap.	
IV	Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)
V	Agricultural Research Service, Department of Agriculture (Parts 500—599)
VI	Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)
VII	Farm Service Agency, Department of Agriculture (Parts 700—799)
VIII	Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)
IX	Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)
X	Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)
XI	Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)
XIV	Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)
XV	Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)
XVI	Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)
XVII	Rural Utilities Service, Department of Agriculture (Parts 1700—1799)
XVIII	Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)
XXVI	Office of Inspector General, Department of Agriculture (Parts 2600—2699)
XXVII	Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)
XXVIII	Office of Operations, Department of Agriculture (Parts 2800—2899)
XXIX	Office of Energy, Department of Agriculture (Parts 2900—2999)
XXX	Office of Finance and Management, Department of Agriculture (Parts 3000—3099)
XXXI	Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)
XXXII	[Reserved]
XXXIII	Office of Transportation, Department of Agriculture (Parts 3300—3399)
XXXIV	Cooperative State Research, Education, and Extension Service, Department of Agriculture (Parts 3400—3499)
XXXV	Rural Housing Service, Department of Agriculture (Parts 3500—3599)
XXXVI	National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)

Title 7—Agriculture—Continued

Chap.	
XXXVII	Economic Research Service, Department of Agriculture (Parts 3700—3799)
XXXVIII	World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)
XLI	[Reserved]
XLII	Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Parts 4200—4299)

Title 8—Aliens and Nationality

I	Immigration and Naturalization Service, Department of Justice (Parts 1—499)

Title 9—Animals and Animal Products

I	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)
II	Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture (Parts 200—299)
III	Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300—599)

Title 10—Energy

I	Nuclear Regulatory Commission (Parts 0—199)
II	Department of Energy (Parts 200—699)
III	Department of Energy (Parts 700—999)
X	Department of Energy (General Provisions) (Parts 1000—1099)
XI	United States Enrichment Corporation (Parts 1100—1199)
XV	Office of the Federal Inspector for the Alaska Natural Gas Transportation System (Parts 1500—1599)
XVII	Defense Nuclear Facilities Safety Board (Parts 1700—1799)

Title 11—Federal Elections

I	Federal Election Commission (Parts 1—9099)

Title 12—Banks and Banking

I	Comptroller of the Currency, Department of the Treasury (Parts 1—199)
II	Federal Reserve System (Parts 200—299)
III	Federal Deposit Insurance Corporation (Parts 300—399)
IV	Export-Import Bank of the United States (Parts 400—499)
V	Office of Thrift Supervision, Department of the Treasury (Parts 500—599)
VI	Farm Credit Administration (Parts 600—699)
VII	National Credit Union Administration (Parts 700—799)
VIII	Federal Financing Bank (Parts 800—899)

Title 12—Banks and Banking—Continued

Chap.

IX Federal Housing Finance Board (Parts 900—999)

XI Federal Financial Institutions Examination Council (Parts 1100—1199)

XIV Farm Credit System Insurance Corporation (Parts 1400—1499)

XV Thrift Depositor Protection Oversight Board (Parts 1500—1599)

XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700-1799)

XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)

III Economic Development Administration, Department of Commerce (Parts 300—399)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)

II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

III Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)

V National Aeronautics and Space Administration (Parts 1200—1299)

Title 15—Commerce and Foreign Trade

SUBTITLE A—Office of the Secretary of Commerce (Parts 0—29)

SUBTITLE B—Regulations Relating to Commerce and Foreign Trade

I Bureau of the Census, Department of Commerce (Parts 30—199)

II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

IV Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)

VII Bureau of Export Administration, Department of Commerce (Parts 700—799)

VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

XI Technology Administration, Department of Commerce (Parts 1100—1199)

XIII East-West Foreign Trade Board (Parts 1300—1399)

XIV Minority Business Development Agency (Parts 1400—1499)

SUBTITLE C—Regulations Relating to Foreign Trade Agreements

Title 15—Commerce and Foreign Trade—Continued

Chap.

XX Office of the United States Trade Representative (Parts 2000—2099)

SUBTITLE D—Regulations Relating to Telecommunications and Information

XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

I Federal Trade Commission (Parts 0—999)

II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1—199)

II Securities and Exchange Commission (Parts 200—399)

IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

III Delaware River Basin Commission (Parts 400—499)

VI Water Resources Council (Parts 700—799)

VIII Susquehanna River Basin Commission (Parts 800—899)

XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I United States Customs Service, Department of the Treasury (Parts 1—199)

II United States International Trade Commission (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

II Railroad Retirement Board (Parts 200—399)

III Social Security Administration (Parts 400—499)

IV Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)

V Employment and Training Administration, Department of Labor (Parts 600—699)

VI Employment Standards Administration, Department of Labor (Parts 700—799)

VII Benefits Review Board, Department of Labor (Parts 800—899)

VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)

Title 20—Employees' Benefits—Continued

Chap.

IX Office of the Assistant Secretary for Veterans' Employment and Training, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)

II Agency for International Development, International Development Cooperation Agency (Parts 200—299)

III Peace Corps (Parts 300—399)

IV International Joint Commission, United States and Canada (Parts 400—499)

V United States Information Agency (Parts 500—599)

VI United States Arms Control and Disarmament Agency (Parts 600—699)

VII Overseas Private Investment Corporation, International Development Cooperation Agency (Parts 700—799)

IX Foreign Service Grievance Board Regulations (Parts 900—999)

X Inter-American Foundation (Parts 1000—1099)

XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)

XII United States International Development Cooperation Agency (Parts 1200—1299)

XIII Board for International Broadcasting (Parts 1300—1399)

XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)

XV African Development Foundation (Parts 1500—1599)

XVI Japan-United States Friendship Commission (Parts 1600—1699)

XVII United States Institute of Peace (Parts 1700—1799)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)

II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

Chap.

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0—99)

SUBTITLE B—Regulations Relating to Housing and Urban Development

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]

VII Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs and Section 202 Direct Loan Program) (Parts 800—899)

IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—999)

X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)

XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)

Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)

III National Indian Gaming Commission, Department of the Interior (Parts 500—599)

IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)

V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)

VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Part 1001)

Title 26—Internal Revenue

Chap.

I Internal Revenue Service, Department of the Treasury (Parts 1—799)

Title 27—Alcohol, Tobacco Products and Firearms

I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 1—299)

Title 28—Judicial Administration

I Department of Justice (Parts 0—199)

III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)

V Bureau of Prisons, Department of Justice (Parts 500—599)

VI Offices of Independent Counsel, Department of Justice (Parts 600—699)

VII Office of Independent Counsel (Parts 700—799)

Title 29—Labor

SUBTITLE A—Office of the Secretary of Labor (Parts 0—99)

SUBTITLE B—Regulations Relating to Labor

I National Labor Relations Board (Parts 100—199)

II Office of Labor-Management Programs, Department of Labor (Parts 200—299)

III National Railroad Adjustment Board (Parts 300—399)

IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)

V Wage and Hour Division, Department of Labor (Parts 500—899)

IX Construction Industry Collective Bargaining Commission (Parts 900—999)

X National Mediation Board (Parts 1200—1299)

XII Federal Mediation and Conciliation Service (Parts 1400—1499)

XIV Equal Employment Opportunity Commission (Parts 1600—1699)

XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

XX Occupational Safety and Health Review Commission (Parts 2200—2499)

XXV Pension and Welfare Benefits Administration, Department of Labor (Parts 2500—2599)

XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)

XL Pension Benefit Guaranty Corporation (Parts 4000—4999)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)

II Minerals Management Service, Department of the Interior (Parts 200—299)

Title 30—Mineral Resources—Continued

Chap.

III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300—399)

IV Geological Survey, Department of the Interior (Parts 400—499)

VI Bureau of Mines, Department of the Interior (Parts 600—699)

VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

Title 31—Money and Finance: Treasury

SUBTITLE A—Office of the Secretary of the Treasury (Parts 0—50)

SUBTITLE B—Regulations Relating to Money and Finance

I Monetary Offices, Department of the Treasury (Parts 51—199)

II Fiscal Service, Department of the Treasury (Parts 200—399)

IV Secret Service, Department of the Treasury (Parts 400—499)

V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)

VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)

VIII Office of International Investment, Department of the Treasury (Parts 800—899)

Title 32—National Defense

SUBTITLE A—Department of Defense

I Office of the Secretary of Defense (Parts 1—399)

V Department of the Army (Parts 400—699)

VI Department of the Navy (Parts 700—799)

VII Department of the Air Force (Parts 800—1099)

SUBTITLE B—Other Regulations Relating to National Defense

XII Defense Logistics Agency (Parts 1200—1299)

XVI Selective Service System (Parts 1600—1699)

XIX Central Intelligence Agency (Parts 1900—1999)

XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)

XXI National Security Council (Parts 2100—2199)

XXIV Office of Science and Technology Policy (Parts 2400—2499)

XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)

XXVIII Office of the Vice President of the United States (Parts 2800—2899)

XXIX Presidential Commission on the Assignment of Women in the Armed Forces (Part 2900)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Transportation (Parts 1—199)

II Corps of Engineers, Department of the Army (Parts 200—399)

Title 33—Navigation and Navigable Waters—Continued

Chap.

IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

SUBTITLE A—Office of the Secretary, Department of Education (Parts 1—99)

SUBTITLE B—Regulations of the Offices of the Department of Education

I Office for Civil Rights, Department of Education (Parts 100—199)

II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

IV Office of Vocational and Adult Education, Department of Education (Parts 400—499)

V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)

VI Office of Postsecondary Education, Department of Education (Parts 600—699)

VII Office of Educational Research and Improvement, Department of Education (Parts 700—799)

XI National Institute for Literacy (Parts 1100-1199)

SUBTITLE C—Regulations Relating to Education

XII National Council on Disability (Parts 1200—1299)

Title 35—Panama Canal

I Panama Canal Regulations (Parts 1—299)

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)

II Forest Service, Department of Agriculture (Parts 200—299)

III Corps of Engineers, Department of the Army (Parts 300—399)

IV American Battle Monuments Commission (Parts 400—499)

V Smithsonian Institution (Parts 500—599)

VII Library of Congress (Parts 700—799)

VIII Advisory Council on Historic Preservation (Parts 800—899)

IX Pennsylvania Avenue Development Corporation (Parts 900—999)

XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)

XII National Archives and Records Administration (Parts 1200—1299)

XIV Assassination Records Review Board (Parts 1400-1499)

Title 37—Patents, Trademarks, and Copyrights

I Patent and Trademark Office, Department of Commerce (Parts 1—199)

II Copyright Office, Library of Congress (Parts 200—299)

Title 37—Patents, Trademarks, and Copyrights—Continued

Chap.

IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—499)

V Under Secretary for Technology, Department of Commerce (Parts 500—599)

Title 38—Pensions, Bonuses, and Veterans' Relief

I Department of Veterans Affairs (Parts 0—99)

Title 39—Postal Service

I United States Postal Service (Parts 1—999)

III Postal Rate Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—799)

V Council on Environmental Quality (Parts 1500—1599)

Title 41—Public Contracts and Property Management

SUBTITLE B—Other Provisions Relating to Public Contracts

50 Public Contracts, Department of Labor (Parts 50–1—50–999)

51 Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51–1—51–99)

60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

61 Office of the Assistant Secretary for Veterans Employment and Training, Department of Labor (Parts 61–1—61–999)

SUBTITLE C—Federal Property Management Regulations System

101 Federal Property Management Regulations (Parts 101–1—101–99)

105 General Services Administration (Parts 105–1—105–999)

109 Department of Energy Property Management Regulations (Parts 109–1—109–99)

114 Department of the Interior (Parts 114–1—114–99)

115 Environmental Protection Agency (Parts 115–1—115–99)

128 Department of Justice (Parts 128–1—128–99)

SUBTITLE D—Other Provisions Relating to Property Management [Reserved]

SUBTITLE E—Federal Information Resources Management Regulations System

201 Federal Information Resources Management Regulation (Parts 201–1—201–99) [Reserved]

SUBTITLE F—Federal Travel Regulation System

301 Travel Allowances (Parts 301–1—301–99)

302 Relocation Allowances (Parts 302–1—302–99)

303 Payment of Expenses Connected with the Death of Certain Employees (Parts 303–1—303–2)

304 Payment from a Non-Federal Source for Travel Expenses (Parts 304–1—304–99)

Title 42—Public Health

Chap.

I Public Health Service, Department of Health and Human Services (Parts 1—199)

IV Health Care Financing Administration, Department of Health and Human Services (Parts 400—499)

V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

SUBTITLE A—Office of the Secretary of the Interior (Parts 1—199)

SUBTITLE B—Regulations Relating to Public Lands

I Bureau of Reclamation, Department of the Interior (Parts 200—499)

II Bureau of Land Management, Department of the Interior (Parts 1000—9999)

III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10005)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency (Parts 0—399)

IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—Department of Health and Human Services, General Administration (Parts 1—199)

SUBTITLE B—Regulations Relating to Public Welfare

II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

IV Office of Refugee Resettlement, Administration for Children and Families Department of Health and Human Services (Parts 400—499)

V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)

VI National Science Foundation (Parts 600—699)

VII Commission on Civil Rights (Parts 700—799)

VIII Office of Personnel Management (Parts 800—899)

X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)

XI National Foundation on the Arts and the Humanities (Parts 1100—1199)

XII ACTION (Parts 1200—1299)

XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

Title 45—Public Welfare—Continued

Chap.

XVI Legal Services Corporation (Parts 1600—1699)

XVII National Commission on Libraries and Information Science (Parts 1700—1799)

XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)

XXI Commission on Fine Arts (Parts 2100—2199)

XXII Christopher Columbus Quincentenary Jubilee Commission (Parts 2200—2299)

XXIII Arctic Research Commission (Part 2301)

XXIV James Madison Memorial Fellowship Foundation (Parts 2400—2499)

XXV Corporation for National and Community Service (Parts 2500—2599)

Title 46—Shipping

I Coast Guard, Department of Transportation (Parts 1—199)

II Maritime Administration, Department of Transportation (Parts 200—399)

IV Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0—199)

II Office of Science and Technology Policy and National Security Council (Parts 200—299)

III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)

Title 48—Federal Acquisition Regulations System

1 Federal Acquisition Regulation (Parts 1—99)

2 Department of Defense (Parts 200—299)

3 Department of Health and Human Services (Parts 300—399)

4 Department of Agriculture (Parts 400—499)

5 General Services Administration (Parts 500—599)

6 Department of State (Parts 600—699)

7 Agency for International Development (Parts 700—799)

8 Department of Veterans Affairs (Parts 800—899)

9 Department of Energy (Parts 900—999)

10 Department of the Treasury (Parts 1000—1099)

12 Department of Transportation (Parts 1200—1299)

13 Department of Commerce (Parts 1300—1399)

14 Department of the Interior (Parts 1400—1499)

15 Environmental Protection Agency (Parts 1500—1599)

16 Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

17 Office of Personnel Management (Parts 1700—1799)

18 National Aeronautics and Space Administration (Parts 1800—1899)

Title 48—Federal Acquisition Regulations System—Continued

Chap.

19 United States Information Agency (Parts 1900—1999)

20 Nuclear Regulatory Commission (Parts 2000—2099)

21 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)

23 Social Security Administration (Parts 2300—2399)

24 Department of Housing and Urban Development (Parts 2400—2499)

25 National Science Foundation (Parts 2500—2599)

28 Department of Justice (Parts 2800—2899)

29 Department of Labor (Parts 2900—2999)

34 Department of Education Acquisition Regulation (Parts 3400—3499)

35 Panama Canal Commission (Parts 3500—3599)

44 Federal Emergency Management Agency (Parts 4400—4499)

51 Department of the Army Acquisition Regulations (Parts 5100—5199)

52 Department of the Navy Acquisition Regulations (Parts 5200—5299)

53 Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399)

54 Defense Logistics Agency, Department of Defense (Part 5452)

57 African Development Foundation (Parts 5700—5799)

61 General Services Administration Board of Contract Appeals (Parts 6100—6199)

63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)

99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

SUBTITLE A—Office of the Secretary of Transportation (Parts 1—99)

SUBTITLE B—Other Regulations Relating to Transportation

I Research and Special Programs Administration, Department of Transportation (Parts 100—199)

II Federal Railroad Administration, Department of Transportation (Parts 200—299)

III Federal Highway Administration, Department of Transportation (Parts 300—399)

IV Coast Guard, Department of Transportation (Parts 400—499)

V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

VI Federal Transit Administration, Department of Transportation (Parts 600—699)

VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)

VIII National Transportation Safety Board (Parts 800—999)

Title 49—Transportation—Continued

Chap.

X Surface Transportation Board, Department of Transportation (Parts 1000—1399)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Fishing and Related Activities (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index

List of Agency Prepared Indexes

Parallel Tables of Statutory Authorities and Rules

Acts Requiring Publication in the Federal Register

List of CFR Titles, Chapters, Subchapters, and Parts

Alphabetical List of Agencies Appearing in the CFR

Alphabetical List of Agencies Appearing in the CFR

(Revised as of January 1, 1997)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Administrative Committee of the Federal Register	1, I
Advanced Research Projects Agency	32, I
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
African Development Foundation	22, XV
Federal Acquisition Regulation	48, 57
Agency for International Development	22, II
Federal Acquisition Regulation	48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Animal and Plant Health Inspection Service	7, III; 9, I
Commodity Credit Corporation	7, XIV
Cooperative State Research, Education, and Extension Service	7, XXXIV
Economic Research Service	7, XXXVII
Energy, Office of	7, XXIX
Environmental Quality, Office of	7, XXXI
Farm Service Agency	7, VII, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Finance and Management, Office of	7, XXX
Food and Consumer Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Forest Service	36, II
Grain Inspection, Packers and Stockyards Administration	7, VIII; 9, II
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
Natural Resources Conservation Service	7, VI
Operations, Office of	7, XXVIII
Rural Business-Cooperative Service	7, XVIII, XLII
Rural Development Administration	7, XLII
Rural Housing Service	7, XVIII, XXXV
Rural Telephone Bank	7, XVI
Rural Utilities Service	7, XVII, XVIII, XLII
Secretary of Agriculture, Office of	7, Subtitle A
Transportation, Office of	7, XXXIII
World Agricultural Outlook Board	7, XXXVIII
Air Force Department	32, VII
Federal Acquisition Regulation Supplement	48, 53
Alaska Natural Gas Transportation System, Office of the Federal Inspector	10, XV
Alcohol, Tobacco and Firearms, Bureau of	27, I
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I

Agency	CFR Title, Subtitle or Chapter
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arctic Research Commission	45, XXIII
Arms Control and Disarmament Agency, United States	22, VI
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 51
Assassination Records Review Board	36, XIV
Benefits Review Board	20, VII
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind or Severely Disabled, Committee for Purchase From People Who Are	41, 51
Board for International Broadcasting	22, XIII
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Children and Families, Administration for	45, II, III, IV, X
Christopher Columbus Quincentenary Jubilee Commission	45, XXII
Civil Rights, Commission on	45, VII
Civil Rights, Office for	34, I
Coast Guard	33, I; 46, I; 49, IV
Commerce Department	44, IV
Census Bureau	15, I‘
Economic Affairs, Under Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Emergency Management and Assistance	44, IV
Export Administration, Bureau of	15, VII
Federal Acquisition Regulation	48, 13
Fishery Conservation and Management	50, VI
Foreign-Trade Zones Board	15, IV
International Trade Administration	15, III; 19, III
National Institute of Standards and Technology	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII; 47, III
National Weather Service	15, IX
Patent and Trademark Office	37, I
Productivity, Technology and Innovation, Assistant Secretary for	37, IV
Secretary of Commerce, Office of	15, Subtitle A
Technology, Under Secretary for	37, V
Technology Administration	15, XI
Technology Policy, Assistant Secretary for	37, IV
Commercial Space Transportation	14, III
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	5, XLI; 17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	5, LXXI; 16, II
Cooperative State Research, Education, and Extension Service	7, XXXIV
Copyright Office	37, II
Cost Accounting Standards Board	48, 99
Council on Environmental Quality	40, V
Customs Service, United States	19, I
Defense Contract Audit Agency	32, I
Defense Department	5, XXVI; 32, Subtitle A
Advanced Research Projects Agency	32, I
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III, 48, 51
Defense Intelligence Agency	32, I

Agency	CFR Title, Subtitle or Chapter
Defense Logistics Agency	32, I, XII; 48, 54
Defense Mapping Agency	32, I
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 2
Navy Department	32, VI; 48, 52
Secretary of Defense, Office of	32, I
Defense Contract Audit Agency	32, I
Defense Intelligence Agency	32, I
Defense Logistics Agency	32, XII; 48, 54
Defense Mapping Agency	32, I
Defense Nuclear Facilities Safety Board	10, XVII
Delaware River Basin Commission	18, III
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Affairs, Under Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Economic Research Service	7, XXXVII
Education, Department of	5, LIII
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Acquisition Regulation	48, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	5, XXIII; 10, II, III, X
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	5, XXIV; 18, I
Property Management Regulations	41, 109
Energy, Office of	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Enrichment Corporation, United States	10, XI
Environmental Protection Agency	5, LIV; 40, I
Federal Acquisition Regulation	48, 15
Property Management Regulations	41, 115
Environmental Quality, Office of	7, XXXI
Equal Employment Opportunity Commission	5, LXII; 29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Environmental Quality, Council on	40, V
Management and Budget, Office of	25, III, LXXVII; 48, 99
National Drug Control Policy, Office of	21, III
National Security Council	32, XXI; 47, 2
Presidential Documents	3
Science and Technology Policy, Office of	32, XXIV; 47, II
Trade Representative, Office of the United States	15, XX
Export Administration, Bureau of	15, VII
Export-Import Bank of the United States	5, LII; 12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	5, XXXI; 12, VI
Farm Credit System Insurance Corporation	5, XXX; 12, XIV
Farm Service Agency	7, VII, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I

Agency	CFR Title, Subtitle or Chapter
Commercial Space Transportation	14, III
Federal Claims Collection Standards	4, II
Federal Communications Commission	5, XXIX; 47, I
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	5, XXII; 12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I
Federal Acquisition Regulation	48, 44
Federal Employees Group Life Insurance Federal Acquisition Regulation	48, 21
Federal Employees Health Benefits Acquisition Regulation	48, 16
Federal Energy Regulatory Commission	5, XXIV; 18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Mortgage Corporation	1, IV
Federal Housing Enterprise Oversight Office	12, XVII
Federal Housing Finance Board	12, IX
Federal Inspector for the Alaska Natural Gas Transportation System, Office of	10, XV
Federal Labor Relations Authority, and General Counsel of the Federal Labor Relations Authority	5, XIV; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	5, LXXIV; 29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries, Inc.	28, III
Federal Procurement Policy Office	48, 99
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Board of Governors	5, LVIII
Federal Retirement Thrift Investment Board	5, VI, LXXVI
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	5, XLVII; 16, I
Federal Transit Administration	49, VI
Federal Travel Regulation System	41, Subtitle F
Finance and Management, Office of	7, XXX
Fine Arts, Commission on	45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Food and Drug Administration	21, I
Food and Consumer Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of the United States	45, V
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Accounting Office	4, I, II
General Services Administration	5, LVII
Contract Appeals, Board of	48, 61
Federal Acquisition Regulation	48, 5
Federal Property Management Regulations System	41, 101, 105
Federal Travel Regulation System	41, Subtitle F
Payment From a Non-Federal Source for Travel Expenses	41, 304
Payment of Expenses Connected With the Death of Certain Employees	41, 303

Agency	CFR Title, Subtitle or Chapter
Relocation Allowances	41, 302
Travel Allowances	41, 301
Geological Survey	30, IV
Government Ethics, Office of	5, XVI
Government National Mortgage Association	24, III
Grain Inspection, Packers and Stockyards Administration	7, VIII; 9, II
Great Lakes Pilotage	46, III
Harry S. Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	5, XLV; 45, Subtitle A
Child Support Enforcement, Office of	45, III
Children and Families, Administration for	45, II, III, IV, X
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Health Care Financing Administration	42, IV
Human Development Services, Office of	45, XIII
Indian Health Service	25, V
Inspector General (Health Care), Office of	42, V
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
Health Care Financing Administration	42, IV
Housing and Urban Development, Department of	5, LXV; 24, Subtitle B
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Federal Housing Enterprise Oversight, Office of	12, XVII
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Inspector General, Office of	24, XII
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle A, VII
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Human Development Services, Office of	45, XIII
Immigration and Naturalization Service	8, I
Independent Counsel, Office of	28, VII
Indian Affairs, Bureau of	25, I, V
Indian Affairs, Office of the Assistant Secretary	25, VI
Indian Arts and Crafts Board	25, II
Indian Health Service	25, V
Information Agency, United States	22, V
Federal Acquisition Regulation	48, 19
Information Resources Management, Office of	7, XXVII
Information Security Oversight Office, National Archives and Records Administration	32, XX
Inspector General	
Agriculture Department	7, XXVI
Health and Human Services Department	42, V
Housing and Urban Development Department	24, XII
Institute of Peace, United States	22, XVII
Inter-American Foundation	5, LXIII; 22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I, V
Indian Affairs, Office of the Assistant Secretary	25, VI
Indian Arts and Crafts Board	25, II
Land Management, Bureau of	43, II
Minerals Management Service	30, II
Mines, Bureau of	30, VI

Agency	CFR Title, Subtitle or Chapter
National Indian Gaming Commission	25, III
National Park Service	36, I
Reclamation, Bureau of	43, I
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico, United States Section	22, XI
International Development, Agency for	22, II
Federal Acquisition Regulation	48, 7
International Development Cooperation Agency, United States	22, XII
International Development, Agency for	22, II; 48, 7
Overseas Private Investment Corporation	5, XXXIII; 22, VII
International Fishing and Related Activities	50, III
International Investment, Office of	31, VIII
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	5, XL
James Madison Memorial Fellowship Foundation	45, XXIV
Japan–United States Friendship Commission	22, XVI
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	5, XXVIII; 28, I
Drug Enforcement Administration	21, II
Federal Acquisition Regulation	48, 28
Federal Claims Collection Standards	4, II
Federal Prison Industries, Inc.	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration and Naturalization Service	8, I
Offices of Independent Counsel	28, VI
Prisons, Bureau of	28, V
Property Management Regulations	41, 128
Labor Department	5, XLII
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Programs, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefits Administration	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Relations and Cooperative Programs, Bureau of	29, II
Labor-Management Programs, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Management and Budget, Office of	5, III, LXXVII; 48, 99
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II

Agency	CFR Title, Subtitle or Chapter
Micronesian Status Negotiations, Office for	32, XXVII
Mine Safety and Health Administration	30, I
Minerals Management Service	30, II
Mines, Bureau of	30, VI
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
National Aeronautics and Space Administration	5, LIX; 14, V
Federal Acquisition Regulation	48, 18
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National Archives and Records Administration	5, LXVI; 36, XII
Information Security Oversight Office	32, XX
National Bureau of Standards	15, II
National Capital Planning Commission	1, IV
National Commission for Employment Policy	1, IV
National Commission on Libraries and Information Science	45, XVII
National and Community Service, Corporation for	45, XXV
National Council on Disability	34, XII
National Credit Union Administration	12, VII
National Drug Control Policy, Office of	21, III
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II, III; 49, V
National Indian Gaming Commission	25, III
National Institute for Literacy	34, XI
National Institute of Standards and Technology	15, II
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	5, XLIII; 45, VI
Federal Acquisition Regulation	48, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII; 47, III
National Transportation Safety Board	49, VIII
National Weather Service	15, IX
Natural Resources Conservation Service	7, VI
Navajo and Hopi Indian Relocation, Office of	25, IV
Navy Department	32, VI
Federal Acquisition Regulation	48, 52
Neighborhood Reinvestment Corporation	24, XXV
Nuclear Regulatory Commission	5, XLVIII; 10, I
Federal Acquisition Regulation	48, 20
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Offices of Independent Counsel	28, VI
Operations Office	7, XXVIII
Overseas Private Investment Corporation	5, XXXIII; 22, VII
Panama Canal Commission	48, 35
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Payment From a Non-Federal Source for Travel Expenses	41, 304
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension and Welfare Benefits Administration	29, XXV
Pension Benefit Guaranty Corporation	29, XL
Personnel Management, Office of	5, I, XXXV; 45, VIII
Federal Acquisition Regulation	48, 17
Federal Employees Group Life Insurance Federal Acquisition Regulation	48, 21

Agency	CFR Title, Subtitle or Chapter
Federal Employees Health Benefits Acquisition Regulation	48, 16
Postal Rate Commission	5, XLVI; 39, III
Postal Service, United States	5, LX; 39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Commission on the Assignment of Women in the Armed Forces	32, XXIX
Presidential Documents	3
Prisons, Bureau of	28, V
Productivity, Technology and Innovation, Assistant Secretary	37, IV
Public Contracts, Department of Labor	41, 50
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Public Health Service	42, I
Railroad Retirement Board	20, II
Reclamation, Bureau of	43, I
Refugee Resettlement, Office of	45, IV
Regional Action Planning Commissions	13, V
Relocation Allowances	41, 302
Research and Special Programs Administration	49, I
Rural Business-Cooperative Service	7, XVIII, XLII
Rural Development Administration	7, XLII
Rural Housing Service	7, XVIII, XXXV
Rural Telephone Bank	7, XVI
Rural Utilities Service	7, XVII, XVIII, XLII
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI
Small Business Administration	13, I
Smithsonian Institution	36, V
Social Security Administration	20, III; 48, 23
Soldiers' and Airmen's Home, United States	5, XI
Special Counsel, Office of	5, VIII
Special Education and Rehabilitative Services, Office of	34, III
State Department	22, I
Federal Acquisition Regulation	48, 6
Surface Mining and Reclamation Appeals, Board of	30, III
Surface Mining Reclamation and Enforcement, Office of	30, VII
Surface Transportation Board	49, X
Susquehanna River Basin Commission	18, VIII
Technology Administration	15, XI
Technology Policy, Assistant Secretary for	37, IV
Technology, Under Secretary for	37, V
Tennessee Valley Authority	5, LXIX; 18, XIII
Thrift Depositor Protection Oversight Board	12, XV
Thrift Supervision Office, Department of the Treasury	12, V
Trade Representative, United States, Office of	15, XX
Transportation, Department of	5, L
Coast Guard	33, I; 46, I; 49, IV
Commercial Space Transportation	14, III
Contract Appeals, Board of	48, 63
Emergency Management and Assistance	44, IV
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Railroad Administration	49, II
Federal Transit Administration	49, VI
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 49, V
Research and Special Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Surface Transportation Board	49, X

Agency	CFR Title, Subtitle or Chapter
Transportation, Office of	7, XXXIII
Travel Allowances	41, 301
Treasury Department	5, XXI; 17, IV
Alcohol, Tobacco and Firearms, Bureau of	27, I
Community Development Financial Institutions Fund	12, XVIII
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Law Enforcement Training Center	31, VII
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
International Investment, Office of	31, VIII
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Thrift Supervision, Office of	12, V
Truman, Harry S. Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States and Mexico, International Boundary and Water Commission, United States Section	22, XI
United States Enrichment Corporation	10, XI
Utah Reclamation Mitigation and Conservation Commission	43, III
Veterans Affairs Department	38, I
Federal Acquisition Regulation	48, 8
Veterans' Employment and Training, Office of the Assistant Secretary for	41, 61; 20, IX
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I
World Agricultural Outlook Board	7, XXXVIII

Redesignation Table

Title 12 of the Code of Federal Regulations was amended at 54 FR 36758, Sept. 5, 1989, by redesignating certain regulations from 12 CFR chapter V to 12 CFR chapter IX, as set forth in the following redesignation table which shows the relationship of the former CFR part, subpart and section numbers under 12 CFR chapter V and new part, subpart and section numbers in 12 CFR chapter IX.

Redesignation Table

12 CFR Ch. V Former Section Numbers	12 CFR Ch. IX New Section Numbers
Part 506	Part 910
506.1	910.1
506.2	910.2
506.3	910.3
506.4	910.4
506.5	910.5
506.6	910.6
Part 506a	Part 912
506a.1	912.1
506a.2	912.2
506a.3	912.3
506a.4	912.4
506a.5	912.5
506a.6	912.6
506a.7	912.7
506a.8	912.8
506a.9	912.9
Subchapter B	Subchapter B
Part 521	Part 931
521.1	931.1
521.2	931.2
521.3	931.3
521.4	931.4
521.5	931.5
521.6	931.6
521.6–1	931.7
521.6–2	931.8
521.7	931.9
521.8	931.10
521.9	931.11
521.10	931.12
521.11	931.13
Part 522	Part 932
522.1	932.1
522.5	932.2
522.6	932.3
522.10	932.4
522.11	932.5
522.12	932.6
522.13	932.7
522.20	932.8
522.21	932.9
522.22	932.10
522.23	932.11
522.24	932.12
522.25	932.13
522.26	932.14
522.27	932.15
522.28	932.16
522.60	932.27
522.61	932.28
522.62	932.29
522.70	932.40
522.71	932.41
522.72	932.42

Redesignation Table—Continued

12 CFR Ch. V Former Section Numbers	12 CFR Ch. IX New Section Numbers
522.73	932.43
522.75	932.50
522.76	932.51
522.80	932.55
522.81	932.56
522.82	932.57
522.85	932.60
522.86	932.61
522.87	932.62
522.90	932.65
Part 523	Part 933
523.1	933.1
523.3	933.3
523.3–1	933.4
523.3–2	933.5
523.3–3	933.6
523.4	933.7
523.5	933.8
523.6	933.9
523.7	933.10
523.8	933.11
523.10	933.13
523.11	933.14
523.12	933.15
523.13	933.16
523.14	933.17
523.15	933.18
523.20	933.22
523.25	933.27
523.29	933.31
523.30	933.32
523.31	933.33
Part 524	Part 934
524.1	934.1
524.2	934.2
524.3	934.3
524.4	934.4
524.5	934.5
524.6	934.6
524.7	934.7
524.8	934.8
524.9	934.9
524.10	934.10
524.11	934.11
524.12	934.12
524.13	934.13
Part 525	Part 935
525.1	935.1
525.2	935.2
525.3	935.3
525.4	935.4
525.5	935.5
525.6	935.6
525.7	935.7
525.8	935.8

Redesignation Table—Continued

12 CFR Ch. V Former Section Numbers	12 CFR Ch. IX New Section Numbers
525.9	935.9
525.10	935.10
525.33	935.30
525.34	935.31
525.35	935.32
525.36	935.33
Part 526	Part 936
526.1	936.1
526.2	936.2
Part 527	Part 937
527.1	937.1
527.2	937.2
527.3	937.3
527.4	937.4
527.5	937.5
527.6	937.6
527.7	937.7
527.8	937.8
Part 528	Part 938
528.1	938.1
528.1a	938.2
528.2	938.3
528.2a	938.4
528.3	938.5
528.4	938.6
528.5	938.7
528.6	938.8
528.7	938.9
528.8	938.10
Part 529	Part 939
529.1	939.1
529.2	939.2
529.3	939.3
529.4	939.4
529.5	939.5

Redesignation Table—Continued

12 CFR Ch. V Former Section Numbers	12 CFR Ch. IX New Section Numbers
529.6	939.6
529.7	939.7
529.8	939.8
529.9	939.9
529.10	939.10
529.11	939.11
529.12	939.12
Part 531	Part 940
531.1	940.1
531.2	940.2
531.4	940.3
531.8	940.4
531.9	940.5
531.10	940.6
Part 532	Part 941
532.1	941.1
Part 533	Part 942
533.1	942.1
Part 534	Part 943
534.1	943.1
534.2	943.2
534.3	943.3
534.4	943.4
534.5	943.5
534.6	943.6
534.7	943.7
Part 535	Part 944
535.1	944.1
535.2	944.2
535.3	944.3
535.4	944.4
535.5	944.5

List of CFR Sections Affected—Transferred Regulations Formerly Appearing in Title 12 CFR, Chapter V

Regulations formerly issued by the Federal Home Loan Bank Board were transferred to the Federal Deposit Insurance Corporation at 54 FR 42800, Oct. 18, 1989. The following list contains all changes since January 1, 1986, to the regulations formerly codified in 12 CFR Chapter V prior to transfer into 12 CFR Chapter III.

For the period before January 1, 1986, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, and 1973–1985'' published in seven separate volumes.

1986

12 CFR

51 FR Page

Chapter V

522 Authority citation revised 27165
Section authority citations removed 27166
522.62 Added 28222
Correctly designated 28690
522.90 Added 27165
524 Authority citation revised 34951
524.1 Authority citation removed 34951
524.7 Authority citation removed 34951
524.13 Revised 34951
526 Revised 10816
526.2 (h) revised 34951
531 Authority citation revised 10816
531.1 (a) and (d) amended 33584
531.10 Removed; new 531.10 redesignated from 531.11 and authority citation removed 10816
531.11 Redesignated as 531.10 and authority citation removed 10816
532 Authority citation revised 10816
532.1 Amended 10816, 34951
535 Exemption 45879

1987

12 CFR

52 FR Page

Chapter V

522 Authority citation revised 33402
522.81 (a) (3) and (4) amended; (a)(5) added 33402
522.87 (a) designation removed 7122
522.90 (a)(2) and (c) revised; (b)(2) amended 37763
523 Authority citation revised; section authority citations removed 7122
523.3–2 Heading and (b) revised; (c) through (g) added 30142
523.3–3 Amended 7122
523.10 (h)(5) amended 7122
524 Authority citation revised 49381
524.11 Revised 49381

1988

12 CFR

53 FR Page

Chapter V

522.10 Revised 18262
522.72 Revised 52655
524.6 Amended 30252
525 Authority citation revised; section authority citations removed 320
525.1 Revised 320

1989

12 CFR

54 FR Page

Chapter V
Heading revised 35453
Revised 49411
506 Redesignated as 12 CFR Part 910 and heading revised 36759
506a Redesignted as 12 CFR Part 912 and heading revised 36759
521 Redesignated as 12 CFR Part 931 36759
522 Redesignated as 12 CFR Part 932 36759
523 Redesignated as 12 CFR Part 933 36759
524 Redesignated as 12 CFR Part 934 36759
525 Redesignated as 12 CFR Part 935 36759
525.7 (b)(3) amended; (b)(4) redesignated as (b)(5); new (b)(4) added 6113
526 Redesignated as 12 CFR Part 936 36759
527 Redesignated as 12 CFR Part 937 36759
528 Authority citation revised 30537

12 CFR—Continued

54 FR Page

Chapter V —Continued
Redesignated as 12 CFR Part 938 36759
528.1 (c) revised 30537
528.1a Revised 30537
528.2 Revised 30537
528.3 (a) revised 30537
528.4 Revised 30537
528.5 (b) revised 30537
528.6 Appendixes A and B revised 30538
528.7 (f) revised 30541
528.8 Revised 30541
529 Redesignated as 12 CFR Part 939 36759
531 Redesignated as 12 CFR Part 940 36759
531.8 (a) revised; (c)(8) added 30542
532 Redesignated as 12 CFR Part 941 and heading revised 36759
533 Redesignated as 12 CFR Part 942 36759
534 Redesignated as 12 CFR Part 943 36759
535 Redesignated as 12 CFR Part 944 36759

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the FEDERAL REGISTER since January 1, 1986, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 1986, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, and 1973–1985'' published in seven separate volumes.

1986

12 CFR

51 FR Page

Chapter VI

600 Revised 41933
Effective date corrected 44408
601 Authority citation revised 41935
601.100 (b) revised 41935
Effective date corrected 44408
601.101 Revised 41935
Effective date corrected 44408
601.110 Introductory text, (a), (b), (d) (4) and (5), and (e) through (i) revised 41935
Effective date corrected 44408
601.126 Revised 41936
Effective date corrected 44408
601.127 (c) and (e) revised 41936
Effective date corrected 44408
601.130 Revised 41936
Effective date corrected 44408
601.140 Revised 41936
Effective date corrected 44408
601.141 Revised 41936
Effective date corrected 44408
601.150 Introductory text, (b), and (d) revised 41936
Effective date corrected 44408
601.165 (b) revised 41937
Effective date corrected 44408
601.170 (a) (2), (3), and (4) revised 41937
Effective date corrected 44408
601.171 Introductory text revised 41937
Effective date corrected 44408

12 CFR—Continued

51 FR Page

Chapter VI —Continued

601.176 Revised 41937
Effective date corrected 44408
601.178 Revised 41937
Effective date corrected 44408
601.180 Revised 41937
Effective date corrected 44408
601.190 Removed 41938
Effective date corrected 44408
602 Authority citation revised 8656, 41938
602.200 Revised 41938
Effective date corrected 44408
602.205 Revised 41938
Effective date corrected 44408
602.210 Removed 41938
Effective date corrected 44408
602.215 Introductory text, (a), (b), (c), and (e) revised 41938
Effective date corrected 44408
602.220 Revised 41938
Effective date corrected 44408
602.235 Removed 41938
Effective date corrected 44408
602.240 Removed 41938
Effective date corrected 44408
602.245 Removed 41938
Effective date corrected 44408
602.250 (a) introductory text, (5), and (8) revised (effective date pending) 8656
602.260 Revised 41938
Effective date corrected 44408
602.261 (a), (b), (c), and (d) introductory text revised 41939
Effective date corrected 44408

12 CFR—Continued

51 FR Page

Chapter VI —Continued

602.265 (c), (d)(2), and (e) revised 41939
Effective date corrected 44408
602.280 Revised 41939
Effective date corrected 44408
602.281 (a) through (j) revised 41940
Effective date corrected 44408
602.282 Revised 41940
Effective date corrected 44408
602.283 Revised 41940
Effective date corrected 44408
602.284 Revised 41940
Effective date corrected 44408
602.285 (b) revised 41940
Effective date corrected 44408
602.286 Revised 41940
Effective date corrected 44408
602.288 (b) and (c) revised 41940
Effective date corrected 44408
602.289 Revised 41941
Effective date corrected 44408
603 Authority citation revised 41941
603.300 (a) and (b)(1) revised 41941
Effective date corrected 44408
603.305 Revised 41941
Effective date corrected 44408
603.310 Revised 41941
Effective date corrected 44408
603.315 Revised 41941
Effective date corrected 44408
603.320 (a) introductory text and (3), (b), (c), and (d) revised 41941
Effective date corrected 44408
603.325 Revised 41942
Effective date corrected 44408
603.330 Revised 41942
Effective date corrected 44408
603.335 Introductory text and (b) revised 41942
Effective date corrected 44408
603.340 (a) through (d) revised 41942
Effective date corrected 44408
604 Heading and authority citation revised 41942
604.300 Redesignated as 603.400 and revised 41942
Effective date corrected 44408
604.305 Redesignated as 604.405 and (b) revised 41942
Effective date corrected 44408
604.310 Redesignated as 604.410 and revised 41942

12 CFR—Continued

51 FR Page

Chapter VI —Continued

Effective date corrected 44408
604.315 Redesignated as 604.415 and revised 41943
Effective date corrected 44408
604.320 Redesignated as 604.420 and revised 41943
Effective date corrected 44408
604.325 Redesignated as 604.425 and (a) and (c) revised 41943
Effective date corrected 44408
604.330 Redesignated as 604.430 and (a) and (c) revised 41943
Effective date corrected 44408
604.335 Redesignated as 604.435 and (a), (c), (d), and (e) revised 41943
Effective date corrected 44408
604.340 Redesignated as 604.440 and revised 41944
Effective date corrected 44408
604.400 Redesignated as 604.300 and revised 41942
Effective date corrected 44408
604.405 Redesignated from 604.305 and (b) revised 41942
Effective date corrected 44408
604.410 Redesignated from 604.310 and revised 41942
Effective date corrected 44408
604.415 Redesignated from 604.315 and revised 41943
Effective date corrected 44408
604.420 Redesignated from 604.320 and revised 41943
Effective date corrected 44408
604.425 Redesignated from 604.325 and (a) and (c) revised 41943
Effective date corrected 44408
604.430 Redesignated from 604.330 and (a) and (c) revised 41943
Effective date corrected 44408
604.435 Redesignated from 604.335 and (a), (c), (d), and (e) revised 41943
Effective date corrected 44408
604.440 Redesignated from 604.340 and revised 41944
Effective date corrected 44408
611 Authority citation revised 32441, 41944
611.100 Revised 41944
Effective date corrected 44408
611.200 (Subpart B) Removed 41944
Effective date corrected 44408
611 (Subpart C) Removed 41944

12 CFR—Continued

51 FR Page

Chapter VI —Continued
Effective date corrected 44408
611.400 (a) revised.....41944
Effective date corrected 44408
611.500 (Subpart E) Added.....41944
Effective date corrected 44408
611.1000 Revised.....41944
Effective date corrected 44408
611.1010 (i) revised.....41945
Effective date corrected 44408
611.1090 Revised (effective date pending).....32441
Eff. 10–13–86.....37549
611.1115 Removed (effective date pending).....32441
Eff. 10–13–86.....37549
611.1120 (b) and (c) revised 41945
Effective date corrected 44408
611.1121 Introductory text, and (b), (c), and (d) revised (effective date pending).....32441
Eff. 10–13–86.....37549
611.1122 (a) introductory text, (3), (b), (c), (e) introductory text, (4), (g) and (i) revised (effective date pending).....32441
Eff. 10–13–86.....37549
611.1123 (a) introductory text and (7) revised (effective date pending) 32442
Eff. 10–13–86.....37549
611.1124 Revised (effective date pending).....32442
Eff. 10–13–86.....37549
611.1125 Revised (effective date pending).....32443
Eff. 10–13–86.....37549
611.1130 Redesignated from 611.1145.....8666
(d) revised.....41945
Effective date corrected 44408
611.1135 Redesignated from 611.1150.....8666
(a), (b) (2) and (7), (c), (d)(1) introductory text, (iv), and (2), and (e) revised 41945
Effective date corrected 44408
611.1136 Redesignated from 611.1151.....8666
611.1140—611.1142 (Subpart J) Added 8666
Comment time extended 16291, 21331
611.1141 (b) introductory text corrected.....10353
611.1142 (c) revised 16292
(h), (l)(9), and (m) added.....21334

12 CFR—Continued

51 FR Page

Chapter VI —Continued
611.1145 Redesignated as 611.1130.....8666
611.1150 (b)(3)(xii) removal eff. 12–15–85.....2472
Redesignated as 611.1135.....8666
611.1151 Redesignated as 611.1136.....8666
611.1155—611.1158 (Subpart K) Added (effective date pending) 32443
Eff. 10–13–86.....37549
611.1160—611.1168 (Subpart J) Redesignated as Subpart L 8666
611.1160—611.1168 (Subpart L) Redesignated from Subpart J 8666
611.1160 Revised (effective date pending).....32444
Eff. 10–13–86.....37549
611.1161 Revised (effective date pending).....32444
Eff. 10–13–86.....37549
611.1165 Revised (effective date pending).....32445
Eff. 10–13–86.....37549
611.1167 Revised (effective date pending).....32445
Eff. 10–13–86.....37549
611.1168 Revised.....41945
Effective date corrected 44408
611.1170—611.1176 (Subpart K) Redesignated as Subpart M.....8671
611.1170—611.1176 (Subpart M) Redesignated from Subpart K.....8671
611.1170 Revised (effective date pending).....32446
Eff. 10–13–86.....37549
611.1174 (c) and (d)(5) revised.....41946
Effective date corrected 44408
611.1175 Revised (effective date pending).....32446
Eff. 10–13–86.....37549
611.1176 Revised.....41946
Effective date corrected 44408
611.1180—611.1183 (Subpart N) Added (effective date pending) 32447
Eff. 10–13–86.....37549
612 Authority citation revised.....41946
612.2130 (p) and (t) revised.....41946
Effective date corrected 44408
612.2150 (c) introductory text revised.....41946

12 CFR—Continued

51 FR Page

Chapter VI —Continued
Effective date corrected 44408
612.2200 Heading and (a) revised.....41946
Effective date corrected 44408
612.2220 Revised.....41946
Effective date corrected 44408
613 Authority citation revised.....41947
613.3170 (b) revised 41947
Effective date corrected 44408
614 Authority citation revised.....39500, 41947
614.4010 Removed.....41947
Effective date corrected 44408
614.4015 Removed.....41947
Effective date corrected 44408
614.4020 Removed.....41947
Effective date corrected 44408
614.4260 (c)(5) revised 41947
Effective date corrected 44408
614.4330 (c)(12) removal, (d) introductory text revision, and (d)(5) addition eff. 1–21–86.....4891
614.4365—614.4367 (Subpart K) Added 39500
614.4440—614.4444 (Subpart L) Heading revised 39501
614.4440 Revised 39501
614.4441 Revised 39502
614.4442 Revised 39502
614.4443 Added 39502
614.4444 Added 39502
614.4450 Revised 41947
Effective date corrected 44408
614.4460 (a), (c), and (d) revised.....41947
Effective date corrected 44408
614.4510 (d) introductory text, (1), and (2) revised 39502
614.4512 Removed.....39502
614.4513 Added 39502
614.4590 Revised 41947
Effective date corrected 44408
614.4710 Introductory text, (a)(1) introductory text and (ii), (2), (3), and (4), (d) (1) and (2), and (e) revised 41947
Effective date corrected 44408
614.4900 (i) revised 41948
Effective date corrected 44408
615 Authority citation revised.....41948
615.5150 Revision eff. 1–31–86 4891
615.5250 (b) revised 41948
Effective date corrected 44408

12 CFR—Continued

51 FR Page

Chapter VI —Continued
615.5255 Added 39503
615.5453 Revised 41948
Effective date corrected 44408
615.5495 (b) revised 41948
Effective date corrected 44408
617 Heading and authority citation revised 41948
Effective date corrected 44408
617.7000—617.7090 (Subpart A) Heading revised 41948
Effective date corrected 44408
617.7000 Revised 41948
Effective date corrected 44408
617.7020 Revised 41948
Effective date corrected 44408
617.7030 Revised 41948
Effective date corrected 44408
617.7050 Removed.....41949
Effective date corrected 44408
617.7060 Removed.....41949
Effective date corrected 44408
617.7070 Introductory text and (a) revised 41949
Effective date corrected 44408
617.7080 Revised 41949
Effective date corrected 44408
617.7100 Removed.....41949
Effective date corrected 44408
618 Authority citation revised.....39503, 41949
618.8010 Removed.....39503
618.8020 Removed.....39503
618.8100 Introductory text revised.....41949
Effective date corrected 44408
618.8150 Removed.....41949
Effective date corrected 44408
618.8160 (a) and (b) revised 41949
Effective date corrected 44408
618.8200 Removed.....41949
Effective date corrected 44408
618.8310 Revised 39503
618.8340 (c) revised 41949
Effective date corrected 44408
618.8325 Added 39504
618.8350 Removed.....41949
Effective date corrected 44408
618.8400 Revised 41950
Effective date corrected 44408
618.8410 Revised 41950
Effective date corrected 44408
620 Added (effective date pending) 8656
Authority citation revised 21340, 42086

12 CFR—Continued

51 FR Page

Chapter VI —Continued

620.1 (c) revised 42086
620.2 (b) revised; (k) added (effective date pending) 21340
Eff. 7–29–86 29459
620.3 (f)(1)(i) and (iii), (g)(1)(iii)(B) and (2)(i), and (i) revised (effective date pending) 21341
Eff. 7–29–86 29459
(j)(2), (3)(i) introductory text and (ii) introductory text, (A), (B), (D), (E), (F), and (G) revised; (j)(3)(ii)(H) and (I) removed 42087
(j)(3)(i) introductory text correctly designated and correctly revised 44783
620.10—620.11 (Subpart B) Added (effective date pending) 21341
Eff. 7–29–86 29459
620.20 (c) revised (effective date pending) 21343
Eff. 7–29–86 29459
621 Added (effective date pending) 8661
Authority citation revised 21340
621.2 (a)(15)(iii) revised (effective date pending) 21343
Eff. 7–29–86 29459
(a)(15)(iv) removed; (a)(11), (15)(iii), and (18)(ii) revised 42087
(a)(11)(iii) and (15)(iii) correctly revised; (a)(11) republished 44783
622 Added (effective date pending) 21139
Eff. 7–28–86 29460
623 Added (effective date pending) 21147
Eff. 7–28–86 29460
624 Added 46600

Chapter VII

Chapter VII Interpretation and policy statement 16292, 42083
701 Authority citation revised; section authority citations removed 10360
701.27 Revised 10360
709 Removed 33029
740 Revised 37556
741 Authority citation revised 27523
Revised 37558
741.5 (b)(1) revised 27523
745 Revised 37560

12 CFR—Continued

51 FR Page

Chapter VII —Continued

790 Authority citation revised; section authority citations removed 33588
790.2 Revised 33588
794 Added 22889, 22896
794.170 (c) revised 22889
795.1 (b) table amended (OMB numbers) 4158

Chapter XII

Chapter removed 9767
1201—1204 Removed 9767

1987

12 CFR

52 FR Page

Chapter VI

602.250 (a) introductory text, (5) and (8) revision eff. 5–6–86 2105
605 Authority citation revised 18200
605.502 (d), (f) and (j) revised 18200
611 Authority citation corrected 48094
611.1020 Revised (effective date pending) 36013
Eff. 10–28–87 41401
611.1021 Removed (effective date pending) 36013
Eff. 10–28–87 41401
611.1022 Removed (effective date pending) 36013
Eff. 10–28–87 41401
611.1030 Removed (effective date pending) 36013
Eff. 10–28–87 41401
611.1031 Removed (effective date pending) 36013
Eff. 10–28–87 41401
611.1140 (b) introductory text, (1)(ii) and (2)(v), (vi) (B), (C), (F), and (H) and (4) (i), (ii) and (iii) revised; (b)(1)(iii) added (effective date pending) 12142
Eff. 5–20–87 19129
611.1142 (i) introductory text, (3) and (l)(3) revised; (l)(10) added (effective date pending) 12143
Eff. 5–20–87 19129
614 Authority citation revised 43740
Authority citation correctly revised 44970
Authority citation corrected 46151

12 CFR—Continued

52 FR Page

Chapter VI —Continued

614.4341 Added (effective date pending) 43740
Eff. 12–21–87 48673
614.4366 (e) revised (effective date pending) 12147
Eff. 5–20–87 19129
614.4367 (a) introductory text revised; (g) and (h) added (effective date pending) 12147
Eff. 5–20–87 19129
614.4440 (c) revised (effective date pending) 12147, 45162
Eff. 5–20–87 19129
614.4442 (b) revised (effective date pending) 12147
Eff. 5–20–87 19129
Revised (effective date pending) 45162
614.4443 Existing text designated as (a); (b) added (effective date pending) 12147
Eff. 5–20–87 19129
620 Addition eff. 5–6–86 2105
Hearings 8581
620.3 Technical correction 1440
621 Addition eff. 5–6–86 2105
621.2 Technical correction 1440
624 Hearings 2672
Heading and authority citation revised 13429
Authority citation revised 43740
624.100 Revised (effective date pending) 43741
Eff. 12–21–87 48673
624.103 (b) revised (effective date pending) 43741
Eff. 12–21–87 48673
624.104 Introductory text revised 2671
Redesignated as 624.105; new 624.104 added 13429
624.105 Redesignated from 624.104 13429
Amended 37132
(b) introductory text revised (effective date pending) 43741
Eff. 12–21–87 48673
624.110 Revised 13429
624.111 Revised 2671
(b) revised (effective date pending) 43741
Eff. 12–21–87 48673
624.113 (b) introductory text and (1) introductory text revised 2671

12 CFR—Continued

52 FR Page

Chapter VI —Continued

(a) and (b) introductory text and (1) introductory text revised 13429
(a), (b) introductory text, (1) introductory text and (ii) revised (effective date pending) 43741
(b) introductory text correctly revised 44970
Eff. 12–21–87 48673
624.114 Removed (effective date pending) 43741
Eff. 12–21–87 48673

Chapter VII

Interpretation and policy statement 35231
700 Authority citation revised 34895
700.1 (h)(1) revised 34895
701.13 Removed 43318
701.21 (c)(7) revised 8061
(a), (c) (5) and (8), and (d)(5) revised; (h) added 12368
701.27 (c)(3) revised; (d)(6) redesignated as (d)(6)(i) and amended; (c)(5) and (d)(6) (ii) and (iii) added 43570
701.36 (b)(6) revised; (e) (1) through (3) redesignated as (e)(1) (i) through (iii) and revised; (b)(8) and new (e) (2) and (3) added 43570
703.2 (i) revised; (p) through (t) redesignated as (q) through (u); new (p) added 43570
703.4 (e) amended; (f) and (g) added 43570
705 Revised 34893
706 Added; interim 35061
Revised 46586
708 Revised 12374
721 Authority citation revised 43571
721.2 (c) revised; (d) and (e) added 43571
741 Authority citation revised 12370
741.3 Redesignated as 741.4; new 741.3 added 12370
741.4 Redesignated as 741.5; new 741.4 redesignated from 741.3 12370
741.5 Redesignated as 741.6; new 741.5 redesignated from 741.4 12370

12 CFR—Continued

52 FR Page

Chapter VII —Continued

741.6 Redesignated as 741.7; new 741.6 redesignated from 741.5 12370
741.7 Redesignated as 741.8; new 741.7 redesignated from 741.6 12370
741.8 Redesignated as 741.9; new 741.8 redesignated from 741.7 12370
741.9 Redesignated as 741.10; new 741.9 redesignated from 741.8 12370
741.10 Redesignated from 741.9 12370
748 Heading and authority citation revised 2861
748.2 Added 2861
(b) revised 8062
790.4 (a)(7) revised 27987
790.7 Revised 27987
795.1 (b) table amended (OMB numbers) 28132

1988

12 CFR

53 FR Page

Chapter VI

600 Revised 16693
606 Added (effective date pending) 19889
Eff. 7–6–88 25481
611 Authority citation revised 12140, 16695, 18810, 39080
611.100 (Subpart A) Removed (effective date pending) 50392
611.310—611.340 (Subpart C) Added (effective date pending) 50392
611.400 Removed; new 611.400 redesignated from 611.1020 and heading revised (effective date pending) 50393
611.400 (Subpart D) Heading revised (effective date pending) 50393
611.500—611.525 (Subpart E) Revised (effective date pending) 50393
611.1000—611.1040 (Subpart F) Revised (effective date pending) 50395
611.1020 Redesignated as 611.400 and heading revised (effective date pending) 50393

12 CFR—Continued

53 FR Page

Chapter VI —Continued

611.1122 (a) (5) and (6) and (e) (11) through (16) redesignated as (a) (6) and (7) and (e) (16) through (21); new (e) (11) through (15) and (a)(5) and (k) added; (g) revised (effective date pending) 50396
611.1123 (a)(9) redesignated as (a)(11); new (a) (9), (10), and (c) added (effective date pending) 50396
611.1136 Revised (effective date pending) 27155
Eff. 9–13–88 35303
611.1140—611.1142 (Subpart J) Removed 12140
611.1140 (Subpart J) Added; interim 16695
(d) revised; (e) added 29446
611.1145 Added 39080
611.1162 (c) added 18810
611.1166 (d) added 18810
611.1172 (c) and (d) added 18810
611.1174 (c) removed; (d) through (f) redesignated as (c) through (e); new (d) amended; new (c)(5) revised; new (f) added 18810
611.1190—611.1198 (Subpart O) Added (effective date pending) 50396
612 Authority citation revised; section authority citations removed 22136
612.2150 (e) added 22136
612.2200 Removed (effective date pending) 50399
614 Authority citation revised 35451
614.4341 Revised 775
Correctly revised 3191
614.4365—614.4368 (Subpart K) Revised (effective date pending) 35451
Eff. in part 10–14–88 45076
614.4367 (c)(1) and (d)(1) effective date deferred in part 45076
614.4440—614.4444 (Subpart L) Revised (effective date pending) 35452
Eff. 10–14–88 45076
614.4440 (c) revision eff. 2–2–88 2826
614.4442 Revision eff. 2–2–88 2826

12 CFR—Continued

53 FR Page

Chapter VI —Continued
614.4510—614.4522 (Subpart N) Heading added (effective date pending) 35454
Heading eff. 10–14–88 45076
614.4512 Added (effective date pending) 35454
Eff. 10–14–88 45076
614.4513 Revised (effective date pending) 35454
Eff. 10–14–88 45076
614.4514 Added (effective date pending) 35454
Eff. 10–14–88 45076
614.4515—614.4519 Added (effective date pending) 35455
Eff. 10–14–88 45076
614.4520 Redesignated as 614.4525 (effective date pending) 35454
Added (effective date pending) 35456
Redesignation and addition eff. 10–14–88 45076
614.4521 Added (effective date pending) 35456
Eff. 10–14–88 45076
614.4522 Added (effective date pending) 35456
Eff. 10–14–88 45076
(c) (2) and (3) introductory text correctly revised 52401
614.4525 Redesignated from 614.4520 (effective date pending) 35454
Eff. 10–14–88 45076
615 Authority citation revised 12141, 27156, 35457, 39247, 40046
615.5200—615.5215 (Subpart H) Revised (effective date pending) 39247
615.5215 Amended (effective date pending) 40046
615.5220—615.5240 (Subpart I) Removed (effective date pending) 39250
615.5220—615.5250 (Subpart I) Added (effective date pending) 40046
615.5260—615.5280 (Subpart J) Revised (effective date pending) 40047
615.5290 Revised (effective date pending) 35457
Eff. 10–14–88 45076

12 CFR—Continued

53 FR Page

Chapter VI —Continued
615.5330 (Subpart K) Revised (effective date pending) 40048
615.5350—615.5370 (Subpart L) Removed (effective date pending) 40049
615.5390—615.5430 (Subpart M) Removed (effective date pending) 40049
615.5440 (Subpart N) Removed (effective date pending) 40049
615.5560 (Subpart R) Added 12141
Addition confirmed 27156
617 Heading and authority citation revised 27156
617.7000—617.7090 (Subpart A) Removed (effective date pending) 27156
Removal eff. 9–13–88 35303
618 Authority citation revised 35305, 35457, 39250
618.8030 (b) (6) and (7) removed; (b) (2) through (5) and (8) through (13) redesignated as (b) (3) through (12); new (b) (4), (6), (8) and (11) amended; new (b)(2) added; heading, (a), (b) introductory text, (1) and new (3) revised (effective date pending) 35305
Eff. 10–13–88 40867
618.8100 (Subpart D) Removed (effective date pending) 50399
618.8160 (Subpart E) Removed (effective date pending) 50399
618.8310 (b)(1) introductory text revised (effective date pending) 35457
Eff. 10–14–88 45076
618.8320 (b) (9) and (10) added (effective date pending) 35457
Eff. 10–14–88 45076
618.8325 (a) and (b) revised (effective date pending) 35458
Eff. 10–14–88 45076
618.8440 Added (effective date pending) 39250
620 Authority citation revised 3335, 16697, 50399
620.1 (a) revised (effective date pending) 3337
Eff. 3–8–88 7340
620.2 (k) revised (effective date pending) 3337

12 CFR—Continued

53 FR Page

Chapter VI —Continued
Eff. 3–8–88 7340
620.3 (j)(3) introductory text and (i) revised; (j)(3)(ii) redesignated as (j)(3)(iii) and introductory text revised and (E) and (G) amended; new (j)(3)(ii) added; interim 3335
(c) revised and (j)(3)(i) introductory text amended (effective date pending) 3337
Eff. 3–8–88 7340
(j)(3)(ii) revised (effective date pending) 16697
Eff. 6–13–88 21986
620.10 (a) revised (effective date pending) 3337
Eff. 3–8–88 7340
620.11 (b) (2) and (4) revised (effective date pending) 3337
Eff. 3–8–88 7340
620.20 (b) and (c) revised (effective date pending) 3337
Eff. 3–8–88 7340
620.30—620.32 (Subpart D) Added 50399
621.2 (a)(18)(i) removed; (a)(18) (ii), (iii), (iv) and (v) redesignated as (a)(18) (i), (ii), (iii), and (iv); (a)(24) removed (effective date pending) 3338
Eff. 3–8–88 7340
621.4 Heading revised (effective date pending) 3338
Eff. 3–8–88 7340
622 Authority citation revised; section authority citations removed 27284
622.2 (d) revised (effective date pending) 27284
Eff. 9–13–88 35306
622.51—622.60 (Subpart B) Revised (effective date pending) 27284
Eff. 9–13–88 35306
623 Authority citation revised; section authority citations removed 27285
623.2 (d) revised (effective date pending) 27285
Eff. 9–13–88 35306
624 Revised (effective date pending) 40050

Chapter VII
Interpretation and policy statement 18268

12 CFR—Continued

53 FR Page

Chapter VII —Continued
701 Authority citation revised 19748
701.6 (a) revised 19748
701.10 Removed 4845
701.20 (c) revised 9611
701.21 (i) added; interim 19751
(c)(7) revised 29645
701.23 (a)(3) removed; (b)(1)(iv) revised 4844
701.24 Revised 19747
701.32 Added; interim 50920
701.33 Revised 29642
701.35 (c) revised 19748
703 Authority citation revised 4844, 19752
Interpretation and policy statement 18268
703.1 Revised 4844
Revised; interim 19752
703.2 (o) revised 4844
703.4 (a) revised; interim 19752
704 Revised 42943
725.2 (h) through (p) redesignated as (i) through (q); new (h) added 22472
725.5 (c) amended 22472
741.5 Redesignated as 741.6; new 741.5 added 50920
741.6 Redesignated as 741.7; new 741.6 redesignated from 741.5; interim 50920
741.7 Redesignated as 741.8; new 741.7 redesignated from 741.6; interim 50920
741.8 Redesignated as 741.9; new 741.8 redesignated from 741.7; interim 50920
741.9 Redesignated as 741.10; new 741.9 redesignated from 741.8; interim 50920
741.10 Redesignated as 741.11; new 741.10 redesignated from 741.9; interim 50920
741.11 Redesignated from 741.10; interim 50920
745 Appendix amended 22473
747 Authority citation revised 29447
747.501—747.507 (Subpart E) Heading revised 29447
747.501 Revised 29447
747.502 Revised 29447
747.503 Revised 29447
747.505 Revised 29448
747.506 Redesignated as 747.507; new 747.506 added 29448

12 CFR—Continued

53 FR Page

Chapter VII —Continued

747.507 Redesignated from 747.506 29448
748.0 (b) revised 4845
748.1 (c) revised 26232
761 Removed 29646
790 Heading and authority citation revised 29647
790.1 (b) revised 29647
790.10 Removed 29647
790.40—790.49 (Subpart C) Redesignated as 791.9—791.18 (Subpart C) and revised 29647
Correctly removed 34481
790 Appendix A removed 29647
791 Revised 29647
Authority citation correctly revised 34481
795 Revised (OMB numbers) 3001, 29652
795.1 (b) table amended (OMB numbers) 1005

Chapter XI

1101 Authority citation revised 7341
1101.3 (e) revised 7341
1101.4 (b)(1)(vii) and (5) revised 7341

1989

12 CFR

54 FR Page

Chapter VI

600 Subpart and section authority citations removed 50736
600.10 (Subpart B) Added (effective date pending) 50736
611 Subpart authority citations removed 1147
611.100 (Subpart A) Removal eff. 2–22–89 7758
611.310—611.340 (Subpart C) Addition eff. 2–22–89 7758
611.310 (c) correctly revised ... 2994, 37095
611.400 Removal; new 611.400 redesignation from 611.1020 and heading revision; eff. 2–22–89 7758
611.400 (Subpart D) Heading revision; eff. 2–23–89 7758
611.500—611.525 (Subpart E) Revision eff. 2–22–89 7758
611.1000—611.1040 (Subpart F) Revision eff. 2–22–89 7758

12 CFR—Continued

54 FR Page

Chapter VI —Continued

611.1020 Redesignation as 611.400 and heading revision; eff. 2–23–89 7758
611.1122 Amendment eff. 2–22–89 7758
611.1123 Amendment eff. 2–22–89 7758
611.1155 Amended (effective date pending) 1148
Eff. 2–23–89 7758
611.1156 (a) and (b)(1) revised; (b)(4) and (5) amended; (b)(6) added (effective date pending) 1148
Eff. 2–23–89 7758
611.1157 (a) and (b) amended (effective date pending) 1148
Eff. 2–23–89 7758
611.1158 Nomenclature change (effective date pending) 1148
Eff. 2–23–89 7758
611.1160 (a), (b), (e), (f) and (g) amended (effective date pending) 1148
Eff. 2–23–89 7758
611.1161 Introductory text and (s) amended (effective date pending) 1148
Eff. 2–23–89 7758
611.1162 (b) amended; (c) revised and (d) added (effective date pending) (See correction published at 55 FR 10042) 1148
Eff. 2–23–89 7758
611.1165 Removed (effective date pending) 1148
Eff. 2–23–89 7758
611.1166 Redesignated as 611.1167; and (a)(4) amended and (d) revised; new 611.1166 added (effective date pending) (See correction published at 55 FR 10042) 1148
Eff. 2–23–89 7758
611.1167 Redesignated as 611.1168 and (a) amended and (b) revised; new 611.1167 redesignated from 611.1166; and (a)(4) amended and (d) revised (effective date pending) 1148
Eff. 2–23–89 7758
611.1168 Redesignated as 611.1169 and amended; new 611.1168 redesignated from 611.1167 and (a) amended and (b) revised (effective date pending) 1148

12 CFR—Continued

54 FR Page

Chapter VI —Continued
Eff. 2–23–89 7758
611.1169 Redesignated from 611.1168 and amended (effective date pending) 1148
Eff. 2–23–89 7758
611.1170 (a), (b), (e), (f), and (g) amended; (h) revised (effective date pending) 1148
Eff. 2–23–89 7758
611.1172 (b) amended; (c) and (d) revised (effective date pending) (See also 55 FR 10042) 1149
Eff. 2–23–89 7758
611.1174 (c) removed; (d), (e) and (f) redesignated as (c), (d) and (e); new (c)(5) revised; new (d) amended; new (f) added (effective date pending) (See also 55 FR 10042 amendment removed).....1149
Eff. 2–23–89 7758
611.1175 (b) revised (effective date pending).....1149
Eff. 2–23–89 7758
611.1176 Amended (effective date pending).....1149
Eff. 2–23–89 7758
611.1180 (a), (d) and (e) amended; (f) revised (effective date pending) 1149
Eff. 2–23–89 7758
611.1181 (b) and (c)(1) amended (effective date pending) 1149
Eff. 2–23–89 7758
611.1182 (a) amended (b) revised (effective date pending).....1149
Eff. 2–23–89 7758
611.1190—611.1198 (Subpart O) Addition eff. 2–22–89 7758
611.1195 (b) correctly revised.....2994
Eff. 2–23–89 7758
612.2150 (a) and (c) introductory text amended; interim.....1150
Regulation at 54 FR 1150 confirmed (effective date pending).....50736
612.2160 (a) amended; interim 1150
Regulation at 54 FR 1150 confirmed (effective date pending).....50736
612.2200 Removal eff. 2–22–89 7758
614.4280 (a) amended; (a) designation and (b) removed; interim 1150

12 CFR—Continued

54 FR Page

Chapter VI —Continued
Regulation at 54 FR 1150 confirmed (effective date pending).....50736
614.4320 Amended; interim 1150
Regulation at 54 FR 1150 confirmed (effective date pending).....50736
614.4321 Introductory text amended; interim.....1150
Regulation at 54 FR 1150 confirmed (effective date pending).....50736
614.4340 (a) amended; interim 1151
Regulation at 54 FR 1151 confirmed (effective date pending).....50736
614.4345 Amended; interim 1151
Regulation at 54 FR 1151 confirmed (effective date pending).....50736
614.4367 (c)(1) and (d)(1) revised (effective date pending).....1153
Eff. 2–23–89 7758
614.4460 Introductory text and (f)(1) and (3) amended; interim 1151
Regulation at 54 FR 1151 confirmed (effective date pending).....50736
614.4511 Amended; interim 1151
Regulation at 54 FR 1151 confirmed (effective date pending).....50736
614.4910 (Subpart R) Added (effective date pending) 1155
Eff. 2–23–89 7759
615.5000 Revised (effective date pending).....1158
Eff. 2–23–89 7759
615.5010 Revised (effective date pending).....1159
Eff. 2–23–89 7759
615.5030 Revised (effective date pending).....1159
Eff. 2–23–89 7759
615.5040 Amended; interim 1151
Regulation at 54 FR 1151 confirmed (effective date pending).....50736
615.5045—615.5090 (Subpart B) Revised (effective date pending) 1159
Eff. 2–23–89 7759
615.5100 Revised (effective date pending).....1160

12 CFR—Continued

54 FR Page

Chapter VI —Continued
Eff. 2–23–89 7759
615.5101 Revised (effective date pending)....1160
Eff. 2–23–89 7759
615.5102 Revised (effective date pending)....1160
Eff. 2–23–89 7759
615.5104 Amended; interim 1151
Regulation at 54 FR 1151 confirmed (effective date pending)....50736
615.5105 (b) revised (effective date pending)....1160
Eff. 2–23–89 7759
615.5135 (b) introductory text amended; interim....1151
Regulation at 54 FR 1151 confirmed (effective date pending)....50736
615.5143 Amended; interim 1151
Regulation at 54 FR 1151 confirmed (effective date pending)....50736
615.5190 (b) amended; interim 1151
Regulation at 54 FR 1151 confirmed (effective date pending)....50736
615.5200—615.5215 (Subpart H) Revision eff. 2–1–89....5074
615.5210 (e)(3)(iii) table correctly revised 31323
615.5215 Amendment eff. 2–9–89 6264
615.5220—615.5240 (Subpart I) Removal eff. 2–1–89 5074
Addition eff. 2–9–89....6264
615.5230 (b)(4) correctly revised (effective date pending)....6118
615.5250 Clarifying correction....7029
615.5255 Correctly removed....7029
615.5260—615.5290 (Subpart J) Clarifying correction 7029
615.5260—615.5280 (Subpart J) Revision eff. 2–9–89....6264
615.5320 Correctly removed....7029
(b)(4) revision eff. 2–9–89 6264
615.5325 Correctly removed....7029
615.5330 (Subpart K) Revision eff. 2–9–89 6264
615.5350—615.5370 (Subpart L) Removal eff. 2–9–89 6264
615.5390—615.5430 (Subpart M) Removal eff. 2–9–89 6264
615.5440 (Subpart N) Removal eff. 2–9–89 6264

12 CFR—Continued

54 FR Page

Chapter VI —Continued
615.5450 Revised (effective date pending)....1160
Eff. 2–23–89 7759
615.5451 Removed (effective date pending)....1160
Eff. 2–23–89 7759
615.5452 Removed 1160
Eff. 2–23–89 7759
615.5453 Removed 1160
Eff. 2–23–89 7759
615.5460 (b) and (c) revised (effective date pending) 1160
Eff. 2–23–89 7759
615.5497 Removed (effective date pending)....1160
Eff. 2–23–89 7759
618 Authority citation corrected 2994
618.8060 Amended; interim 1151
Regulation at 54 FR 1151 confirmed (effective date pending)....50736
618.8100 (Subpart D) Removal eff. 2–22–89....7758
618.8160 (Subpart E) Removal eff. 2–22–89....7758
618.8440 Addition eff. 2–1–89....5074
620 Authority citation revised; section authority citations removed 1155
620.30—620.32 (Subpart D) Addition eff. 2–22–89 7758
620.40 (Subpart E) Added (effective date pending) 1155
Eff. 2–23–89 7759
621 Authority citation revised; section authority citations removed 1155
621.10 (a) revised (effective date pending)....1155
Eff. 2–23–89 7759
621.11 Revised (effective date pending)....1155
Eff. 2–23–89 7759
621.20—621.24 (Subpart C) Added (effective date pending)....1155
Eff. 2–23–89 7759
624 Revision eff. 2–9–89....6284
Chapter VII
Interpretation and policy statement 31168
700.1 (j) and (k) redesignated as (k) and (l); new (k) revised; new (j) added....48234

12 CFR—Continued

54 FR Page

Chapter VII —Continued
(j) through (l) redesignated as (k) through (m) 52015
701 Interpretation and policy statement 31168
Authority citation revised 31184, 51383
701.1 Revised 31168
701.5 Removed 18474
701.13 Added 51383
701.20 (c) revised 18470
701.21 (i) revised 18472
(f) revised 43278
701.31 Revised 46223
701.32 Regulation at 53 FR 50920 comment time extended 8280
Revised 31184
(c) revised 51384
701.36 Revised 18467
701.37 Added 18471
701.37–1 Removed 18471
701.37–2 Removed 18471
702 Authority citation revised 48235
702.2 Revised 48235
702.3 (c) revised 48235
703 Authority citation revised 18473
703.1 Regulation at 53 FR 19752 confirmed 18473
703.4 Regulation at 53 FR 19752 confirmed 18473
705 Authority citation revised 51384
705.0 Revised 51384
705.7 (b)(1) revised 51384
705.9 Revised 51384
708.301 (a)(2) revised 43280
708.302 (a)(2) and (b)(2) revised 43280
708.303 (a) amended 43280
741 Authority citation revised 31184, 48235, 51383
741.2 Revised 51383
741.5—741.11 Regulation at 53 FR 50920 comment time extended 8280
741.5 Revised 31184
741.7 (a) revised 48235
747.01 Revised 43282
747.101 Revised 43282
747.122 Added 43283
747.301—747.306 (Subpart C) Revised 43283
747.401—747.408 (Subpart D) Revised 43284

12 CFR—Continued

54 FR Page

Chapter VII —Continued
747.409 Added 43284
747.501—747.507 (Subpart E) Revised 43285
747.601—747.611 (Subpart F) Revised 43286
790 Revised 18474
792 Redesignated as Part 796; new 792 added 18476
796 Redesignated from Part 792 18476
Chapter IX
Chapter established 36758
900—924 (Subchapter A) Added 36758
900 Heading added 36758
902 Heading added 36758
904 Heading added 36758
906 Heading added 36758
908 Heading added 36758
910 Redesignated from 12 CFR Part 506 and heading revised 36759
912 Redesignated from 12 CFR Part 506a and heading revised 36759
914 Heading added 36758
916 Heading added 36758
918 Heading added 36758
920 Heading added 36759
922 Heading added 36758
924 Heading added 36758
931—944 (Subchapter B) Added 36579
931 Redesignated from 12 CFR Part 521 36759
932 Redesignated from 12 CFR Part 522 36759
Authority citation revised 38591
932.8 Republished 38591
932.9 Republished 38591
932.10 Revised 38591
932.11 Revised 38591
932.12 Republished 38591
932.13 Revised 38591
932.14 Revised 38591
932.15 Republished 38592
932.16 Revised 38592
932.17 Removed; eff. thru 6–15–90 38593
Added (temporary) 38592
(k) corrected 43384
933 Redesignated from 12 CFR Part 523 and Heading revised 36759

12 CFR—Continued

54 FR Page

Chapter IX —Continued
934 Redesignated from 12 CFR Part 524 36759
934 Authority citation revised 36760
934.14 Added 36760
935 Redesignated from 12 CFR Part 525 36759
936 Redesignated from 12 CFR Part 526 36759
937 Redesignated from 12 CFR Part 527 36759
938 Redesignated from 12 CFR Part 528 36759
939 Redesignated from 12 CFR Part 529 36759
940 Redesignated from 12 CFR Part 531 36759
941 Redesignated from 12 CFR Part 532 and heading revised 36759
942 Redesignated from 12 CFR Part 533 36759
943 Redesignated from 12 CFR Part 534 36759
944 Redesignated from 12 CFR Part 535 36759
950 (Subchapter C) Added 36759
Heading added 36759
Added 38595
955 (Subchapter D) Added 36759
955 Heading added 36759
Added 39729
Chapter XIII
Chapter established 34487
1300 Added 34487
Chapter XV
Chapter established 38966
1510—1511 (Subchapter B) Added 41950
1510 Added 41950
1511 Added 41954

1990

12 CFR

55 FR Page

Chapter VI
600.10 (Subpart B) Regulation at 54 FR 50735 eff. 3–6–90 7884
611.1162 Regulation at 54 FR 1148 corrected 10042
611.1167 Regulation at 54 FR 1148 corrected 10042
611.1172 Regulation at 54 FR 1148 corrected 10042

12 CFR—Continued

55 FR Page

Chapter VI —Continued
611.1174 Regulation at 54 FR 1148 corrected 10042
612.2150 Regulation at 54 FR 50736 eff. 3–6–90 7884
612.2160 Regulation at 54 FR 50736 eff. 3–6–90 7884
613 Authority citation revised; sectional authority citations removed 24877
Technical correction 25773, 41309
613.3000—613.3005 (Subpart A) Revised (effective date pending) 24877
Regulation at 55 FR 24877 eff. 7–30–90 30903
613.3000 Corrected 28511
613.3005 Redesignated from 614.4160 (effective date pending) 24880
(c) corrected 28511
Regulation at 55 FR 24880 eff. 7–30–90 30903
613.3010—613.3050 (Subpart B) Heading revised (effective date pending) 24877
Regulation at 55 FR 24877 eff. 7–30–90 30903
613.3010 Revised (effective date pending) 24877
Regulation at 55 FR 24877 eff. 7–30–90 30903
613.3020 Revised (effective date pending) 24877
Regulation at 55 FR 24877 eff. 7–30–90 30903
613.3040 (d)(3) removed; (d)(4) redesignated as (d)(3); (d)(2) revised (effective date pending) 24878
Regulation at 55 FR 24878 eff. 7–30–90 30903
613.3045 Revised (effective date pending) 24878
(c)(4) corrected 28511
Regulation at 55 FR 24878 eff. 7–30–90 30903
613.3050 (c) revised (effective date pending) 24878
Regulation at 55 FR 24878 eff. 7–30–90 30903
613.3060 (Subpart C) Heading and section revised (effective date pending) 24879
Regulation at 55 FR 24879 eff. 7–30–90 30903

12 CFR—Continued

55 FR Page

Chapter VI —Continued

613.3110 (Subpart D) Heading, (a)(4), (b) heading, (1) introductory text, (2), and (4) revised; (c) redesignated as (d); new (c) added (effective date pending) 24879
(c)(2) corrected 28511
(b)(2)(i) correctly revised 28885
Regulation at 55 FR 24879 eff. 7–30–90..... 30903

613.3120 Added (effective date pending) 24879
(b) correctly revised 28885
Regulation at 55 FR 24879 eff. 7–30–90..... 30903

614 Sectional authority citations removed 12473, 24879
Technical correction 25773, 41309

614.4000—614.4050 (Subpart A) Revised (effective date pending) 24880
Regulation at 55 FR 24880 eff. 7–30–90..... 30903

614.4030 Redesignated as 614.4100 (effective date pending) 24879
Regulation at 55 FR 24879 eff. 7–30–90..... 30903

614.4040 Redesignated as 614.4145 (effective date pending) 24879
(a)(3) corrected 28511
Regulation at 55 FR 24879 eff. 7–30–90..... 30903

614.4050 Redesignated as 614.4135 (effective date pending) 24879
(b)(1)(ii) corrected 28511
Regulation at 55 FR 24879 eff. 7–30–90..... 30903

614.4060 Redesignated as 614.4140 (effective date pending) 24879
Regulation at 55 FR 24879 eff. 7–30–90..... 30903

614.4070—614.4080 (Subpart B) Revised (effective date pending) 24882
Regulation at 55 FR 24882 eff. 7–30–90..... 30903

614.4090 Removed (effective date pending) 24879
Regulation at 55 FR 24879 eff. 7–30–90..... 30903

614.4100—614.4145 (Subpart C) Heading revised (effective date pending) 24882
Regulation at 55 FR 24882 eff. 7–30–90..... 30903

12 CFR—Continued

55 FR Page

Chapter VI —Continued

614.4100 Removed; new 614.4100 redesignated from 614.4030..... 24879
Revised (effective date pending) 24883
Regulation at 55 FR 24883 eff. 7–30–90..... 30903

614.4110 Revised (effective date pending) 24883
Regulation at 55 FR 24883 eff. 7–30–90..... 30903

614.4120 Revised (effective date pending) 24883
Regulation at 55 FR 24883 eff. 7–30–90..... 30903

614.4130 Removed (effective date pending) 24879
(a) and (b) redesignated from 614.4190 (c) and (d) (effective date pending)..... 24880
Heading revised; (a), (b), and (c) amended (effective date pending)..... 24883
Regulations at 55 FR 24879 and 24883 eff. 7–30–90 30903

614.4135 Redesignated from 614.4050 (effective date pending) 24879
Regulation at 55 FR 24879 eff. 7–30–90..... 30903

614.4140 Redesignated as 614.4150; new 614.4140 redesignated from 614.4060 (effective date pending) 24880
Regulation at 55 FR 24880 eff. 7–30–90..... 30903

614.4145 Redesignated from 614.4040 (effective date pending) 24879
Regulation at 55 FR 24879 eff. 7–30–90..... 30903

614.4150 Redesignated as 614.4160 and revised; new 614.4150 redesignated from 614.4140 (effective date pending)..... 24880
Regulation at 55 FR 24880 eff. 7–30–90..... 30903

614.4160 Redesignated as 613.3005; new 614.4160 redesignated from 614.4150 (effective date pending) 24880
Revised..... 24883
(e) corrected 28511
Technical correction 42303
Regulation at 55 FR 24880 eff. 7–30–90..... 30903

12 CFR—Continued

55 FR Page

Chapter VI —Continued

614.4165 (f) removed; (c) introductory text and (d) revised (effective date pending) 24883
Regulation at 55 FR 24883 eff. 7–30–90 30903
614.4170 Removed (effective date pending) 24883
Regulation at 55 FR 24883 eff. 7–30–90 30903
614.4180 Removed (effective date pending) 24883
Regulation at 55 FR 24883 eff. 7–30–90 30903
614.4190 (c) and (d) redesignated as 614.4130 (a) and (b) (effective date pending) 24880
(a) and (b) removed (effective date pending) 24883
Regulations at 55 FR 24880 and 24883 eff. 7–30–90 30903
614.4200—614.4233 (Subpart E) Revised (effective date pending) 24884
Regulation at 55 FR 24884 eff. 7–30–90 30903
614.4220 Redesignated as 614.4240 (effective date pending) 24880
(a) and (c) removed (effective date pending) 24884
Regulations at 55 FR 24880 and 24884 eff. 7–30–90 30903
614.4222 Corrected 28511
614.4230 Removed (effective date pending) 24884
(a)(2) corrected 28511
Regulation at 55 FR 24884 eff. 7–30–90 30903
614.4231 (a)(2)(iii) corrected 28511
(a)(2) introductory text correctly revised 28885
614.4233 (b) correctly revised 28886
Introductory text corrected 50544
614.4240—614.4261 (Subpart F) Heading revised (effective date pending) 24886
Regulation at 55 FR 24886 eff. 7–30–90 30903
614.4240 (b) redesignated as 614.4130 (c); new 614.4240 redesignated from 614.4220 (effective date pending) 24880
(a) and (c) removed (effective date pending) 24884
Regulation at 55 FR 24880 eff. 7–30–90 30903

12 CFR—Continued

55 FR Page

Chapter VI —Continued

614.4250 Removed (effective date pending) 24885
Regulation at 55 FR 24885 eff. 7–30–90 30903
614.4260 Removed (effective date pending) 24885
Regulation at 55 FR 24885 eff. 7–30–90 30903
614.4280 Regulation at 55 FR 50736 eff. 3–6–90 7884
614.4320 Regulation at 54 FR 50736 eff. 3–6–90 7884
614.4321 Regulation at 54 FR 50736 eff. 3–6–90 7884
614.4340 Regulation at 54 FR 50736 eff. 3–6–90 7884
614.4345 Regulation at 54 FR 50736 eff. 3–6–90 7884
614.4354 (a)(1)(iii), (vi), (viii), and (x) amended (effective date pending) 24886
Regulation at 55 FR 24886 eff. 7–30–90 30903
614.4460 Regulation at 54 FR 50736 eff. 3–6–90 7884
614.4511 Regulation at 54 FR 50736 eff. 3–6–90 7884
614.4525 (a) revised; (b) amended (effective date pending) 24886
Regulation at 55 FR 24886 eff. 7–30–90 30903
614.4530 Heading and introductory text amended (effective date pending) 24886
Regulation at 55 FR 24886 eff. 7–30–90 30903
614.4540—614.4660 (Subpart P) Heading revised (effective date pending) 24886
Regulation at 55 FR 24886; eff. 7–30–90 30903
614.4540 (e) revised; (h) and (i) added (effective date pending) 24886
Regulation at 55 FR 24886; eff. 7–30–90 30903
614.4545 (a), (b), (c) introductory text, (d) and (e) amended (effective date pending) 24886
Regulation at 55 FR 24886 eff. 7–30–90 30903
614.4550 (a) introductory text, (1), (2), (3), and (b) amended (effective date pending) 24886

12 CFR—Continued

55 FR Page

Chapter VI —Continued
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4555 Amended (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4560 (a), (b)(1), (2), (3), (4), and (5) amended (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4565 Amended (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4570 Amended (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4580 Amended (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4590 Amended (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4600 (a) introductory text, (1) and (2) amended (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4610 Amended (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4620 Amended (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4630 (a) amended (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4640 Amended (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4650 (a) introductory text, (1) and (b) amended (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4660 Amended (effective date pending).....24886

12 CFR—Continued

55 FR Page

Chapter VI —Continued
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4700 (a) revised (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4710 Revised (effective date pending).....24886
Regulation at 55 FR 24886 eff. 7–30–90.....30903
614.4720 Introductory text and (a) revised (effective date pending).....24887
Regulation at 55 FR 24887 eff. 7–30–90.....30903
614.4800 Revised (effective date pending).....24887
Regulation at 55 FR 24887 eff. 7–30–90.....30903
614.4810 (a) introductory text and (b) amended (effective date pending).....24887
Regulation at 55 FR 24887 eff. 7–30–90.....30903
614.4900 (a), (b) introductory text and (i) revised (effective date pending).....24887
Regulation at 55 FR 24887 eff. 7–30–90.....30903
615 Authority citation correctly revised.....12473
Authority citation revised; sectional authority citation removed.....24887
Technical correction.....25773, 28511, 41309
615.5040 Regulation at 54 FR 50736 eff. 3–6–90.....7884
615.5104 Regulation at 54 FR 50736 eff. 3–6–90.....7884
615.5135 Regulation at 54 FR 50736 eff. 3–6–90.....7884
615.5143 Regulation at 54 FR 50736 eff. 3–6–90.....7884
615.5160 (c) removed; (d) and (e) redesignated as (c) and (d); (a) and new (c) revised (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
Heading correctly revised.....38313
615.5190 Regulation at 54 FR 50736 eff. 3–6–90.....7884
(a) revised; (b) amended (effective date pending).....24888

12 CFR—Continued

55 FR Page

Chapter VI —Continued
(b) correctly amended.....42184
Regulation at 55 FR 24888 eff. 7–30–90.....30903
615.5550 Revised (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
616 Removed (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
Technical correction.....25773, 28511, 41309
618 Sectional authority citations removed.....24888
Technical correction.....25773, 28511, 41309
618.8050 Revised (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
618.8060 Regulation at 54 FR 50736 eff. 3–6–90.....7884
618.8430 Revised (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
619 Authority citation revised; sectional authority citations removed.....24888
Technical correction.....25773, 28511, 41309
619.9015 Added (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
619.9020 Redesignated as 619.9025; new 619.9020 added (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
619.9025 Redesignated from 619.9020 (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
619.9050 Revised (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
619.9060 Redesignated as 619.9065; new 619.9060 added (effective date pending).....24888
Correctly revised.....28886

12 CFR—Continued

55 FR Page

Chapter VI —Continued
Regulation at 55 FR 24888 eff. 7–30–90.....30903
619.9065 Redesignated from 619.9060 (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
619.9080 Amended (effective date pending).....24889
Regulation at 55 FR 24889 eff. 7–30–90.....30903
619.9135 Redesignated as 619.9146 (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
Added (effective date pending).....24889
Regulation at 55 FR 24889 eff. 7–30–90.....30903
619.9140 Redesignated as 619.9150 (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
Added (effective date pending).....24889
Regulation at 55 FR 24889 eff. 7–30–90.....30903
619.9145 Added (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
619.9146 Redesignated from 619.9135 and revised (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
Revised (effective date pending).....24889
Regulation at 55 FR 24889 eff. 7–30–90.....30903
619.9150 Redesignated as 619.9160; new 619.9150 redesignated from 619.9140 (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903
619.9155 Added (effective date pending).....24889
Regulation at 55 FR 24889 eff. 7–30–90.....30903
619.9160 Redesignated as 619.9165 and amended (effective date pending).....24888
Regulation at 55 FR 24888 eff. 7–30–90.....30903

12 CFR—Continued

55 FR Page

Chapter VI —Continued

619.9165 Redesignated from 619.9160 and amended (effective date pending) 24888
Regulation at 55 FR 24888 eff. 7–30–90 30903
619.9185 Added (effective date pending) 24888
Regulation at 55 FR 24888 eff. 7–30–90 30903
619.9290 Amended (effective date pending) 24889
Regulation at 55 FR 24889 eff. 7–30–90 30903
619.9320 Amended (effective date pending) 24889
Regulation at 55 FR 24889 eff. 7–30–90 30903

Chapter VII

700 Authority citation revised 1794
700.1 (h) and (i) removed; (j) through (m) redesignated as (h) through (k) 1794
701 Authority citation revised 1794
701.6 (d) added 1799
701.14 Added 43086
701.19 Existing regulation confirmed 30198
701.21 (c)(7) revised 1797
(a) revised 30207
701.32 Heading revised; (d) added 1794
705 Authority citation revised 1794
705.3 Revised 1794
722 Added 30207
Appendix A added; interim; eff. 1–30–91 ..... 53612, 53618
724 Revised 30211
741 Authority citation revised 1794, 30210, 43089
741.4 Redesignated as 741.5; new 741.4 added 30210
741.5 Revised 1794
Redesignated as 741.6; new 741.5 redesignated from 741.4 30210
741.6 Redesignated as 741.7; new 741.6 redesignated from 741.5 30210
741.7 Redesignated as 741.8; new 741.7 redesignated from 741.6 30210

12 CFR—Continued

55 FR Page

Chapter VII —Continued

741.8 Redesignated as 741.9; new 741.8 redesignated from 741.7 30210
Redesignated as 741.9; new 741.8 added 43087
741.9 (k) added 1799
Redesignated as 741.10; new 741.9 redesignated from 741.8 30210
Redesignated as 741.10; new 741.9 redesignated from 741.8 43087
741.10 Redesignated as 741.11; new 741.10 redesignated from 741.9 30210
Redesignated as 741.11; new 741.10 redesignated from 741.9 43087
741.11 Redesignated as 741.12; new 741.11 redesignated from 741.10 30210
Redesignated as 741.12; new 741.11 redesignated from 741.10 43087
741.12 Redesignated from 741.11 30210
Redesignated as 741.13; new 741.12 redesignated from 741.11 43087
741.13 Redesignated from 741.12 43087
741.14 Added 43089
745 Heading and authority citation revised 5586
745.0—745.13 Designated as Subpart A; heading added 5586
745.200—745.203 (Subpart B) Added 5586
745 Appendix amended 47455
747 Authority citation revised 5589, 43090
Heading revised 31038
747.1001—747.1003 (Subpart J) Added 5590
747.1101—747.1107 (Subpart K) Added 5590
747.1201—747.1205 (Subpart L) Added 43090
749 Revised 30212

Chapter IX

910 Authority citation revised 2229
910.1 Amended 2229
910.5 Amended 2229
910.6 Amended 2229
912 Authority citation revised 2229

12 CFR—Continued

55 FR Page

Chapter IX —Continued

912.1 (b) amended 2228
912.4 (b) amended 2229
931 Authority citation revised 1397, 2229
931.3 Revised 2229
931.6 Removed 41996
931.14 Added; interim 1397
931.15 Added; interim 1397
931.16 Added; interim 1397
931.17 Added; interim 1397
931.18 Added; interim 1397
931.19 Added; interim 1397
931.20 Added; interim 1397
931.21 Added; interim 1397
931.22 Added; interim 1398
931.23 Added; interim 1398
931.24 Added; interim 1398
931.25 Added; interim 1398
932 Authority citation revised 1398
Effective date 2229
Undesignated center headings removed; interim 1398
932.14 (d) amended; interim 1398
932.18 Added; interim 1398
932.19 Added; interim 1399
932.20 Added; interim 1399
932.21 Added; interim 1399
932.22 Added; interim 1400
932.42 Removed; interim 1400
932.60 (b) amended 2228
932.65 Removed 2229
933 Authority citation revised 2229
933.5 (b), (c) (1), (d), (f), and (g) amended; (c) heading and introductory text revised 2229
933.6 Removed 2229
933.13 Undesignated center heading and section removed 41996
933.14 Removed 2229
933.15 Removed 2229
933.16 Removed 2229
933.17 Removed 2229
933.31 Undesignated center heading and section removed 41996
934 Authority citation revised 50545
934.3 Amended 2229
934.5 Introductory text amended 2229
934.6 Amended 2229
934.11 Amended 2229
934.12 Amended 2229
934.15 Added; interim 50545

12 CFR—Continued

55 FR Page

Chapter IX —Continued

935 Authority citation revised 2229
935.1 (a) and (b) amended 2229
935.33 Amended 2229
936 Authority citation revised 2230
Removed 41996
936.1 (a) and (c) amended 2230
937 Authority citation revised 2230
937.2 (c) amended 2230
937.4 Amended 2230
937.6 Amended 2230
937.8 Amended 2230
938 Authority citation revised 2230
Removed 41996
938.1 Introductory text and (a) amended 2230
938.2 Amended 2230
938.3 Cross-reference amended 2230
938.4 Cross-reference amended 2230
938.5 Cross-reference and (a) introductory text amended 2230
938.7 (b) amended 2230
938.8 (d)(1) amended 2230
938.9 (f) introductory text amended 2230
938.10 Amended 2230
939 Authority citation revised 2230
939.1 Amended 2228
939.2 (b) revised 2230
939.3 Introductory text and (d) amended 2230
939.8 (a)(2) removed; (a)(3) redesignated as (a)(2); (b) and (c)(3) amended 2230
939.9 (a) and (e) amended; (d)(1) revised 2230
939.10 (c) amended 2230
939.12 (c) amended 2231
940 Authority citation revised 2231
940.2 (a) and (b)(3) amended 2231
940.4 (a) and (c)(7) and (8) amended 2231
Removed 41996
940.5 (d) amended 2231
940.6 Removed 41996
941 Authority citation revised 2231
Removed 41996
941.1 Amended 2231
942 Authority citation revised 2231

12 CFR—Continued

55 FR Page

Chapter IX —Continued
Removed....41996
943 Authority citation revised....2231
943.4 Introductory text amended....2231
944 Authority citation revised....2231
Removed....41996
944.1 (b) amended....2231
950 Authority citation revised....2231
955 Authority citation revised....2231
960 (Subchapter E and Part) Added; interim....7485

Chapter XIV
Chapter XIV Chapter established (effective date pending)....36610
Regulation at 55 FR 36610 eff. 10–9–90....41185
1400 Added (effective date pending)....36610
Regulation at 55 FR 36610 eff. 10–9–90....41185

Chapter XV
1505 Added; interim....5358
1505.19 (b) corrected....11719
1505.26 Corrected....11719
1505.27 (d) corrected....11719
1505.33 Corrected....11719
1505.40 (c)(3) corrected....11719
1506 (Subchapter A and Part) Added....5350, 5356
1506.4 (a)(1), (b)(2), (4), and (c) corrected....11720
1506.5 Section designation and (a) introductory text corrected....11720
1506.7 (g) corrected....11720
1506.15 (c) corrected....11720

Chapter XVI
Chapter XVI Chapter established....5356
1605 Added....5370
1606 Added....5350, 5356
1606.4 (a)(1), (b)(2), (4), and (c) corrected....11720
1606.5 Section designation and (a) introductory text corrected....11720
1606.7 (g) corrected....11720
1606.15 (c) corrected....11720
1608 Added....34228
Appendix A added; interim; eff. 1–30–91....53612, 53618

12 CFR—Continued

55 FR Page

Chapter XVI —Continued
1609 Added; interim....14084
Revised....35568
1611 Added (eff. date pending in part)....22328

1991

12 CFR

56 FR Page

Chapter VI
600.1 Amended (effective date pending)....2672
Regulation at 56 FR 2672 eff. 3–4–91....8910
600.5 (b)(1), (2), (3), and (6) revised (effective date pending)....2672
Regulation at 56 FR 2672 eff. 3–4–91....8910
601 Authority citation revised....2673
601.101 (a) introductory text and (b) amended (effective date pending)....2673
Regulation at 56 FR 2673 eff. 3–4–91....8910
601.141 Amended (effective date pending)....2673
Regulation at 56 FR 2673 eff. 3–4–91....8910
602 Authority citation revised; sectional authority citations removed....2673
602.220 Amended (effective date pending)....2673
Regulation at 56 FR 2673 eff. 3–4–91....8910
602.250 (a)(5) amended (effective date pending)....2673
Regulation at 56 FR 2673 eff. 3–4–91....8910
(a)(7) revised (effective date pending)....28476
Regulation at 56 FR 28476 eff. 7–29–91....35808
602.260 Amended (effective date pending)....28476
Regulation at 56 FR 28476 eff. 7–29–91....35808
602.261 (b), (c) and (d) amended (effective date pending)....28476
Regulation at 56 FR 28476 eff. 7–29–91....35808
602.262 Added (effective date pending)....28476
Regulation at 56 FR 28476 eff. 7–29–91....35808

12 CFR—Continued

56 FR Page

Chapter VI —Continued

602.265 Removed (effective date pending) 28477
Regulation at 56 FR 28477 eff. 7–29–91 35808
602.265—602.272 (Subpart C) Added (effective date pending) 28477
Regulation at 56 FR 28477 eff. 7–29–91 35808
602.280—602.289 (Subpart C) Redesignated as Subpart D (effective date pending) 28477
Regulation at 56 FR 28477 eff. 7–29–91 35808
603 Authority citation revised 2673
603.340 (a) and (b) amended (effective date pending) 2673
Regulation at 56 FR 2673 eff. 3–4–91 8910
603.345 Amended (effective date pending) 28479
Regulation at 56 FR 28479 eff. 7–29–91 35808
603.355 Revised (effective date pending) 2673
Regulation at 56 FR 2673 eff. 3–4–91 8910
604 Authority citation revised 2673
604.420 (i)(1) amended (effective date pending) 2673
Regulation at 56 FR 2673 eff. 3–4–91 8910
604.425 (a) amended (effective date pending) 9611
Regulation at 56 FR 9611 eff. 4–22–91 16265
604.435 (e) amended (effective date pending) 2673
Regulation at 56 FR 2673 eff. 3–4–91 8910
606.670 (c) amended (effective date pending) 2674
Regulation at 56 FR 2674 eff. 3–4–91 8910
611 Sectional authority citations removed 3407
611.1122 (b)(1) and (2) removed (effective date pending) 2674
Regulation at 56 FR 2674 eff. 3–4–91 8910
611.1135 (a) amended (effective date pending) 2674
Regulation at 56 FR 2674 eff. 3–4–91 8910

12 CFR—Continued

56 FR Page

Chapter VI —Continued

611.1168 (d) introductory text, (2), (3) and (e) introductory text amended (effective date pending) 29420
(d)(3) corrected 42649
Regulation at 56 FR 29420 eff. 9–10–91 46111
611.1175 (d) introductory text, (2), (3) and (e) introductory text amended (effective date pending) 29420
(d)(3) corrected 42649
Regulation at 56 FR 29420 eff. 9–10–91 46111
611.1182 (d) amended (effective date pending) 29421
Regulation at 56 FR 29421 eff. 9–10–91 46111
611.1200—611.1270 (Subpart P) Added (effective date pending) 3407
Regulation at 56 FR 3407 eff. 3–11–91 10169
611.1205 (g) corrected 11589
611.1210 (b)(2) corrected 11589
611.1212 (c) corrected 11589
611.1215 (d) corrected 11589
611.1225 (k), (p), (t)(3)(ii), (u) and (v) corrected 11589
611.1255 (a) corrected 11589
611.1260 (h) corrected 11589
611.1270 Corrected 11589
612 Authority citation revised 2674, 32957
612.2080 Removed (effective date pending) 32957
Regulation at 56 FR 32957 eff. 9–23–91 48097
612.2090 Removed (effective date pending) 32957
Regulation at 56 FR 32957 eff. 9–23–91 48097
612.2120 Removed (effective date pending) 32957
Regulation at 56 FR 32957 eff. 9–23–91 48097
612.2130 (l), (p), and (t) revised (effective date pending) 2674
Regulation at 56 FR 2674 eff. 3–4–91 8910
(l), (p) and (t) corrected 12298
612.2150 (b)(6) and (c) introductory text amended (effective date pending) 2674

12 CFR—Continued

56 FR Page

Chapter VI —Continued
Regulation at 56 FR 2674 eff. 3–4–91 8910
612.2160 (a), (b), and (c) amended (effective date pending) 2674
Regulation at 56 FR 2674 eff. 3–4–91 8910
612.2170 (a) amended (effective date pending) 2674
Regulation at 56 FR 2674 eff. 3–4–91 8910
612.2180 (a) and (b) amended (effective date pending) 2674
Regulation at 56 FR 2674 eff. 3–4–91 8910
612.2230 (a)(1) amended (effective date pending) 2674
Regulation at 56 FR 2674 eff. 3–4–91 8910
613.3045 (b)(2)(ii) amended; (c) redesignated as (e); new (c) and (d) added (effective date pending) 65989
614.4233 Introductory text corrected 5927
614.4310 Removed (effective date pending) 2674
Regulation at 56 FR 2674 eff. 3–4–91 8910
614.4460 (c) amended (effective date pending) 2674
Regulation at 56 FR 2674 eff. 3–4–91 8910
614.4640 Revised (effective date pending) 2674
Regulation at 56 FR 2674 eff. 3–4–91 8910
615 Authority citation corrected 12298
615.5103 Removed (effective date pending) 2674
Regulation at 56 FR 2674 eff. 3–4–91 8910
615.5120 (a) amended (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
615.5135 Transferred to Subpart E (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
615.5150 (c) amended (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910

12 CFR—Continued

56 FR Page

Chapter VI —Continued
615.5151 Revised (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
Corrected 12298
615.5180 Amended (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
Corrected 12298
615.5190 (b) amended (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
615.5201 (f) amended (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
615.5210 (d)(2)(i) and (ii) amended (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
615.5250 (d)(2) amended (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
617 Sectional authority citations removed 2675
617.7110 (d) amended (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
617.7150 (b) amended (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
618.8030 (b)(2) and (3)(v) revised (effective date pending) 65990
618.8210 Amended (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
618.8320 (b)(2) revised (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
618.8325 (d) removed (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
618.8360 Introductory text and (d) through (h) removed; (a)(5) revised (effective date pending) 2675

12 CFR—Continued

56 FR Page

Chapter VI —Continued
Regulation at 56 FR 2675 eff. 3–4–91....8910
(a)(5) corrected....12298
619 Authority citation revised; sectional authority citations removed....2675
619.9146 Amended (effective date pending)....2675
Regulation at 56 FR 2675 eff. 3–4–91....8910
620.1—620.3 (Subpart A) Heading revised....29421
Regulation at 56 FR 29421 eff. 9–10–91....46111
620.1 (i) removed; (b) through (h) and (j) redesignated as (o), (e) through (i), (n) and (p); introductory text, new (b) through (d), new (j) through (m) and (q) added; new (g) and (i) revised (effective date pending)....29421
(q) correctly designated....42649
Regulation at 56 FR 29421 eff. 9–10–91....46111
620.2 (a), (b) and (c) redesignated as 620.4; (a), (b) and (c); (j) removed; (d) through (i) and (k) redesignated as (a) through (g); introductory text, (h) and (i) added; heading, new (a) and new (g) revised; new (b)(3), new (c) and new (f) amended (effective date pending)....29421
Regulation at 56 FR 29421 eff. 9–10–91....46111
620.3 Redesignated as 620.5 (effective date pending)....29421
Added (effective date pending)....29422
Regulations at 56 FR 29421 and 29422 eff. 9–10–91....46111
620.4—620.5 (Subpart B) Added (effective date pending)....29421
Regulation at 56 FR 29421 eff. 9–10–91....46111
620.4 (a), (b) and (c) redesignated from 620.2; (a), (b) and (c) (effective date pending)....29421
Heading added; (b) revised; (c) amended (effective date pending)....29422
(b) corrected....42649
Regulations at 56 FR 29421 and 29422 eff. 9–10–91....46111

12 CFR—Continued

56 FR Page

Chapter VI —Continued
620.5 Redesignated from 620.3 (effective date pending)....29421
(c) text designated as (c)(1); (m)(2) removed; (g)(1)(iii), (2)(vi), (4)(v) and (m)(3) redesignated as (g)(1)(iv), (2)(vii), (4)(vi) and (m)(2); (a)(3), (9), (c) heading, (d), (e)(1), (2), (f), (g) introductory text, (1)(i), (2)(ii), (iii), (4)(ii), (j)(3)(i), (m)(1), new (g)(1)(iv) heading, (D) and (g)(4)(vi) revised; (c)(2), (e)(4), new (g)(1)(iii), (iv)(E), (2)(vi), (3)(ii)(C) and new (4)(v) added; (a)(4), (b) and (g)(2)(v) amended (effective date pending)....29422
(g)(1)(iv)(E) and (j)(3)(i) corrected....42649
Regulations at 56 FR 29421 and 29422 eff. 9–10–91....46111
620.10—620.11 (Subpart B) Redesignated as Subpart C (effective date pending)....29421
Regulation at 56 FR 29421 eff. 9–10–91....46111
620.10 Revised (effective date pending)....29424
Regulation at 56 FR 29424 eff. 9–10–91....46111
620.11 (a) and (d)(3) revised; (b)(3) removed; (b)(4) through (9) redesignated as (b)(3) through (8); (b) introductory text and (d)(4) added; new (b)(8) and (c) amended (effective date pending)....29424
Regulation at 56 FR 29424 eff. 9–10–91....46111
620.20—620.22 (Subpart C) Redesignated as Subpart D (effective date pending)....29421
Regulation at 56 FR 29421 eff. 9–10–91....46111
620.20 Heading revised; (c) amended; (d) through (h) removed (effective date pending)....29425
Regulation at 56 FR 29425 eff. 9–10–91....46111
620.21 (c)(4) and (d)(5) amended (effective date pending)....29425
(c)(4) corrected....42649
Regulation at 56 FR 29425 eff. 9–10–91....46111

12 CFR—Continued

56 FR Page

Chapter VI —Continued

620.22 Removed (effective date pending) 29425
Regulation at 56 FR 29425 eff. 9–10–91 46111
620.30—620.32 (Subpart D) Redesignated as Subpart E (effective date pending) 29421
Regulation at 56 FR 29421 eff. 9–10–91 46111
620.32 Removed (effective date pending) 29425
Regulation at 56 FR 29425 eff. 9–10–91 46111
620.40 (Subpart E) Redesignated as Subpart F (effective date pending) 29421
Regulation at 56 FR 29421 eff. 9–10–91 46111
621.1 Amended (effective date pending) 2675
Regulation at 56 FR 2675 eff. 3–4–91 8910
621.2 (a)(11) introductory text and (12) amended (effective date pending) 2676
Regulation at 56 FR 2676 eff. 3–4–91 8910
(a)(8) introductory text amended (effective date pending) 29425
Regulation at 56 FR 29425 eff. 9–10–91 46111
621.10 (c) amended (effective date pending) 2676
Regulation at 56 FR 2676 eff. 3–4–91 8910

Chapter VII

701.21 (c)(7) revised 37831
(h) revised 48425
701.23 (b)(3) revised 15036
(b)(2) revised 35811
(b)(2) effective date corrected 37276
703 Revised 56003
703.5 (e) revised; eff. 3–1–92 56005
705.7 (d) revised 67155
709 Added 56925
722 Appendix A corrected 1229
741 Authority citation revised 35811
741.3 Revised 35811
Effective date corrected 37276
741.4 Revised 35811
Effective date corrected 37276
(a)(3) corrected 44129
747 Revised 37767

12 CFR—Continued

56 FR Page

Chapter IX

900 Added 67155
922 Added 55218
Technical correction 56691, 58964
931 Authority citation revised 55219
Technical correction 56691, 58964
931.14 Revised 55219
931.15 Revised 55219
931.16 Revised 55219
931.17 Revised 55219
931.18 Revised 55219
931.19 Revised 55219
931.20 Revised 55219
931.21 Revised 55219
931.23 Revised 55219
931.26 Added 55219
931.30 Added 55220
931.32 Added 55220
931.34 Added 55220
931.36 Added 55220
931.38 Added 55220
931.40 Added 55220
932 Authority citation revised 55220
Technical correction 56691, 58964
932.18 Revised 55220
OMB number 56929
OMB number corrected 58964
932.19 Revised 55221
932.20 Introductory text revised; table amended 55221
932.21 Revised 55222
OMB number 56929
OMB number corrected 58964
932.22 Revised 55222
932.23 Added 55222
OMB number 56929
OMB number corrected 58964
936 Added 58647
960 (Subchapter E) Revised 8694

Chapter XIV

1410 Added 3201
1410.2 (g)(1)(iii) correctly designated 10302
1410.3 (c)(2) corrected 13211
1410.4 (a) corrected 10302
1410.6 (a)(2) revised 57233

Chapter XV

1507 Added 43998
1510 Authority citation revised 57482
1510.10 (b) through (e) revised 57483
1510.12 (a) revised 57483

12 CFR—Continued

56 FR Page

Chapter XVI

1608 Appendix A corrected 1229
1609.2 (h)(1) Regulation at 55 FR 35568 suspended 3–23–91 to 9–30–91; new (h)(1) added; effective to 9–30–91 25353
1609.7 (a)(3) Regulation at 55 FR 35568 suspended 3–23–91 to 9–30–91; new (a)(3) added; effective to 9–30–91 25353
1613 Added 5649
1617 Added; interim 40488
1618 Added; interim 30837
1680 Added; interim 34015
Revised 52160

1992

12 CFR

57 FR Page

Chapter VI

603 Authority citation revised 32421
603.355 Heading revised; existing text designated as (a) and amended; (b) added 32421
Regulation at 57 FR 32421 eff. 9–16–92 42888
611 Authority citation revised 26992, 43394
611.400 (b) introductory text, (2), (3), (5) and (c) introductory text amended; (a) revised; (c)(6) added (effective date pending) 43394
611.1137 Added (effective date pending) 26992
Regulation at 57 FR 26992 eff. 7–27–92 33104
611.1155 Amended (effective date pending) 46487
611.1156 Redesignated as 627.2710 (effective date pending) 46487
611.1157 (a) and (b) amended (effective date pending) 46487
611.1160 (b) and (g) amended (effective date pending) 46487
611.1168 (c), (d) and (e) removed; (f) redesignated as (d); new (c) added (effective date pending) 46487
611.1170 (b), (g) and (h) amended (effective date pending) 46487

12 CFR—Continued

57 FR Page

Chapter VI —Continued

611.1175 (c), (d) and (e) removed; (f) redesignated as (d); new (c) added (effective date pending) 46487
611.1180 (a) and (f) amended (effective date pending) 46487
612 Authority citation revised 43395
612.2000—612.2110 (Subpart A) Removed (effective date pending) 43395
612.2130—612.2270 (Subpart B) Heading removed 43395
612.2150 (b)(5) amended (effective date pending) 43395
613 Authority citation revised 13637
613.3045 Regulation at 56 FR 65989 eff. 2–26–92 6553
613.3140 Removed (effective date pending) 13637
Removal at 57 FR 13637 eff. 5–27–92 22157
613.3145 Added (effective date pending) 13637
Regulation at 57 FR 13637 eff. 5–27–92 22157
613.3150 Revised 13638
Regulation at 57 FR 13638 eff. 5–27–92 22157
613.3151 Added (effective date pending) 13638
Regulation at 57 FR 13638 eff. 5–27–92 22157
613.3152 Added (effective date pending) 13638
Regulation at 57 FR 13638 eff. 5–27–92 22157
613.3160 (a) revised; (b) introductory text amended (effective date pending) 13638
Regulation at 57 FR 13638 eff. 5–27–92 22157
613.3170 Revised (effective date pending) 13638
Regulation at 57 FR 13638 eff. 5–27–92 22157
613.3175 Added (effective date pending) 13639
Regulation at 57 FR 13639 eff. 5–27–92 22157
614 Authority citation revised 38246
Authority citation corrected 43290

12 CFR—Continued

57 FR Page

Chapter VI —Continued

614.4000 (e) and (f) added (effective date pending) 38246
(e)(1) introductory text corrected 43290
Regulation at 57 FR 38246 eff. 10–7–92 46755
614.4010 (f) and (g) added (effective date pending) 38246
(g)(3) corrected 43290
Regulation at 57 FR 38246 eff. 10–7–92 46755
614.4030 (c) added (effective date pending) 38247
Regulation at 57 FR 38247 eff. 10–7–92 46755
614.4040 (d) added (effective date pending) 38247
Regulation at 57 FR 38247 eff. 10–7–92 46755
614.4050 (d) added (effective date pending) 38247
Regulation at 57 FR 38247 eff. 10–7–92 46755
614.4060 Added (effective date pending) 38247
Regulation at 57 FR 38247 eff. 10–7–92 46755
614.4240—614.4267 (Subpart F) Revised (effective date pending) 54695
614.4245 (a) corrected 58860
614.4265 (b) corrected 58860
614.4325—614.4337 (Subpart H) Revised (effective date pending) 38248
Regulation at 57 FR 38248 eff. 10–7–92 46755
614.4336 (a)(2)(ii) corrected (effective date pending) 44489
614.4440 (f), (g) and (h) redesignated as (g), (h) and (i); (f) added (effective date pending) 54699
(f) corrected 58860
614.4443 (c) revised (effective date pending) 54699
614.4510 (c) amended (effective date pending) 38250
Regulation at 57 FR 38250 eff. 10–7–92 46755
614.4710 (a)(4) and (b)(2) amended (effective date pending) 38250
Regulation at 57 FR 38250 eff. 10–7–92 46755

12 CFR—Continued

57 FR Page

Chapter VI —Continued

615 Authority citation revised 46487
615.5210 (d)(2)(i) suspended in part and (d)(2)(ii) and (iii) suspended (effective date pending) 38251
Regulation at 57 FR 38251 eff. 10–7–92 46755
615.5216 (b) amended (effective date pending) 46487
618.8030 Regulation at 56 FR 65990 eff. 2–26–92 6553
619 Authority citation revised 38250
619.9195 Revised (effective date pending) 38250
Regulation at 57 FR 38250 eff. 10–7–92 46755
619.9320 Removed (effective date pending) 38250
Regulation at 57 FR 38250 eff. 10–7–92 46755
625 Added (effective date pending) 60109
627 Added (effective date pending) 46482
627.2710 Redesignated from 611.1156; (a) revised (effective date pending) 46487

Chapter VII

700.1 (i) introductory text republished; (i)(7) and (15) revised; (i)(16) and (17) redesignated as (i)(17) and (18); new (i)(16) added 47985
701 Authority citation revised 42488
701.21 (h)(2)(ii)(A), (iii)(B) and (3) introductory text revised 42488
701.33 (b)(2)(i) revised 54502
702.3 (c)(2) revised; eff. 1–21–93 60722
703 Interpretive ruling and policy statement 22157
703.5 (e) stayed 6553
(e) eff. 12–1–92 53238
704 Revised 22630
704.1 Existing text designated as (a); new (b) added 28085
704.2 Corrected 28085
704.6 (b)(2)(vi)(A) correctly revised; (d) corrected 28085
704.7 (b)(3) corrected 28085
704.10 (b)(2) corrected 28086
704.11 (i) corrected 28086

12 CFR—Continued

57 FR Page

Chapter VII —Continued
704.12 (c)(2) correctly revised; (c)(5) corrected 28086
704 Appendix A corrected 28086
705 Authority citation revised 20742
705.7 (b)(2) revised 20742
722 Authority citation revised 28998
Temporary exceptions 54173
722.2 (g) through (k) redesignated as (h) through (l); new (g) added 28998
722.3 (a)(4)(iv) and (5) revised; (a)(6) added 28998
741.9 (a)(3) and (b)(3) revised 22636
(a)(3) and (b)(3) corrected 28086
747.0 (a) and (b) corrected 523
747.1 (a), (b), (c) introductory text and (c)(1) corrected 523
747.3 (f)(1) and (g) corrected 523
747.9 (d) corrected 522
747.16 Corrected 523
747.33 (a) corrected 523
747.201 Corrected 523
747.207 Corrected 523
747.208 (a) corrected 523
747.301 Introductory text corrected 523
747.304 Corrected 523
747.305 Corrected 523
747.306 (a) corrected 523
747.401—747.406 (Subpart E) Heading corrected 522, 523
747.401 Corrected 523
747.405 (c) corrected 523
747.606 (c) corrected 523
747.703 (a) corrected 523
747.803 (b)(1)(iv) corrected 523
747.901—747.905 (Subpart J) Heading corrected 523
747.901 Corrected 523
747.902 Corrected 523
747.903 (a)(3) corrected 523
747.904 (b)(1), (2) and (d)(2) corrected 523, 524
747.905 (a) corrected 524
Chapter IX
900.30 Revised 6468
900.53 Correctly designated 749
910 Authority citation revised 62186
910.0 Added; eff. 1–29–93 62186
910.1 Revised; eff. 1–29–93 62186
910.6 Revised; eff. 1–29–93 62186

12 CFR—Continued

57 FR Page

Chapter IX —Continued
932 Authority citation revised 6190
932.3 Revised 6190
932.18 Technical correction 81
932.21 Technical correction 81
932.23 Technical correction 81
932.55 Removed; interim 2834
Removal at 57 FR 2834 confirmed 11429
932.56 Removed; interim 2834
Removal at 57 FR 2834 confirmed 11429
932.57 Removed; interim 2834
Removal at 57 FR 2834 confirmed 11429
935.6 Revised 42889
940.1 (b) revised 42889
941 Added; interim 2834
Regulation at 57 FR 2384 confirmed 11429
941.6 (c)(3) amended; (c)(2) revised 11429
941.7 (f)(1)(ii) and (2) amended; (d)(1), (4)(i) and (ii) revised 11429
941.8 (a) amended; (d) added 11429
941.10 (b) revised 11429
Chapter XI
1102 Added 10982
1102.20—1102.39 (Subpart B) Added 31650
1102.20 (b) corrected 35004
1102.29 (f)(1)(ii) and (g) corrected 35004
1102.100—1102.110 (Subpart C) Added 36357
1102.300—1102.304 (Subpart D) Added 60724
Chapter XIII
Chapter XIII Chapter removed 60113
1300 Removed 60113
Chapter XV
Chapter XV Heading revised 4715
1502 Added 53240
1503 Added 61252
Chapter XVI
1606 Policy statement 54503
1608 Authority citation revised 49388
1608.2 (g) through (k) redesignated as (h) through (l); new (g) added 49388

12 CFR—Continued

57 FR Page

Chapter XVI —Continued

1608.3 (a) introductory text, (1), (4)(iv) and (5) revised; (a)(6), (7) and (d) added 49388
1608.4 (b) and (c) redesignated as (c) and (d); new (b) added 49388
1609 Revised; interim 19501
Policy statement 24937
1615 Added; interim 32882
Revised 48950
1616 Added; interim 43608
1617 Revised; interim 35733
1620 Added 32395
1680.1—1680.17 Designated as subpart A; interim 37402
Redesignated as subpart A; heading added 56969
1680.21—1680.34 (Subpart B) Added; interim 37402
Added; final 56969

1993

12 CFR

58 FR Page

Chapter VI

601 Revised (effective date pending) 5919
Regulation at 58 FR 5919 eff. 3–3–93 12333
607 Added (effective date pending) 10942
Regulation at 58 FR 10942 eff. 3–25–93 16104
611.400 Regulation at 57 FR 43393 eff. 1–29–93 6604
611.515 (b)(6)(ii)(E) amended (effective date pending) 48790
Regulation at 58 FR 48790 eff. 12–31–93 67665
611.1122 (e)(6)(iii) amended; (e)(9) revised (effective date pending) 48790
Regulation at 58 FR 48790 eff. 12–31–93 67665
611.1130 (b)(4)(iii) amended (effective date pending) 48790
Regulation at 58 FR 48790 eff. 12–31–93 67665
611.1155 Regulation at 57 FR 46487 eff. 2–23–93 10945
611.1156 Regulation at 57 FR 46487 eff. 2–23–93 10945
611.1157 Regulation at 57 FR 46487 eff. 2–23–93 10945
611.1160 Regulation at 57 FR 46487 eff. 2–23–93 10945

12 CFR—Continued

58 FR Page

Chapter VI —Continued

611.1168 Regulation at 57 FR 46487 eff. 2–23–93 10945
611.1170 Regulation at 57 FR 46487 eff. 2–23–93 10945
611.1175 Regulation at 57 FR 46487 eff. 2–23–93 10945
611.1180 Regulation at 57 FR 46487 eff. 2–23–93 10945
611.1182 (c) amended (effective date pending) 48790
Regulation at 58 FR 48790 eff. 12–31–93 67665
611.1197 (b)(6)(ii)(E) amended (effective date pending) 48790
Regulation at 58 FR 48790 eff. 12–31–93 67665
611.1225 (t)(2) amended (effective date pending) 48790
Regulation at 58 FR 48790 eff. 12–31–93 67665
611.1240 (c) amended (effective date pending) 48790
Regulation at 58 FR 48790 eff. 12–31–93 67665
612.2000—612.2110 (Subpart A) Regulation at 57 FR 43394 eff. 1–29–93 6605
612.2130—612.2270 (Subpart B) Regulation at 57 FR 43394 eff. 1–29–93 6605
612.2150 Regulation at 57 FR 43395 eff. 1–29–93 6605
613 Authority citation revised 48790
613.3045 (c)(3)(i) amended (effective date pending) 48790
Regulation at 58 FR 48790 eff. 12–31–93 67665
614.4130 (a) amended (effective date pending) 48791
Regulation at 58 FR 48791 eff. 12–31–93 67665
614.4240—614.4267 (Subpart F) Regulation at 57 FR 54695 eff. 3–1–93 11792
614.4250 (a)(1) amended (effective date pending) 11372
614.4255 (a) revised; (b), (c) and (d) redesignated as (c), (d) and (e); new (b) added; new (c) amended (effective date pending) 11372
614.4325 (g) removed; (h) redesignated as (g) (effective date pending) 40321

12 CFR—Continued

58 FR Page

Chapter VI —Continued
Regulation at 58 FR 40321 eff. 1–1–94 67665
614.4350—614.4360 (Subpart J) Revised (effective date pending) 40321
Regulation at 58 FR 40321 eff. 1–1–94 67665
614.4440 Regulation at 57 FR 54699 eff. 3–1–93 11792
614.4443 Regulation at 57 FR 54699 eff. 3–1–93 11792
614.4470 (c) amended (effective date pending) 40324
Regulation at 58 FR 40324 eff. 1–1–94 67665
614.4512 (c)(2) and (e)(1) amended (effective date pending) 48791
Regulation at 58 FR 48791 eff. 12–31–93 67665
614.4514 (d) amended (effective date pending) 48791
Regulation at 58 FR 48791 eff. 12–31–93 67665
614.4516 (b)(2) amended (effective date pending) 48791
(a) introductory text revised (effective date pending) 62514
Regulation at 58 FR 48791 eff. 12–31–93 67665
614.4517 (a)(5) amended (effective date pending) 48791
Regulation at 58 FR 48791 eff. 12–31–93 67665
614.4520 (a) amended (effective date pending) 48791
Regulation at 58 FR 48791 eff. 12–31–93 67665
614.4522 (a)(1) heading revised; (b), (c) introductory text, (3), (4), (d) introductory text and (e) amended (effective date pending) 48791
Regulation at 58 FR 48791 eff. 12–31–93 67665
614.4710 Introductory text, (a)(2), (3) and (b)(1) amended (effective date pending) 40324
Regulation at 58 FR 40324 eff. 1–1–94 67665
615 Authority citation revised 63055
615.5131 Added (effective date pending) 63055

12 CFR—Continued

58 FR Page

Chapter VI —Continued
615.5132 Redesignated from 615.5135(a) and revised (effective date pending) 63056
615.5133 Redesignated from 615.5135(b) and revised (effective date pending) 63056
615.5134 Added (effective date pending) 63056
615.5135—615.5160 (Subpart E) Heading revised (effective date pending) 63055
615.5135 (a) and (b) redesignated as 615.5132 and 615.5133; new 615.5135 added (effective date pending) 63056
615.5136 Added (effective date pending) 63057
615.5140 Heading and (a) revised; (b) redesignated as (d); new (b) and (c) added (effective date pending) 63057
615.5141 Removed (effective date pending) 63055
Redesignated from 615.5180 (effective date pending) 63056
Revised; (effective date pending) 63058
615.5142 Removed (effective date pending) 63055
Added (effective date pending) 63058
615.5150 Redesignated as 615.5170 (effective date pending) 63056
615.5151 Redesignated as 615.5171 (effective date pending) 63056
615.5160 Redesignated as 615.5172 (effective date pending) 63056
615.5170—615.5172 (Subpart F) Heading revised (effective date pending) 63058
615.5170 Redesignated from 615.5150 (effective date pending) 63056
615.5171 Redesignated from 615.5151 (effective date pending) 63056
615.5172 Redesignated from 615.5160 (effective date pending) 63056
615.5173 Added (effective date pending) 63058
615.5174 Added (effective date pending) 63058
615.5180 Redesignated as 615.5141 (effective date pending) 63056

12 CFR—Continued

58 FR Page

Chapter VI —Continued

615.5216 Regulation at 57 FR 46487 eff. 2–23–93 10945
618 Authority citation revised 10944
618.8230 Removed (effective date pending) 10944
Regulation at 58 FR 10944 eff. 3–25–93 16105
618.8320 (b)(10) redesignated as (b)(10)(i); (b)(10)(ii) added (effective date pending) 51994
Regulation at 58 FR 51994 eff. 11–8–93 59161
620 Authority citation revised 27923
620.1 (i) amended (effective date pending) 48791
Regulation at 58 FR 48791 eff. 12–31–93 67665
620.2 (b)(3) revised (effective date pending) 27923
Regulation at 58 FR 27923 eff. 6–17–93 33189
(b)(1) amended (effective date pending) 48791
Regulation at 58 FR 48791 eff. 12–31–93 67665
620.5 (f)(1)(i)(F) and (g)(1)(iv)(A) revised; (l) and (m)(1) amended (effective date pending) 48791
Regulation at 58 FR 48791 eff. 12–31–93 67665
620.10 (e)(3) and concluding text revised (effective date pending) 27923
Regulation at 58 FR 27923 eff. 6–17–93 33189
(e)(1) amended (effective date pending) 48791
Regulation at 58 FR 48791 eff. 12–31–93 67665
620.21 (f) amended (effective date pending) 48791
Regulation at 58 FR 48791 eff. 12–31–93 67665
620.40 (Subpart F) Revised (effective date pending) 48791
Regulation at 58 FR 48791 eff. 12–31–93 67665
621 Revised (effective date pending) 48786
Regulation at 58 FR 48786 eff. 12–31–93 67665
621.20 (b)(3) corrected (effective date pending) 52888

12 CFR—Continued

58 FR Page

Chapter VI —Continued

625 Regulation at 57 FR 60109 eff. 2–23–93 10945
627 Regulation at 57 FR 46482 eff. 2–23–93 10945
627.2710 Regulation at 57 FR 46487 eff. 2–23–93 10945
627.2785 (c) amended (effective date pending) 48791
Regulation at 58 FR 48791 eff. 12–31–93 67665

Chapter VII

700.1 (i)(2) through (6), (15) and (16) introductory text revised; (i)(7) introductory text amended 40042
701 Authority citation revised 6077, 50445
Authority citation revised 6077, 50445
701.12 (b), (c) and (e) revised 39433
701.21 (c)(7)(ii)(C) amended 6077
(c)(5) amended; (h)(1)(i)(C) and (5) revised 40043
701.32 (b)(1) and (d) revised 21645
701.35 (c) revised; eff. 1–1–95 50445
703 Technical correction 16763
703.5 Introductory text, (g) and (j) revised 34870
(g)(1)(ii)(A), (2) and (j)(2) corrected 41419
704.17 Added 57541
705 Revised 21646
707 Added; eff. 1–1–95 50445
710 Revised 35365
711.2 (h)(1) revised; (l) amended; (o) added 39435
711.4 (a)(5), (6) and (c) amended; (c) existing text redesignated as (c)(1); (a)(7), (8) and (c)(2) added 39435
(a)(8) and (c)(2)(i) introductory text corrected 58263
711.5 Amended 39435
722 Temporary exceptions 42640
722.3 (a)(1) and (d) revised 40043
740 Authority citation revised 50461
740.2 Amended 50461
741.1 Revised 57542
741.13 (a) revised 5571
748.1 (c) revised 17492
790 Revised 45431
791.18 (c) revised 17493
796 Removed 6605

12 CFR—Continued

58 FR Page

Chapter IX

902 Added 19195
904 Added 19198
906 Added 19202
909 Added 19205
931 Authority citation revised 43542
Technical correction 47181, 53023
931.7 Removed 43542
931.8 Removed 43542
931.9 Removed 43542
931.22 Removed 43542
932 Authority citation revised 3490, 31901
Technical correction 47181, 53023
932.2 Removed 43542
932.4 Removed 43542
932.5 Removed 43542
932.6 Removed 43542
932.7 Removed 43542
932.13 (c) amended; interim 3490
(c) amended 31901
932.14 (d) amended; interim 3490
(d) amended 31901
932.18 (f)(1) and (3) introductory text revised; interim 3490
(f)(1) and (3) introductory text revised 31901
932.21 (d)(2), (g)(1) and (3) revised; interim 3490
(d)(2), (g)(1) and (3) revised 31901
933 Revised 43542
Technical correction 52808
933.1 (n) corrected 53023
933.2 OMB number 50837
933.5 OMB number 50837
933.7 (d) corrected 47181
933.9 OMB number 50837
(b)(1) corrected 53023, 58231
933.12 OMB number 50837
933.13 OMB number 50837
933.14 (b)(2) corrected 47181
933.16 (b) corrected 53023
933.18 OMB number 50837
(c) corrected 53023
935 Revised 29469
Authority citation revised 29477
Technical correction 40190
935.1 Amended; interim 29477
935.20 Revised; interim 29477
935.22 Added; interim 29477
940 Removed 29474
Technical correction 40190
943.6 (b)(3) removed; (c) amended 59936
960.9 Revised; interim 17972

12 CFR—Continued

58 FR Page

Chapter XVI

1605 Authority citation revised 8222
1605.1 Removed 8222
1605.2 (f), (g), (l), (n), (s) through (v), (x), (y), (cc) and (dd) removed 8222
1605.3 Removed 8222
1605.4 Removed 8222
1605.5 Removed 8222
1605.6 Removed 8222
1605.7—1605.14 (Subpart B) Heading revised 8222
1605.7 Removed 8222
1605.8 Removed 8222
1605.9 Removed 8222
1605.10 Removed 8222
1605.11 Removed 8222
1605.12 Removed 8222
1605.13 Removed 8222
1605.14 Removed 8222
1605.15 Removed 8222
1605.16 (d) Footnote 4 redesignated as Footnote 2 8222
1605.23 (c) and (g) removed 8222
1605.27 Removed 8222
1605.28 Removed 8222
1605.29 Removed 8222
1605.30—1605.33 (Subpart E) Heading revised 8222
1605.30 Removed 8222
1605.31 Removed 8222
1605.32 Removed 8222
1605.33 Removed 8222
1605.34—1605.43 (Subpart F) Heading revised 8222
1605.34 Removed 8222
1605.35 Removed 8222
1605.36 Removed 8222
1605.37 Removed 8222
1605.38 Removed 8222
1605.39 Removed 8222
1605.40 Removed 8222
1605.41 Removed 8222
1605.42 Removed 8222
1605.43 Removed 8222
1616 Revised 476
1625 Added 58941
1626 Added 34871
1627 Added; interim 18144
Technical correction 21627

1994

12 CFR

59 FR Page

Chapter VI

600 Authority citation revised 21641
600.1 Amended (effective date pending) 21641
Regulation at 59 FR 21641 eff. 4–26–94 27970
600.4 (b) revised; (c) and (d) added (effective date pending) 21641
Regulation at 59 FR 21641 eff. 4–26–94 27970
600.5 (a), (b) and (c) redesignated as (b), (d) and (e), new (a) and new (c) added; new (b) and new (d) revised (effective date pending) 21642
Regulation at 59 FR 21642 eff. 4–26–94 27970
600.10 (c) amended (effective date pending) 21642
Regulation at 59 FR 21642 eff. 4–26–94 27970
604 Authority citation revised 21642
604.440 Amended (effective date pending) 21642
Regulation at 59 FR 21642 eff. 4–26–94 27970
605 Authority citation revised 21643
605.502 (f) amended (effective date pending) 21643
Regulation at 59 FR 21643 eff. 4–26–94 27970
607.2 (b) introductory text amended 37403
608 Added (effective date pending) 13187
Regulation at 59 FR 13187 eff. 5–6–94 23615
611 Authority citation revised 37411
611.400 Revised (effective date pending) 37411
Regulation at 59 FR 37411 eff. 8–22–94 45972
611.1130 (a) amended (effective date pending) 21643
Regulation at 59 FR 21643 eff. 4–26–94 27970
612 Revised (effective date pending) 24894
614.4240—614.4267 (Subpart F) Revised; interim (effective date pending) 46730

12 CFR—Continued

59 FR Page

Chapter VI—Continued

614.4266 (e) correctly designated 50964
614.4351 (a) revised 37403
614.4443 (c) revised; interim 46734
614.4516 Regulation at 58 FR 62514 eff. 3–15–94 11898
614.4710 (a)(1)(i) amended 37404
615.5060 (a) revised (effective date pending) 3787
Regulation at 59 FR 3787 eff. 3–18–94 12811
615.5131 Regulation at 58 FR 63055 eff. 3–15–94 11898
(t) amended 37404
615.5132 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5133 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5134 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5135—615.5160 (Subpart E) Regulation at 58 FR 63055 eff. 3–15–94 11898
615.5135 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5136 Regulation at 58 FR 63057 eff. 3–15–94 11898
615.5140 Regulation at 58 FR 63057 eff. 3–15–94 11898
(a)(8)(i)(B) and (11)(ii) corrected 22736
615.5141 Regulations at 58 FR 63055, 63056 and 63058 eff. 3–15–94 11898
615.5142 Regulations at 58 FR 63055 and 63058 eff. 3–15–94 11898
615.5150 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5151 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5160 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5170—615.5172 (Subpart F) Regulation at 58 FR 63058 eff. 3–15–94 11898
615.5170 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5171 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5172 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5173 Regulation at 58 FR 63058 eff. 3–15–94 11898
615.5174 Regulation at 58 FR 63058 eff. 3–15–94 11898

12 CFR—Continued

59 FR Page

Chapter VI—Continued

615.5180 Regulation at 58 FR 63056 eff. 3–15–94 11898
615.5201 (a) through (l) redesignated as (b) through (g) and (i) through (n); new (a) and new (h) added; new (j) revised; new (k) amended 37404
615.5210 (d) and (e) redesignated as (e) and (f); new (e)(4) through (7) redesignated as (e)(6) through (9); (c), new (f)(1), new (3)(i) and new (ii)(D)(*1*) amended; new (e)(3) removed; new (d), (e)(3), (4) and (5) added; new (e)(2) revised 37404
615.5495 (b) amended (effective date pending) 21643
Regulation at 59 FR 21643 eff. 4–26–94 27970
618.8270 Revised (effective date pending) 37411
Regulation at 59 FR 37411 eff. 8–22–95 45972
618.8320 (b)(11) added; interim (effective date pending) 46734
618.8325 (b) amended; interim (effective date pending) 46734
620.1 (j) amended 37406
620.5 (i) revised (effective date pending) 37412
Regulation at 59 FR 37412 eff. 8–22–95 45972
621 Authority citation revised 60888
621.11 Removed; interim 60888
630 Added (effective date pending) 46742
650 Added (effective date pending) 9626
Regulation at 59 FR 9626 eff. 9–13–94 46913

Chapter VII

701 Authority citation revised 39424
Authority citation corrected 52862
701.1 Revised 29075
Amended 36041
701.2 (b) and (c) amended 36041
701.3 Correctly removed; CFR correction 54517
701.4 Correctly removed; CFR correction 54517
701.6 (a), (b)(2) and (3) revised 33421

12 CFR—Continued

59 FR Page

Chapter VII—Continued

701.14 (f) amended 36042
701.21 (c)(7)(ii)(C) revised 39425
701.31 (d)(3) amended 36041
701.32 (b)(2), (3) and (4) redesignated as (b)(4), (5) and (6); (b)(1) and new (6) revised; new (b)(2) and new (3) added 26102
704.2 Amended; eff. 1–1–96 59360
704.10 (b)(2) amended 47072
704.11 (a)(1) and (2) amended 47072
704.12 Revised; eff. 1–1–96 59360
704.13 (c) amended 47072
704.16 Amended 47072
704 Appendix B amended 47072
707 Compliance date extended 39425
707.2 (r) amended 13436
(a) and (q) revised 59899
707.6 (b)(3) revised 59899
707.8 (c)(5) revised (OMB number pending) 13436
707.9 (b) revised (OMB number pending) 13436
707 Appendix B amended 13436, 13437
Appendix C added 59899
708 Redesignated as 708b 48792
708a Added; interim 48792
708b Redesignated from 708 48792
Authority citation revised 67620
708b.102 (d) and (e) amended 67620
708b.105 (b) amended 67620
708b.106 (a)(2)(ii) and (b) amended 67620
708b.202 (a), (b) and (c) amended 67620
708b.204 (a), (b) and (c) amended 67620
709.8 (c)(1) amended 36041
709.9 (b) amended 36041
722 Statement and order 6531, 40202
Temporary exceptions 62562
741.6 (a) amended 26103
741.11 (b)(1), (c), (d) and (g) revised 33421
745.202 (a) amended 36041
747.306 (b) amended 36041
747.307 (a) amended 36042
747.609 (d) amended 36041
747.616 Amended 36041
790 Authority citation revised 36041

12 CFR—Continued

59 FR Page

Chapter VII—Continued

790.2 (b)(6) redesignated as (b)(6)(i) and (ii); (b)(1), (3), new (6)(i), (8) and (9) amended; (b)(6)(iii), (13), (14) and (15) added; (d) and (e) removed 36042
(b)(6)(ii) removed; (b)(6)(iii) redesignated as (b)(6)(ii); (b)(10) revised; (b)(16) added 47072
791.8 (c) amended 36041
792 Authority citation revised 36041
792.2 (g)(1) amended 36041
(f), (g)(1) and (2) amended 36042
792.5 (b)(1)(i), (ii) and (2) amended 36042
792.22 (a) amended 36041
792.24 (b)(3) amended 36042
792.26 (a) amended 36041, 36042
792.27 (a) and (c) amended 36041
792.37 (a) amended 36042
792.40 Amended 36041
792.50 (a) amended 36042
793 Authority citation revised 36041
793.2 (c) amended 36041
794.170 (c) amended 36042

Chapter IX

935 Authority citation revised 2949
935.1 Amended 2949
935.5 (a)(2) amended; (a)(3) and (b) through (g) added 2949
935.17 Revised 2950

Chapter XI

1102.300—1102.304 (Subpart D) Authority citation revised 1902
1102.305 Added 1902
1102.306 Added 1902
1102.307 Added 1902

Chapter XIV

1402 Added 24638
1403 Added; interim 53084
Regulation at 59 FR 53084 eff. 11–21–94 60888
1408 Added 24899

Chapter XVI

1609 Revised; interim 52671
Regulation at 59 FR 52671 confirmed; eff. 1–12–95 64111
1627 Revised 5939
1630 Added; interim 8845
Regulation at 59 FR 8845 confirmed 37931

12 CFR—Continued

59 FR Page

Chapter XVI—Continued

1640 Added; interim 47793
Regulation at 59 FR 47793 confirmed 60305

Chapter XVII

Chapter XVII Established 62304

1995

12 CFR

60 FR Page

Chapter VI

Chapter VI Regulatory burden statement 57913
601 Revised; interim (effective date pending) 30782
Regulation at 60 FR 30782 confirmed; eff. 9–13–95 47453
607.2 Regulation at 59 FR 37403 eff. 12–31–94 325
611.1125 (b)(2) amended (effective date pending) 34099
Regulation at 60 FR 34099 eff. 8–8–95 42049
612 Regulation at 59 FR 24894 eff. 12–31–94 325
614 Authority citation revised 35289
614.4240—614.4267 (Subpart F) Regulation at 59 FR 46730 eff. 1–4–95 2683
614.4260 (c)(5) introductory text revised 2687
614.4351 Regulation at 59 FR 37403 eff. 12–31–94 325
614.4443 Regulation at 59 FR 46734 eff. 1–4–95 2683
614.4470 (b)(1) and (3) amended (effective date pending) 20010
Regulation at 60 FR 20010 eff. 5–24–95 27402
614.4710 Regulation at 59 FR 37404 eff. 12–31–94 325
614.4940 (Subpart S) Added; eff. 1–2–96 35289
615.5104 Removed (effective date pending) 20011
Regulation at 60 FR 20011 eff. 5–24–95 27402
615.5105 (c) removed (effective date pending) 20011
Regulation at 60 FR 20011 eff. 5–24–95 27402
615.5131 Regulation at 59 FR 37404 eff. 12–31–94 325

12 CFR—Continued

60 FR Page

Chapter VI—Continued

615.5170 (a) designation and (b) through (e) removed (effective date pending) 20011
Regulation at 60 FR 20011 eff. 5–24–95 27402
615.5190 (Subpart G) Removed (effective date pending) 20011
Regulation at 60 FR 20011 eff. 5–24–95 27402
615.5201 Regulation at 59 FR 37404 eff. 12–31–94 325
615.5210 Regulation at 59 FR 37404 eff. 12–31–94 325
615.5230 (a)(1)(ii) and (3) revised; (a)(1)(iii) added (effective date pending) 57921
615.5498 Removed (effective date pending) 20011
Regulation at 60 FR 20011 eff. 5–24–95 27402
615.5500—615.5530 (Subpart P) Removed (effective date pending) 20011
Regulation at 60 FR 20011 eff. 5–24–95 27402
Added; interim (effective date pending) 57919
618.8000—618.8030 (Subpart A) Revised (effective date pending) 34099
Regulation at 60 FR 34099 eff. 8–8–95 42029
618.8025 (a) corrected 42029
618.8030 Redesignated as 618.8040 (effective date pending) 34099
Regulation at 60 FR 34099 eff. 8–8–95 42029
618.8040 (b)(10) removed; (b)(2) through (9) redesignated as (b)(3) through (10); (b)(1) and new (6) revised; new (b)(2) added; new (b)(3) amended (effective date pending) 34101
Redesignated from 618.8030 (effective date pending) 34099
Regulation at 60 FR 34099 eff. 8–8–95 42029
618.8220 Removed (effective date pending) 20011
Regulation at 60 FR 20011 eff. 5–24–95 27402
618.8320 Regulation at 59 FR 46734 eff. 1–4–95 2683
618.8325 Regulation at 59 FR 46734 eff. 1–4–95 2683

12 CFR—Continued

60 FR Page

Chapter VI—Continued

620.1 Regulation at 59 FR 37406 eff. 12–31–94 325
620.5 (a)(3) amended (effective date pending) 34102
Regulation at 60 FR 34102 eff. 8–8–95 42029
620.21 Heading, (c)(3), (d)(1), (3), (5) and (6) revised (effective date pending) 20013
Regulation at 60 FR 20013 eff. 5–24–95 27684
(d)(1) amended; (d)(3) revised (effective date pending) 57922
630 Regulation at 59 FR 46742 eff. 1–4–95 2493

Chapter VII

701.1 OMB number 67321
701.6 (d)(4) revised; eff. 1–29–96 58503
701.14 (a) amended 31911
701.21 (c)(8) revised 51889
(a) amended; eff. 1–29–96 58504
(a) corrected 63613
701.22 (a)(1), (b)(2), (c)(4) and (d)(1) revised; eff. 1–26–96 58204
701.23 (b)(2)(iii) revised; eff. 1–29–96 58504
705.3 (b) revised; eff. 1–29–96 58504
707 Compliance date extension 25121, 57173
707 Appendix C amended 21699
708a Regulation at 59 FR 48792 confirmed 12661
708a.1 Revised 12661
708a.2 Revised 12661
708a.3 Added 12661
708a.4 Added 12662
708a.5 Added 12662
708a.6 Added 12662
708a Appendix A added 12662
722.3 Heading, (a) and (d) revised; (e) added 51894
722.4 Revised 51894
722.5 (b) revised 51895
722 Appendix A removed 51895
741 Revised; eff. 1–29–96 58504
747.901 Amended 31911
747.902 Amended 31911
747.904 (b)(2) amended 31911
760 Authority citation revised 35289
760.12 Added; eff. 1–2–96 35289
790.2 (b)(14) revised; (c)(2) amended 31911

12 CFR—Continued

60 FR Page

Chapter VII—Continued
792 Authority citation revised....31912
792.2 (f) amended....31911
792.34 (b)(3) added....31912

Chapter IX
900 Authority citation revised....49199
900.51 Revised....49199
922.6 Revised....49199
922.7 Removed....49199
934 Authority citation revised....65516
934.11 Removed; new 934.11 redesignated from 934.12....65516
934.12 Redesignated as 934.11; new 934.12 redesignated from 934.13....65516
934.13 Redesignated as 934.12; new 934.13 redesignated from 934.14....65516
934.14 Redesignated as 934.13; new 934.14 redesignated from 934.15....65516
934.15 Regulation at 55 FR 50545 confirmed....42779
Redesignated as 934.14....65516
937 Removed....36967
939 Removed....36967
943 Authority citation revised....57682
943.6 (a) and (c) revised....57682
960 Authority citation revised....49330
960.4 (a) amended....49330
960.5 (a)(1) revised; (g) added....49330

Chapter XIV
1401 Added; interim....30778

Chapter XVI
Chapter XVI Removed....66483
1617 Revised....7663

Chapter XVIII
Chapter XVIII Established; interim....54115

1996

12 CFR

61 FR Page

Chapter VI
600 Authority citation revised....67185
600.5 (b) and (d)(1) amended; (d)(2) revised (effective date pending); interim....67185

12 CFR—Continued

61 FR Page

Chapter VI—Continued
603 Authority citation revised....67185
603.310 (b) amended (effective date pending); interim....67185
611.1030 Amended (effective date pending); interim....67185
611.1135 (a), (b)(1), (2), (3)(v), (6), (7), (c), (d)(1) introductory text, (iv) and (2) revised; (e) removed (effective date pending); interim....67185
611.1140—611.1145 (Subpart J) Removed (effective date pending); interim....67186
611.1155—611.1158 (Subpart K) Removed (effective date pending); interim....67186
611.1160—611.1169 (Subpart L) Removed (effective date pending); interim....67186
611.1170—611.1176 (Subpart M) Removed (effective date pending); interim....67186
611.1180—611.1183 (Subpart N) Removed (effective date pending); interim....67186
611.1190—611.1198 (Subpart O) Removed (effective date pending); interim....67186
611.1200 (c) amended (effective date pending); interim....67186
611.1250 (b) and (c) amended (effective date pending); interim....67186
611.1255 Revised (effective date pending); interim....67186
611.1266 (c) amended (effective date pending); interim....67186
614.4321 Revised (effective date pending); interim....67186
614.4367 (a)(4) and (c)(3) amended....11304
Regulation at 61 FR 11304 eff. 5–3–96....20125
614.4440 (h)(1) amended (effective date pending); interim....67187
614.4444 Amended (effective date pending); interim....67187
614.4510 (b) and (d)(4) removed; (c) and (d) redesignated as (b) and (c); introductory text, (a) and new (c) introductory text revised (effective date pending); interim....67187

12 CFR—Continued

61 FR Page

Chapter VI—Continued

614.4515 Removed (effective date pending); interim 67187
614.4516 Heading revised; introductory text added (effective date pending); interim 67187
614.4517 (c) added (effective date pending); interim 67187
614.4520 Removed (effective date pending); interim 67187
614.4525 (c) and (d) amended (effective date pending); interim 67187
614.4920—614.4960 (Subpart S) Revised..... 45711
615 Authority citation revised..... 31394
615.5120 (a) amended (effective date pending); interim 67187
615.5140 (a)(1) revised (effective date pending); interim 67187
615.5143 Amended (effective date pending); interim 67187
615.5230 Regulation at 60 FR 57921 eff. 1–2–96..... 1274
615.5250 (e) revised (effective date pending); interim 67187
615.5280 (a) through (e) revised (effective date pending); interim 67187
615.5290 (a) amended (effective date pending); interim 67188
615.5450—615.5462 (Subpart O) Revised; interim 67192
615.5500—615.5502 (Subpart P) Regulation at 60 FR 57919 confirmed 12015
615.5560 (c) revised; interim 67195
615.5570 (Subpart S) Added 31394
(c) revised; interim 67195
618.8260 Removed (effective date pending); interim 67188
618.8310 (b)(1) amended (effective date pending); interim 67188
618.8320 (b)(2) and (5) revised; (b)(9) removed; (b)(10) and (11) redesignated as (b)(9) and (10) (effective date pending); interim 67188
618.8325 (c) amended (effective date pending); interim 67188
618.8330 (a) designation and (b) removed (effective date pending); interim 67188
618.8340 Removed (effective date pending); interim 67188

12 CFR—Continued

61 FR Page

Chapter VI—Continued

618.8360 Removed (effective date pending); interim 67188
618.8370 Removed (effective date pending); interim 67188
618.8380—618.8420 (Subpart I) Removed (effective date pending); interim 67188
619.9060 Revised (effective date pending); interim 67188
620.21 Regulation at 60 FR 57922 eff. 1–2–96..... 1274
621.11 Regulation at 59 FR 50888 confirmed..... 18236
622 Authority citation revised..... 54729
622.61 Added 54729

Chapter VII

701 Authority citation revised 4214
701.1 Revised (OMB number) 11726
Revised; interim 59308
701.12 (a), (b) and (c) revised; (d) and (e) redesignated as (g) and (h); new (d), new (e) and (f) added..... 41323
701.13 (a)(2) amended..... 41326
701.21 (c)(7)(ii)(C) revised..... 4214
(d)(1) amended; (d)(4) introductory text revised..... 68128
701.32 Heading, (a) and (b)(1) revised; (d) redesignated as 701.34(a); interim 3790
Regulation at 61 FR 3790 confirmed..... 50697
701.34 (a) redesignated from 701.32(d); new (a)(1) amended; (b), (c) and Appendix added; interim 3790
(a)(1) revised..... 50695
Regulation at 61 FR 3790 confirmed; (b)(2) and (c) revised 50697
705 Authority citation revised..... 50695
705.3 (b) amended 45875
(b) revised..... 50695
705.5 (b)(1) revised..... 50695
705.7 (a) amended 50696
705.10 Revised..... 50696
707 Reporting and recordkeeping requirements..... 114
707.1 (c) amended 68129
707.3 OMB number 114
707.4 OMB number 114
707.5 OMB number 114

12 CFR—Continued

61 FR Page

Chapter VII—Continued

707.6 OMB number 114
707.7 OMB number 114
707.8 OMB number 114
707.9 OMB number 114
707 Appendix C amended 68129
709.5 (b)(6) and (7) revised; (b)(8) added; (e) amended; interim 3791
Regulation at 61 FR 3791 confirmed 50697
711 Revised 50702
741.204 (b) amended; (c) added; interim 3792
Regulation at 61 FR 3792 confirmed 50697
745 Authority citation revised 60186
745.200 (b) and (d) revised 60186
747 Authority citation revised 28024, 57291
747.1 (c)(2) amended; (d) redesignated as (e); (c)(3) and new (e) revised; (c)(4) and new (d) added 28025
747.6 (a)(3) revised 28025
747.8 (b) revised 28025
747.9 (a) and (b) revised; (e) added 28025
747.11 (c)(2) and (d) revised 28025
747.12 (a), (c)(1), (2) and (3) revised 28026
747.20 Revised 28026
747.24 (a) and (b) revised 28026
747.25 (a), (b), (e) and (g) revised 28026
(b) amended 45876
747.33 (a) revised 28027
747.34 (a) and (b)(1) revised 28027
747.35 (a)(3) redesignated as (a)(4); new (a)(3) added; (b) revised 28027
747.37 Heading and (a)(1) revised 28027
747.38 Revised 28027
747.1001 (Subpart K) Added 57291
748 Heading revised 11527
Authority citation revised 11527
748.1 (c) revised 11527
760 Revised 45713
790.2 (b)(5) revised; (b)(6)(i), (ii) and (7) amended 45876
791.6 Revised 55208

Chapter IX

900.12 Revised 68129
900.13 Revised 68130

12 CFR—Continued

61 FR Page

Chapter IX—Continued

900.14 Revised 68130
900.15 Revised 68130
900.16 Revised 68130
900.17 Revised 68130
900.18 Revised 68130
900.19 Revised 68130
900.20 Removed 68130
900.21 Removed 68130
902 Authority citation revised 64614
902.6 Added; eff. 1–6–97 64614
910 Authority citation revised 64024
910.3 Revised; interim 64024
912 Revised; interim 64024
931 Authority citation revised 40313
931.5 Revised 40313
932.26 Added 43154
932.27 Revised 43154
933 Heading revised 42542
933.1 (Subpart A) Revised 42542
933.2—933.5 (Subpart B) Revised 42543
933.6—933.10 (Subpart C) Redesignated as 933.19—933.23 (Subpart D) 42542
Added 42545
933.11—933.12 (Subpart D) Redesignated as 933.24—933.25 (Subpart E) 42542
933.13—933.15 (Subpart E) Redesignated as 933.26—933.28 (Subpart F) 42542
933.16 (Subpart F) Redesignated as 933.29 (Subpart G) 42542
933.17 (Subpart G) Redesignated as 933.30 (Subpart H) 42542
933.18 (Subpart H) Redesignated as 933.31 (Subpart I) 42542
933.19 (Subpart I) Redesignated as 933.32 (Subpart J) 42542
933.19—933.23 (Subpart D) Redesignated from 933.6—933.10 (Subpart C) 42542
933.20 (b)(1) and (2) amended 42549
933.22 (b)(1) amended 42549
933.23 Amended 42549
933.24—933.25 (Subpart E) Redesignated from 933.11—933.12 (Subpart D) 42542
933.24 (a)(2) and (b)(2) amended 42549
933.25 (c), (d)(2)(ii)(A), (B), (iii) and (3) amended 42549

12 CFR—Continued

61 FR Page

Chapter IX—Continued

933.26—933.28 (Subpart F) Redesignated from 933.13—933.15 (Subpart E) 42542
933.26 (c) amended 42549
933.27 (e) amended 42549
933.28 (b) amended 42549
933.29 Redesignated from 933.16 (Subpart F) 42542
(a)(1) amended 42549
933.30 Redesignated from 933.17 (Subpart G) 42542
Introductory text, (a) and (b) amended 42549
933.31 Redesignated from 933.18 (Subpart H) 42542
(d) amended 42549
933.32 (Subpart J) Redesignated from 933.19 (Subpart I) 42542
934 Authority citation revised 55880
934.6 Revised 55880
935.6 (d) added 52687
941 Authority citation revised 43155
941.7 (f)(2) revised 43155
950 Revised; interim 59314

Chapter XIV

1401.1 Regulation at 60 FR 30778 confirmed 4349
1411 Added 55079

12 CFR—Continued

61 FR Page

Chapter XV

1511 Revised 66875

Chapter XVII

1750 Added 35620

Chapter XVIII

1805.104 (n) revised; interim 1701
1805.201 Amended; interim 1701
1805.600 Amended; interim 1701
Corrected 7690
1805.604 Added; interim 1701
1805.701 (d)(2)(iii) revised; (e)(3) introductory text amended; interim 1702
1806.103 (dd) added; interim 1702
(q) revised; interim 59828
1806.200 (b)(2)(ii) revised; interim 1702
1806.201 (b)(2) revised; (b)(4)(xii) and (xiii)(B) amended; (b)(4)(xiv) added; interim 1702
1806.202 (a) revised; (b)(2) and (3) amended; (b)(4) and (d) added; interim 1702
Corrected 7690
(a) revised; interim 59828
1806.205 (c)(1) revised; interim 59828
1806.206 (b)(1) and (4) revised; interim 1702

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