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SUBCHAPTER A—ADMINISTRATIVE PROVISIONS

PART 600—ORGANIZATION AND FUNCTIONS

Subpart A—Farm Credit Administration

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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 The prior laws, which were repealed and superseded by the Act, are identified in section 5.40(a) of the Act.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]

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

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AUTHORITY: Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252); 5 U.S.C. 552; E.O. 12600, 52 FR 23781, 3 CFR 1987, p. 235; 52 FR 10012.

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 and addressed to the attention of the Freedom of Information Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. A request improperly addressed will be deemed not to have been received for purposes of the 20-day time period set forth in § 602.261(a) of this part until it is received, or would have

been received, by the Freedom of Information Officer with the exercise of due diligence by Agency personnel. 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 a public reference facility in the offices of the Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

[62 FR 41254, Aug. 1, 1997]

§ 602.261 Response to requests for records.

(a) Within 20 days (excluding Saturdays, Sundays, and legal public holidays), or any extensions thereof as provided in paragraph (d) of this section, of the receipt of a request by the Freedom of Information Officer, the Freedom of Information Officer shall determine whether to comply with or deny such a request and transmit a written notice thereof 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,'' the 20-day time limit prescribed in paragraphs (a) and (c) of this section, or both, may be extended by the Freedom of Information Officer or, in the case of an appeal, by the Director, Office of Resources Management, provided that the total of all extensions does 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 dispatched. As used in this paragraph, *unusual circumstances* means, but only to the extent reasonably 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 a substantial subject matter interest therein.

(e) A requester may obtain, upon request, expedited processing of a request

for records when the requester demonstrates a ''compelling need'' for the information. The Freedom of Information Officer will notify the requester within 10 calendar days after receipt of such a request whether the Agency granted expedited processing. If expedited processing was granted, the request will be processed as soon as practicable.

(1) For the purposes of this paragraph, ''compelling need'' means:

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(2) A requester shall demonstrate a compelling need by a statement certified by the requester to be true and correct to the best of such person's knowledge and belief.

(3) The procedures of this paragraph (e) for expedited processing apply to both requests for information and to administrative appeals.

[40 FR 7339, Feb. 19, 1975, as amended at 51 FR 41939, Nov. 20, 1986; 56 FR 28476, June 21, 1991; 62 FR 41254, Aug. 1, 1997]

§ 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.

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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]

§ 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.
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606.649 Program accessibility: Discrimination prohibited.
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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.
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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) and 12 U.S.C. 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 Financial Institution Rating System (FIRS) 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. The FIRS 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. The composite FIRS rating

ranges from 1 to 5, with a lower number indicating a 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; 63 FR 34268, June 24, 1998]

§ 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 FIRS 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 FIRS 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 FIRS 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 FIRS 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 FIRS 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 FIRS rating equivalent to the best composite FIRS 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 FIRS 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.

[58 FR 10942, Feb. 23, 1993, as amended at 63 FR 34268, June 24, 1998]

§ 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

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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

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AUTHORITY: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 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, 2208, 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 and Other Voting Procedures

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 voting.

(a) No bank or association may use signed ballots in stockholder votes. Each bank and association must adopt policies and procedures to ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including with respect to the institution, its directors, stockholders, or employees, or any other person except:

(1) An independent third party tabulating the vote; or

(2) The Farm Credit Administration.

(b) A bank or association may use balloting procedures, such as an identity code on the ballot, that can be used to identify how or whether an individual stockholder has voted only if the votes are tabulated by an independent third party. In weighted voting, the votes must be tabulated by an independent third party. An independent third party that tabulates the votes must certify in writing that such party will not disclose to any person (including the institution, its directors, stockholders, or employees) any information about how or whether an individual stockholder has voted, except that the

information must be disclosed to the Farm Credit Administration if requested.

(c) Once a bank or association receives a ballot, the vote of that stockholder is final, except that a stockholder may withdraw a proxy ballot before balloting begins at a stockholders' meeting.

(d) A bank or association may give a stockholder voting by proxy an opportunity to give voting discretion to the proxy of the stockholder's choice, provided that the proxy is also a stockholder eligible to vote.

[63 FR 64843, Nov. 24, 1998]

EFFECTIVE DATE NOTE: At 63 FR 64843, Nov. 24, 1998, § 611.30 was revised, effective 30 days after publication in the FEDERAL REGISTER during which either or both Houses of Congress are in session or later if Congress takes certain adjournments. The text remaining in effect until further notice is set forth as follows:

§ 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 voting.

(a) Each bank and association must adopt policies and procedures that assure the security of all records and materials related to a stockholder vote including, but not limited to, ballots, proxy ballots, and other related materials.

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

(c) Ballots and proxy ballots must be safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the bank or association until disposal. In an election of directors, ballots, proxy ballots and election records must be retained at least until the end of the term of office of the director. In other stockholder votes, ballots, proxy ballots, and records must be retained for at least 3 years after the vote.

(d) The voting procedures of each institution must provide for the establishment of a tellers committee or other designated group of persons which must be responsible for validating ballots and proxies and tabulating voting results. An institution and its officers, directors, and employees may not make any public announcement of the results of a stockholder vote before the tellers committee or other designated persons have validated the results of the vote.

[53 FR 50392, Dec. 15, 1988, as amended at 63 FR 64843, Nov. 24, 1998]

EFFECTIVE DATE NOTE: At 63 FR 64843, Nov. 24, 1998, § 611.340 was amended by removing the words ''the election of directors'' and adding in their place, the word ''voting'' in the heading; by removing the words ''System institution'' and adding in their place, the words ''bank and association'' and by removing the words ''the election of board members'' and adding in their place, the words ''a stockholder vote'' in paragraph (a); by removing the word ''shall'' and adding in its place, the word ''must'' each place it appears in paragraphs (a) and (b); and by revising paragraphs (c) and (d), effective 30 days after publication in the FEDERAL REGISTER during which either or both Houses of Congress are in session or later if Congress takes certain adjournments. The text remaining in effect until further notice is set forth as follows:

§ 611.340 Security in the election of directors.

* * * * *

(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.

§ 611.350 Application of cooperative principles to the election of directors.

In the election of directors, each System institution shall comply with the applicable cooperative principles set forth in § 615.5230 of this chapter.

[63 FR 39225, July 22, 1998]

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 may not be less than 35 days after mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after the date of mailing of the notification of stockholder vote, the constituent institutions must agree on a second effective date to be used in the event the transfer is approved on reconsideration. The second effective date may not be less than 60 days after stockholder notification of the results of the first vote, or 15 days

after the date of the reconsideration vote, whichever occurs later.

[53 FR 50393, Dec. 15, 1988, as amended at 63 FR 64844, Nov. 24, 1998]

EFFECTIVE DATE NOTE: At 63 FR 64844, Nov. 24, 1998, § 611.505 was amended by revising paragraph (e), effective 30 days after publication in the FEDERAL REGISTER during which either or both Houses of Congress are in session or later if Congress takes certain adjournments. The text remaining in effect until further notice is set forth as follows:

§ 611.505 Farm Credit Administration review.

* * * * *

(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]

§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 may not be less than 35 days after the date of mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after mailing of the notification to stockholders of the results of the stockholder vote, the constituent institutions must agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. The second effective date may not be less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

[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; 63 FR 64844, Nov. 24, 1998]

EFFECTIVE DATE NOTE: At 63 FR 64844, Nov. 24, 1998, § 611.1122 was amended by revising paragraph (k), effective 30 days after publication in the FEDERAL REGISTER during which either or both Houses of Congress are in session or later if Congress takes certain adjournments. The text remaining in effect until further notice is set forth as follows:

§ 611.1122 Requirements for mergers or consolidations.

* * * * *

(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.

§ 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 organizing 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 include the provisions required by § 615.5220(b) of this chapter.

(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, including imposing minimum capital requirements, as it deems appropriate. For good cause, the Farm Credit Administration 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.

[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; 62 FR 13213, Mar. 19, 1997; 63 FR 39225, July 22, 1998]

§ 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–O [Reserved]

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]

§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 an other financing institution that has established a funding and discount relationship with a Farm Credit Bank or an agricultural credit bank pursuant to section 1.7(b)(1) of the Act and the regulations in subpart P of part 614.

(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; 63 FR 36547, July 7, 1998]

§ 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]

§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]

§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]

§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

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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—Financing Under Titles I and II of the Farm Credit Act

Sec.
613.3000 Financing for farmers, ranchers, and aquatic producers or harvesters.
613.3005 Lending objective.
613.3010 Financing for processing or marketing operations.
613.3020 Financing for farm-related service businesses.
613.3030 Rural home financing.

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

613.3100 Domestic lending.
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Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

613.3300 Participations and other interests in loans to similar entities.

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, 4.18A, 4.25, 4.26, 4.27, 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, 2206a, 2211, 2212, 2213, 2243, 2252).

Subpart A—Financing Under Titles I and II of the Farm Credit Act

SOURCE: 62 FR 4441, Jan. 30, 1997, unless otherwise noted.

§613.3000 Financing for farmers, ranchers, and aquatic producers or harvesters.

(a) *Definitions.* For purposes of this subpart, the following definitions apply:

(1) *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.

(2) *Legal entity* means any partnership, corporation, estate, trust, or other legal entity that is established pursuant to the laws of the United States, any State thereof, the Commonwealth of Puerto Rico, the District of Columbia, or any tribal authority and is legally authorized to conduct a business.

(3) *Person* means an individual who is a citizen of the United States or a foreign national who has been lawfully admitted into the United States either for permanent residency pursuant to 8 U.S.C. 1101(a)(20) or on a visa pursuant to a provision in 8 U.S.C. 1101(a)(15) that authorizes such individual to own property or operate or manage a business or a legal entity.

(4) *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.

(b) *Eligible borrower.* Farm Credit institutions that operate under titles I or II of the Act may provide financing to a bona fide farmer or rancher, or producer or harvester of aquatic products for any agricultural or aquatic purpose and for other credit needs.

§613.3005 Lending objective.

It is the objective of each bank and association, except for 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.

§ 613.3010 Financing for processing or marketing operations.

(a) *Eligible borrowers.* A borrower is eligible for financing for a processing or marketing operation under titles I and II of the Act, only if the borrower meets the following requirements:

(1) The borrower is either a bona fide farmer, rancher, or producer or harvester of aquatic products, or is a legal entity in which eligible borrowers under § 613.3000(b) own more than 50 percent of the voting stock or equity; and

(2) The borrower or an owner of the borrowing legal entity regularly produces some portion of the throughput used in the processing or marketing operation.

(b) *Portfolio restrictions for certain processing and marketing loans.* Processing or marketing loans to eligible borrowers who regularly supply less than 20 percent of the throughput are subject to the following restrictions:

(1) *Bank limitation.* The aggregate of such processing and marketing loans made by a Farm Credit bank shall not exceed 15 percent of all its outstanding retail loans at the end of the preceding fiscal year.

(2) *Association limitation.* The aggregate of such processing and marketing loans made by all direct lender associations affiliated with the same Farm Credit bank shall not exceed 15 percent of the aggregate of their outstanding retail loans at the end of the preceding fiscal year. Each Farm Credit bank, in conjunction with all its affiliated direct lender associations, shall ensure that such processing or marketing loans are equitably allocated among its affiliated direct lender associations.

(3) *Calculation of outstanding retail loans.* For the purposes of this paragraph, ''outstanding retail loans'' includes loans, loan participations, and other interests in loans that are either bought without recourse or sold with recourse.

§ 613.3020 Financing for farm-related service businesses.

(a) *Eligibility.* An individual or legal entity that furnishes farm-related services to farmers and ranchers that are directly related to their agricultural production is eligible to borrow from a Farm Credit bank or association that operates under titles I or II of the Act.

(b) *Purposes of financing.* A Farm Credit Bank, agricultural credit bank, or direct lender association may finance:

(1) All of the farm-related business activities of an eligible borrower who derives more than 50 percent of its annual income (as consistently measured on either a gross sales or net sales basis) from furnishing farm-related services that are directly related to the agricultural production of farmers and ranchers; or

(2) Only the farm-related services activities of an eligible borrower who derives 50 percent or less of its annual income (as consistently measured on either a gross sales or net sales basis) from furnishing farm-related services that are directly related to the agricultural production of farmers and ranchers.

§ 613.3030 Rural home financing.

(a) *Definitions.*

(1) *Rural homeowner* means an individual who is not a bona fide farmer, rancher, or producer or harvester of aquatic products.

(2) *Rural home* means a single-family moderately priced dwelling located in a rural area that will be the occupant's principal residence.

(3) *Rural area* means open country within a State or the Commonwealth of Puerto Rico, which may include a town or village that has a population of not more than 2,500 persons.

(4) *Moderately priced* means the price of any rural home that either:

(i) Satisfies the criteria in section 8.0 of the Act pertaining to rural home loans that collateralize securities that are guaranteed by the Federal Agricultural Mortgage Corporation; or

(ii) Is otherwise determined to be moderately priced for housing values for the rural area where it is located, as documented by data from a credible, independent, and recognized national or regional source, such as a Federal, State, or local government agency, or an industry source. Housing values at or below the 75th percentile of values reflected in such data will be deemed moderately priced.

(b) *Eligibility*. Any rural homeowner is eligible to obtain financing on a rural home. No borrower shall have a loan from the Farm Credit System on more than one rural home at any one time.

(c) *Purposes of financing.* Loans may be made to rural homeowners for the purpose of buying, building, remodeling, improving, repairing rural homes, and refinancing existing indebtedness thereon.

(d) *Portfolio limitations.* (1) The aggregate of retail rural home loans by any Farm Credit Bank or agricultural credit bank shall not exceed 15 percent of the total of all of its outstanding loans at any one time.

(2) The aggregate of rural home loans made by each direct lender association shall not exceed 15 percent of the total of its outstanding loans at the end of its preceding fiscal year, except with the prior approval of its funding bank.

(3) The aggregate of rural home loans made by all direct lender associations that are funded by the same Farm Credit bank shall not exceed 15 percent of the total outstanding loans of all such associations at the end of the funding bank's preceding fiscal year.

Subpart B—Financing for Banks Operating Under Title III of the Farm Credit Act

SOURCE: 62 FR 4442, Jan. 30, 1997, unless otherwise noted.

§613.3100 Domestic lending.

(a) *Definitions.* For purposes of this subpart, the following definitions apply:

(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 that conducts business for the mutual benefit of its members and has the power to:

(i) Process, prepare for market, handle, or market farm or aquatic products;

(ii) Purchase, test, grade, process, distribute, or furnish farm or aquatic supplies; or

(iii) Furnish business and financially related services to its members.

(2) *Farm or aquatic supplies and farm or aquatic business services* are any goods or services normally used by farmers, ranchers, or producers and harvesters of aquatic products in their business operations, or to improve the welfare or livelihood of such persons.

(3) *Public utility* means a cooperative or other entity that is licensed under Federal, State, or local law to provide electric, telecommunication, cable television, water, or waste treatment services.

(4) *Rural area* means all territory of a State that is not within the outer boundary of any city or town having a population of more than 20,000 inhabitants based on the latest decennial census of the United States.

(5) *Service cooperative* means a cooperative that is involved in providing business and financially related services (other than public utility services) to farmers, ranchers, aquatic producers or harvesters, or their cooperatives.

(b) *Cooperatives and other entities that serve agricultural or aquatic producers.*

(1) *Eligibility of cooperatives.* A bank for cooperatives or an agricultural credit bank may lend to a cooperative that satisfies the following requirements:

(i) Unless the bank's board of directors establishes by resolution a higher voting control threshold for any type of cooperative, the percentage of voting control of the cooperative held by farmers, ranchers, producers or harvesters of aquatic products, or cooperatives shall be 80 percent except:

(A) Sixty (60) percent for a service cooperative;

(B) Sixty (60) percent for local farm supply cooperatives that have historically served the needs of a community that would not be adequately served by other suppliers and have experienced a reduction in the percentage of membership by agricultural or aquatic producers due to changed circumstances beyond their control; and

(C) Sixty (60) percent for local farm supply cooperatives that provide or will provide needed services to a community, and are or will be in competition with a cooperative specified in § 613.3100(b)(1)(i)(B);

(ii) The cooperative deals in farm or aquatic products, or products processed therefrom, farm or aquatic supplies, farm or aquatic business services, or financially related services with or for members in an amount at least equal in value to the total amount of such business it transacts with or for nonmembers, excluding from the total of member and non-member business, transactions with the United States, or any agencies or instrumentalities thereof, or services or supplies furnished by a public utility; and

(iii) The cooperative complies with one of the following two conditions:

(A) No member of the cooperative shall have more than one vote because of the amount of stock or membership capital owned therein; or

(B) The cooperative restricts dividends on stock or membership capital to 10 percent per year or the maximum percentage per year permitted by applicable State law, whichever is less.

(iv) Any cooperative that has received a loan from a bank for cooperatives or an agricultural credit bank shall, without regard to the requirements in paragraph (b)(1) of this section, continue to be eligible for as long as more than 50 percent (or such higher percentage as is established by the bank board) of the voting control of the cooperative is held by farmers, ranchers, producers or harvesters of aquatic products, or other eligible cooperatives.

(2) *Other eligible entities.* The following entities are eligible to borrow from banks for cooperatives and agricultural credit banks:

(i) Any legal entity that holds more than 50 percent of the voting control of a cooperative that is an eligible borrower under paragraph (b)(1) of this section and uses the proceeds of the loan to fund the activities of its cooperative subsidiary on the terms and conditions specified by the bank;

(ii) Any legal entity in which an eligible cooperative has an ownership interest, *provided that* if such interest is less than 50 percent, financing shall not exceed the percentage that the eligible cooperative owns in such entity multiplied by the value of the total assets of such entity; or

(iii) Any creditworthy private entity operated on a non-profit basis that satisfies the requirements for a service cooperative and complies with the requirements of either paragraphs (b)(1)(i)(A) and (b)(1)(iii) of this section, or paragraph (b)(1)(iv) of this section, and any subsidiary of such entity. An entity that is eligible to borrow under this paragraph shall be organized to benefit agriculture in furtherance of the welfare of the farmers, ranchers, and aquatic producers or harvesters who are its members.

(c) *Electric and telecommunication utilities.* (1) *Eligibility.* A bank for cooperatives or an agricultural credit bank may lend to:

(i) Electric and telephone cooperatives as defined by section 3.8(a)(4)(A) of the Act that satisfy the eligibility criteria in paragraph (b)(1) of this section;

(ii) Cooperatives and other entities that:

(A) Have received a loan, loan commitment, insured loan, or loan guarantee from the Rural Utilities Service of the United States Department of Agriculture to finance rural electric and telecommunication services;

(B) Have received a loan or a loan commitment from the Rural Telephone Bank of the United States Department of Agriculture; or

(C) Are eligible under the Rural Electrification Act of 1936, as amended, for a loan, loan commitment, or loan guarantee from the Rural Utilities Service or the Rural Telephone Bank.

(iii) The subsidiaries of cooperatives or other entities that are eligible under paragraph (c)(1)(ii) of this section.

(iv) Any legal entity that holds more than 50 percent of the voting control of any public utility that is an eligible borrower under paragraph (c)(1)(ii) of this section, and uses the proceeds of the loan to fund the activities of the eligible subsidiary on the terms and conditions specified by the bank.

(v) Any legal entity in which an eligible utility under paragraph (c)(1)(ii) of this section has an ownership interest, provided that if such interest is less than 50 percent, financing shall not exceed the percentage that the eligible utility owns in such entity multiplied by the value of the total assets of such entity.

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible to borrow under paragraph (c)(1) of this section in order to provide electric or telecommunication services in a rural area. A subsidiary that is eligible to borrow under paragraph (c)(1)(iii) of this section may also obtain financing from a bank for cooperatives or agricultural credit bank to operate a licensed cable television utility.

(d) *Water and waste disposal facilities.* (1) *Eligibility.* A cooperative or a public agency, quasi-public agency, body, or other public or private entity that, under the authority of State or local law, establishes and operates water and waste disposal facilities in a rural area, as that term is defined by paragraph (a)(5) of this section, is eligible to borrow from a bank for cooperatives or an agricultural credit bank.

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible under paragraph (d)(1) of this section solely for installing, maintaining, expanding, improving, or operating water and waste disposal facilities in rural areas.

(e) *Domestic lessors.* A bank for cooperatives or agricultural credit bank may lend to domestic parties to finance the acquisition of facilities or equipment that will be leased to shareholders of the bank for use in their operations located inside of the United States.

[62 FR 4442, Jan. 30, 1997; 62 FR 33746, June 23, 1997]

§613.3200 International lending.

(a) *Definition.* For the purpose of this section only, the term ''farm supplies'' refers to inputs that are used in a farming or ranching operation, but excludes agricultural processing equipment, machinery used in food manufacturing or other capital goods which are not used in a farming or ranching operation.

(b) *Import transactions.* The following parties are eligible to borrow from a bank for cooperatives or an agricultural credit bank pursuant to section 3.7(b) of the Act for the purpose of financing the import of agricultural commodities or products therefrom, aquatic products, and farm supplies into the United States:

(1) An eligible cooperative as defined by §613.3100(b);

(2) A counterparty with respect to a specific import transaction with a voting stockholder of the bank for the substantial benefit of the shareholder; and

(3) Any foreign or domestic legal entity in which eligible cooperatives hold an ownership interest.

(c) *Export transactions.* Pursuant to section 3.7(b)(2) of the Act, a bank for cooperatives or an agricultural credit bank is authorized to finance the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country. The board of directors of each bank for cooperatives and agricultural credit bank shall adopt policies that ensure that exports of agricultural products and commodities, aquatic products, and farm supplies which originate from eligible cooperatives are financed on a priority basis.

The total amount of balances outstanding on loans made under this paragraph shall not, at any time, exceed 50 percent of the capital of any bank for cooperatives or agricultural credit bank for loans that:

(1) Finance the export of agricultural commodities and products therefrom, aquatic products, or farm supplies that are not originally sourced from an eligible cooperative; and

(2) At least 95 percent of the loan amount is not guaranteed by a department, agency, bureau, board, or commission of the United States or a corporation that is wholly owned directly or indirectly by the United States.

(d) *International business operations.* A bank for cooperatives or an agricultural credit bank may finance a domestic or foreign entity which is at least partially owned by eligible cooperatives described in § 613.3100(b), and facilitates the international business operations of such cooperatives.

(e) *Restrictions.* (1) When eligible cooperatives own less than 50 percent of a foreign or domestic legal entity, the amount of financing that a bank for cooperatives or agricultural credit bank may provide to the entity for imports, exports, or international business operations shall not exceed the percentage of ownership that eligible cooperatives hold in such entity multiplied by the value of the total assets of such entity; and

(2) A bank for cooperatives or agricultural credit bank shall not finance the relocation of any plant or facility from the United States to a foreign country.

Subpart C—Similar Entity Authority Under Sections 3.1(11)(B) and 4.18A of the Act

§ 613.3300 Participations and other interests in loans to similar entities.

(a) *Definitions.* (1) *Participate* and *participation,* for the purpose of this section, refer to multi-lender transactions, including syndications, assignments, loan participations, subparticipations, other forms of the purchase, sale, or transfer of interests in loans, or other extensions of credit, or other technical and financial assistance.

(2) *Similar entity* means a party that is ineligible for a loan from a Farm Credit bank or association, but has operations that are functionally similar to the activities of eligible borrowers in that a majority of its income is derived from, or a majority of its assets are invested in, the conduct of activities that are performed by eligible borrowers.

(b) *Similar entity transactions.* A Farm Credit bank or a direct lender association may participate with a lender that is not a Farm Credit System institution in loans to a similar entity that is not eligible to borrow directly under § 613.3000, 613.3010, 613.3020, 613.3100, or 613.3200, for purposes similar to those for which an eligible borrower could obtain financing from the participating FCS institution.

(c) *Restrictions.* Participations by a Farm Credit bank or association in loans to a similar entity under this section are subject to the following limitations:

(1) *Lending limits.* (i) *Farm Credit banks operating under title I of the Act and direct lender associations.* The total amount of all loan participations that any Farm Credit bank, agricultural credit bank, or direct lender association has outstanding under paragraph (b) of this section to a single credit risk shall not exceed:

(A) Ten (10) percent of its total capital; or

(B) Twenty-five (25) percent of its total capital if a majority of the shareholders of the respective Farm Credit bank or direct lender association so approve.

(ii) *Farm Credit banks operating under title III of the Act.* The total amount of all loan participations that any bank for cooperatives or agricultural credit bank has outstanding under paragraph (b) of this section to a single credit risk shall not exceed 10 percent of its total capital;

(2) *Percentage held in the principal amount of the loan.* The participation interest in the same loan held by one or more Farm Credit bank(s) or association(s) shall not, at any time, equal or exceed 50 percent of the principal amount of the loan; and

(3) *Portfolio limitations.* The total amount of participations that any

Farm Credit bank or direct lender association has outstanding under paragraph (b) of this section shall not exceed 15 percent of its total outstanding assets at the end of its preceding fiscal year.

(d) *Approval by other Farm Credit System institutions.* (1) No direct lender association shall participate in a loan to a similar entity under paragraph (b) of this section without the approval of its funding bank. A funding bank shall deny such requests only for safety and soundness reasons affecting the bank.

(2) No Farm Credit bank or direct lender association shall participate in a loan to a similar entity that is eligible to borrow under §613.3100(b) without the prior approval of the bank for cooperatives or agricultural credit bank that, at the time the loan is made, has the greatest volume of loans made under title III of the Act in the State where the headquarters office of the similar entity is located.

(3) No bank for cooperatives or agricultural credit bank shall participate in a loan to a similar entity that is eligible to borrow under §613.3010 or 613.3020 without the prior consent of the Farm Credit bank(s) in whose chartered territory the similar entity conducts operations.

(4) All approvals required under paragraph (d) of this section may be granted on an annual basis and under such terms and conditions as the various Farm Credit System institutions may agree.

[62 FR 4444, Jan. 30, 1997]

PART 614—LOAN POLICIES AND OPERATIONS

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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; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 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, 4.3A, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E. 4.18, 4.18A, 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, 8.9 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2154a, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5, 2279aa–9); 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, subject to the requirements in §614.4200 of this part, to make real estate mortgage loans with maturities of not less than 5 years nor more than 40 years and continuing commitments to make such loans.

(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 §614.4125.

(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; 62 FR 51013, Sept. 30, 1997; 63 FR 5723, Feb. 4, 1998]

§ 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, subject to the requirements of § 614.4200, to make real estate mortgage loans with maturities of not less than 5 years nor more than 40 years and continuing commitments to make such loans.

(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 § 614.4125.

(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 §§ 614.4200, 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 §§ 614.4200, 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 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 import operations of the type described in paragraph (d)(4) 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.

(6) Any party, subject to the requirements in § 613.3200(c) of this chapter, for the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country, in accordance with § 614.4233 and subpart Q of this part 614; and

(7) Domestic or foreign parties in which eligible cooperatives, as defined in § 613.3100 of this chapter, hold an ownership interest, for the purpose of facilitating the international business operations of such cooperatives pursuant to the requirements of § 613.3200 (d) and (e) of this chapter.

(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; 62 FR 4445, Jan. 30, 1997; 62 FR 51013, Sept. 30, 1997; 63 FR 5723, Feb. 4, 1998]

§ 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 §§ 614.4200, 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 §§ 614.4200, 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 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 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 import operations of the type described in paragraph (a)(4) of this section, in accordance with policies of the bank's board, § 614.4233, and subpart Q of this part.

(6) Any party, subject to the requirements in § 613.3200(c) of this chapter, for the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or farm supplies from the United States to any foreign country, in accordance with § 614.4233 and subpart Q of this part; and

(7) Domestic or foreign parties in which eligible cooperatives, as defined in § 613.3100 of this chapter, hold an ownership interest, for the purpose of facilitating the international business operations of such cooperatives pursuant to the requirements in § 613.3200 (d) and (e) of this chapter.

(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.

[55 FR 24880, June 19, 1990, as amended at 62 FR 4445, Jan. 30, 1997; 62 FR 51013, Sept. 30, 1997]

§ 614.4030 Federal land credit associations.

(a) *Long-term real estate lending.* Federal land credit associations are authorized, subject to the requirments of § 614.4200, to make real estate mortgage loans with maturities of not less than 5 years nor more than 40 years and continuing commitments to make such loans.

(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; 62 FR 51013, Sept. 30, 1997]

§614.4040 Production credit associations.

(a) *Loan terms.* (1) Production credit associations are authorized to make or guarantee loans and other similar financial assistance for the following terms:

(i) Not more than 7 years

(ii) More than 7 years, but not more than 10 years, subject to authorization in policies approved by the funding bank

(iii) Not more than 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

(2) Subject to policies approved by the funding bank, production credit associations may amortize loans over a period greater than the loan terms authorized under paragraph (a)(1) of this section, provided that:

(i) The loan is amortized over a period not to exceed 15 years

(ii) The loan may be refinanced only if the lender determines, at the time of refinancing, that the loan meets its loan policy and underwriting criteria;

(iii) Any refinancing may not extend repayment beyond 15 years from the date of the original loan; and

(iv) The loan is not being made solely for the purpose of acquiring unimproved real estate; and

(3) Short- and intermediate-term loans shall be made with maturities that are appropriate for the purpose and underlying collateral of the loan and that comply with an institution's loan underwriting standards adopted pursuant to §614.4150 and the general requirements of §614.4200 of this part.

(b) *Loan participations.* (1) Subject to the requirements of subpart H of this part and paragraph (b)(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.

(c) *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; 62 FR 51013, Sept. 30, 1997]

§ 614.4050 Agricultural credit associations.

Agricultural credit associations are authorized to make or guarantee, subject to the requirements of § 614.4200 of this part:

(a) *Long-term real estate mortgage loans* with maturities of not less than 5 nor more than 40 years, and continue commitments to make such loans; and

(b) *Short- and intermediate-term loans* and provide other similar financial assistance for a term of not more than 10 years (15 years for aquatic producers and harvesters.

(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; 62 FR 51013, Sept. 30, 1997]

§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 and OFIs.

The board of directors of each Farm Credit Bank and 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 OFIs. The policies and procedures shall prescribe lending policies and loan underwriting standards that are consistent with sound financial and credit practices. The policies shall require a periodic review of the lending relationship with each direct lender association and OFI at intervals consistent with the

term of the general financing agreement but in no case longer than 5 years. The policies shall require an evaluation of the creditworthiness of a direct lender association on the basis of credit factors and lending policies and loan underwriting standards set forth in part 614, subpart D, and may permit lending to such an institution on an unsecured basis only if the overall condition of the institution warrants. The stated term of a general financing agreement shall not exceed 5 years but may be automatically renewable for additional terms not to exceed 5 years if neither party objects at the time of renewal. The term of any general financing agreement that provides for unsecured lending to a direct lender association shall not exceed 1 year and may not be automatically renewed.

[63 FR 5724, Feb. 4, 1998]

§614.4125 Funding and discount relationships between Farm Credit Banks or agricultural credit banks and direct lender associations.

(a) A Farm Credit Bank or agricultural credit bank shall not advance funds to, or discount loans for, any direct lender association except pursuant to a general financing agreement.

(b) The Farm Credit Bank or agricultural credit bank shall deliver a copy of the executed general financing agreement and all related documents, such as a promissory note or security agreement, and all amendments of any of these documents, within 10 business days after any such document or amendment is executed, to the Chief Examiner, Farm Credit Administration, or to the Farm Credit Administration office that the Chief Examiner designates.

(c) The general financing agreement shall address only those matters that are reasonably related to the debtor/creditor relationship between the Farm Credit Bank or agricultural credit bank and the direct lender association.

(d) The total credit extended to a direct lender association, through direct loan or discounts, shall be consistent with the Farm Credit Bank's or agricultural credit bank's lending policies and loan underwriting standards and the creditworthiness of the direct lender association. The general financing agreement or promissory note shall establish a maximum credit limit determined by objective standards as established by the Farm Credit Bank or agricultural credit bank.

(e) A Farm Credit Bank or agricultural credit bank that provides notice to a direct lender association that it is in material default of any covenant, term, or condition of the general financing agreement, promissory note, security agreement, or other related documents simultaneously shall provide written notification to the Chief Examiner, Farm Credit Administration, or to the Farm Credit Administration office that the Chief Examiner designates and the Director, Risk Management, Farm Credit System Insurance Corporation.

(f) A direct lender association shall provide written notification to the Chief Examiner, Farm Credit Administration, or to the Farm Credit Administration office that the Chief Examiner designates, and the Director, Risk Management, Farm Credit System Insurance Corporation immediately upon receipt of a notice that it is in material default under any general financing agreement, loan agreement, promissory note, security agreement, or other related documents with a Farm Credit Bank, agricultural credit bank or non-Farm Credit institution.

(g) A Farm Credit Bank or agricultural credit bank shall obtain prior written consent of the Farm Credit Administration before it takes any action that leads to or could lead to the liquidation of a direct lender association.

(h) No direct lender association shall obtain financing from any party unless the parties agree to the requirements of this paragraph. No Farm Credit Bank, agricultural credit bank, or other party shall petition any Federal or State court to appoint a conservator, receiver, liquidation agent, or other administrator to manage the affairs of or liquidate a direct lender association.

[63 FR 5724, Feb. 4, 1998]

§ 614.4130 Funding and discount relationships between Farm Credit Banks or agricultural credit banks and OFIs.

(a) A Farm Credit Bank or agricultural credit bank shall not advance funds to, or discount loans for, an OFI, as defined in § 611.1205(c) of this chapter, except pursuant to a general financing agreement.

(b) The Farm Credit Bank or agricultural credit bank shall deliver a copy of the executed general financing agreement and all related documents, such as a promissory note or security agreement, and all amendments of any of these documents, within 10 business days after any such document or amendment is executed, to the Chief Examiner, Farm Credit Administration, or to the Farm Credit Administration office that the Chief Examiner designates.

(c) The total credit extended to the OFI, through direct loan or discounts, shall be consistent with the Farm Credit Bank's or agricultural credit bank's lending policies and loan underwriting standards and the creditworthiness of the OFI. The general financing agreement or promissory note shall establish a maximum credit limit determined by objective standards as established by the Farm Credit Bank or agricultural credit bank.

[63 FR 5724, Feb. 4, 1998]

Subpart D—General Loan Policies for Banks and Associations

§ 614.4150 Lending policies and loan underwriting standards.

Under the policies of its board, each institution shall adopt written standards for prudent lending and shall issue written policies, operating procedures, and control mechanisms that reflect prudent credit practices and comply with all applicable laws and regulations. Written policies and procedures shall, at a minimum, prescribe:

(a) The minimum supporting credit and financial information, frequency for collection of information, and verification of information required in relation to loan size, complexity and risk exposure

(b) The procedures to be followed in credit analysis

(c) The minimum standards for loan disbursement, servicing and collections

(d) Requirements for collateral and methods for its administration

(e) Loan approval delegations and requirements for reporting to the board

(f) Loan pricing practices

(g) Loan underwriting standards that include measurable standards:

(1) For determining that an applicant has the operational, financial, and management resources necessary to repay the debt from cashflow

(2) That are appropriate for each loan program and the institution's risk-bearing ability; and

(3) That consider the nature and type of credit risk, amount of the loan, and enterprises being financed

(h) Requirements that loan terms and conditions are appropriate for the loan; and

(i) Such other requirements as are necessary for the professional conduct of a lending organization, including documentation for each loan transaction of compliance with the loan underwriting standards or the compensating factors or extenuating circumstances that establish repayment of the loan notwithstanding the failure to meet any one or more loan underwriting standard.

[62 FR 51014, Sept. 30, 1997]

§ 614.4155 Interest rates.

Loans made by each bank and direct lender association shall bear interest at a rate or rates as may be determined by the institution board. The 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. Any interest rate plan adopted shall be reviewed on a continuing basis by the board, as well as in conjunction with its review and

approval of the institution's operational an strategic business plan.

[62 FR 66818, Dec. 22, 1997]

§614.4160 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. Redesignated at 62 FR 66818, Dec. 22, 1997]

§614.4165 Special credit needs.

(a) The board of each direct lender institution shall adopt policies to establish programs to provide credit and related services to young, beginning, and small farmers, ranchers, and producers or harvesters of aquatic products.

(b) 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.

(c) *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 direct lender institution board shall adopt appropriate policies that define criteria for the selection of specialized high-risk enterprises.

[46 FR 53022, Oct. 28, 1981, as amended at 55 FR 24883, June 19, 1990; 62 FR 51014, Sept. 30, 1997]

Subpart E—Loan Terms and Conditions

SOURCE: 55 FR 24884, June 19, 1990, unless otherwise noted.

§614.4200 General requirements.

(a) *Terms and conditions.* (1) The terms and conditions of each loan made by a Farm Credit bank or association shall be set forth in a written document or documents, such as a loan agreement, promissory note, or other instrument(s) appropriate to the type and amount of the credit extension, in order to establish loan conditions and performance requirements. Copies of all documents executed by the borrower in connection with the closing of a loan made under titles I or II of the Act shall be provided to the borrower at the time of execution and at any time thereafter that the borrower requests additional copies.

(2) The terms and conditions of all loans shall be adequately disclosed in writing to the borrower not later than loan closing. For loans made under titles I and II of the Act, the institution shall provide prompt written notice of the approval of the loan.

(3) Applicants shall be provided notification of the action taken on each credit application in compliance with the requirements of 12 CFR 202.9.

(b) *Security.* (1) Long-term real estate mortgage loans must be secured by a first lien interest in real estate, except that the loans may be secured by a second lien interest if the institution also holds the first lien on the property. No funds shall be advanced, under a legally binding commitment or otherwise, if the outstanding loan balance after the advance would exceed 85 percent (or 97 percent as provided in section 1.10(a) of the Act) of the appraised value of the real estate, except that a loan on which private mortgage insurance is obtained may exceed 85 percent of the appraised value of the real estate to the extent that the loan amount in

excess of 85 percent is covered by such insurance. The real estate that is used to satisfy the loan-to-value limitation must be comprised primarily of agricultural or rural property, including agricultural land and improvements thereto, a farm-related business, a marketing or processing operation, a rural residence, or real estate used as an integral part of an aquatic operation.

(2) Notwithstanding the requirements of paragraph (b)(1) 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. Any action taken that results in exceeding the loan-to-value limitation shall be in accordance with a policy of the institution's board of directors and adequately documented in the loan file.

(3) Short- and intermediate-term loans may be secured or unsecured as the documented creditworthiness of the borrower warrants.

(4) In addition to the requirements in paragraph (b)(1) of this section, a long-term, non-farm rural home loan, including a revolving line of credit, shall be secured by a first lien on the property, except that it may be secured by a second lien if the institution also holds the first lien on the property. A short- or intermediate-term loan on a rural home, including a revolving line of credit, must be secured by a lien on the property unless the financing is provided exclusively for repairs, remodeling, or other improvements to the rural home, in which case the loan may be secured by other property or unsecured if warranted by the documented creditworthiness of the borrower.

(5) Except as provided in § 614.4231, loans made under title III of the Act may be secured or unsecured, as appropriate for the purpose of the loan and the documented creditworthiness of the borrower.

[62 FR 51014, Sept. 30, 1997]

§ 614.4231 Certain seasonal commodity loans to cooperatives.

Loans on certain commodities that are part of government programs shall comply with the criteria established for those programs. Security taken on program commodities shall be consistent with prudent lending practices and ensure compliance with the government program. The bank shall provide for periodic review by bank officials of any custodial activities and shall provide notice to the custodians that their activities are subject to review and examination by the Farm Credit Administration.

[62 FR 51015, Sept. 30, 1997]

§ 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 and § 613.3200 of this chapter to foreign or domestic parties who are not shareholders of the bank shall be subject to the following conditions:

(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; 62 FR 4445, Jan. 30, 1997]

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.

(d) An institution's board of directors may adopt specific collateral evaluation requirements, consistent with the regulations in this subpart, for loans designated as part of a minimum information program.

[59 FR 46730, Sept. 12, 1994, as amended at 62 FR 51015, Sept. 30, 1997]

§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 [Reserved]

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 and transactions involving a pool of loans, 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 the loan underwriting standards adopted pursuant to § 614.4150 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.

(h) *Transactions through agents.* Transactions pertaining to purchases of loans, including the judgement on creditworthiness, may be performed through an agent, provided that:

(1) The institution establishes the necessary criteria in a written agency agreement that outlines, at a minimum, the scope of the agency relationship and obligates the agent to comply with the institution's underwriting standards;

(2) The institution periodically reviews the agency relationship to determine if the agent's actions are in the best interest of the institution;

(3) The agent must be independent of the seller or intermediate broker in the transaction; and

(4) If an association's funding bank serves as its agent, the agency agreement must provide that:

(i) The association can terminate the agreement upon no more than 60 days notice to the bank;

(ii) The association may, in its discretion, require the bank to purchase from the association any interest in a loan that the association determines does not comply with the terms of the agency agreement or the association's loan underwriting standards.

[57 FR 38247, Aug. 24, 1992, as amended at 58 FR 40321, July 28, 1993; 62 FR 51015, Sept. 30, 1997]

§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) *In general.* Except as provided in paragraph (b) of this section, a borrower shall meet the minimum borrower stock purchase requirements as a condition of obtaining a loan.

(b) *Loans designated for sale into a secondary market.* (1) An institution's bylaws may provide that the institution's minimum borrower stock purchase requirements do not apply if a loan is designated, at the time it is made, for sale into a secondary market.

(2) If a loan designated for sale under paragraph (b)(1) of this section is not sold into a secondary market during the 180–day period that begins on the date of designation, the institution's minimum borrower stock purchase requirements shall apply.

(c) *Retirement of borrower stock.* (1) *In general.* Borrower stock may be retired only if the institution meets the minimum permanent capital requirements imposed by the FCA pursuant to the Act or regulations and, except as provided in paragraph (c)(2) of this section, in accordance with the following:

(i) Borrower stock may be retired if the entire loan is sold without recourse, provided that when the loan is sold without recourse to another Farm Credit System institution, the borrower may elect to hold stock in either the selling or purchasing institution.

(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, a proportionate amount of borrower stock may be retired, but in no event may stock be retired below the institution's minimum stock purchase requirements for the interest retained.

(iv) 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.

(2) *Loans sold into a secondary market.* An institution's bylaws may provide that all outstanding voting stock held by a borrower with respect to a loan shall be retired when the loan is sold into a secondary market.

(d) *Applicability.* In the case of a loan sold into a secondary market under title VIII of the Act, paragraphs (b)(1) and (c)(2) of this section apply regardless of whether the institution retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve.

[62 FR 63646, Dec. 2, 1997]

§ 614.4336 Borrower rights in connection with loan sales.

(a) *Loan sales to Farm Credit System institutions.* Loans made by qualified lenders (as defined in section 4.14A(a)(6) of the Act) and interests in such loans that are sold to other qualified lenders are subject to the borrower rights provisions of title IV of the Act.

(b) *Loans designated for sale into a secondary market.* (1) Except as provided in paragraph (b)(2) of this section, the borrower rights provisions of sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D, and 4.36 of the Act do not apply to a loan made on or after February 10, 1996, that is designated for sale into a secondary market at the time it is made.

(2) If a loan designated for sale under paragraph (b)(1) of this section is not sold into a secondary market during the 180–day period that begins on the date of designation, the borrower rights provisions specified as inapplicable pursuant to paragraph (b)(1) of this section shall apply, PROVIDED THAT if the loan is subsequently sold into a secondary market, the borrower rights specified in paragraph (b)(1) of this section become inapplicable beginning on the date of the subsequent sale.

(c) *Other loan sales.* (1) Except for loans sold to another Farm Credit institution or designated for sale into a secondary market, a qualified lender must comply with one of the following two requirements before selling a loan or interest in a loan that is subject to the borrower rights provisions of title IV of the Act:

(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 that 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 the lender or any other Farm Credit System institution repurchases the loan or any interest therein.

(2) Before obtaining the borrower's consent to the sale of the loan and the relinquishment of borrower rights pursuant to paragraph (c)(1)(ii) of this section, the lending institution shall disclose in writing to the borrower:

(i) A full and complete description of the statutory rights that the borrower is asked to relinquish;

(ii) Any changes in the loan terms or conditions that will occur if the loan is not sold; and

(iii) 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.

(3) The making of a loan may not be conditioned on the borrower's consent to its sale and relinquishment of statutory borrower rights.

[62 FR 63647, Dec. 2, 1997]

§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 that complies with the criteria in section 1.7(b) of the Act and the regulations in subpart P 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.

[58 FR 40321, July 28, 1993, as amended at 63 FR 36547, July 7, 1998]

§ 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 commodity 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 commodity 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 commodity loans qualifying under §614.4231: 35 percent.

(2) The sum of paragraphs (a)(1) through (a)(9) of this section: 50 percent.

[58 FR 40321, July 28, 1993, as amended at 62 FR 51015, Sept. 30, 1997]

§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

under the loan underwriting standards adopted pursuant to § 614.4150 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:	

TABLE 1—Continued

Attribution rule	Criteria per § 614.4358	Attribute
(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.

[58 FR 40321, July 28, 1993, as amended at 62 FR 51015, Sept. 30, 1997]

§ 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) 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.

(c) 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.

(d) 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.

[53 FR 35451, Sept. 14, 1988, as amended at 63 FR 63647, Dec. 2, 1997]

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

[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 ____.

☐ 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.

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]

§ 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]

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]

§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 [Reserved]

§614.4516 Restructuring policy and procedures.

Loan restructurings are to be accomplished in accordance 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; 62 FR 25831, May 12, 1997]

§ 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]

§ 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 [Reserved]

§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]

§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

SOURCE: 63 FR 36547, July 7, 1998, unless otherwise noted.

§ 614.4540 Other financing institution access to Farm Credit Banks and agricultural credit banks for funding, discount, and other similar financial assistance.

(a) *Basic criteria for access.* Any national bank, State bank, trust company, agriculture credit corporation, incorporated livestock loan company, savings association, credit union, or any association of agricultural producers engaged in the making of loans to farmers and ranchers, and any corporation engaged in the making of loans to producers or harvesters of aquatic products may become an other financing institution (OFI) that funds, discounts, and obtains other similar financial assistance from a Farm Credit Bank or agricultural credit bank in order to extend short- and intermediate-term credit to eligible borrowers for authorized purposes pursuant to sections 1.10(b) and 2.4(a) and (b) of the Act. Each OFI shall be duly organized and qualified to make loans and leases under the laws of each jurisdiction in which it operates.

(b) *Assured access.* Each Farm Credit Bank or agricultural credit bank must fund, discount, or provide other similar financial assistance to any creditworthy OFI that:

(1) Maintains at least 15 percent of its loan volume at a seasonal peak in loans and leases to farmers, ranchers, aquatic producers and harvesters. The Farm Credit Bank or agricultural credit bank shall not include the loan assets of the OFI's parent, affiliates, or subsidiaries when determining compliance with the requirement of this paragraph; and

(2) Executes a general financing agreement with the Farm Credit Bank or agricultural credit bank that establishes a financing or discount relationship for at least 2 years.

(c) *Underwriting standards.* Each Farm Credit Bank and agricultural credit bank shall establish objective policies and loan underwriting standards for determining the creditworthiness of each OFI applicant.

(d) *Denial of OFI access.* A Farm Credit Bank or an agricultural credit bank may deny the funding request of any creditworthy OFI that meets the conditions in paragraph (b) of this section only when such request would:

(1) Adversely affect a Farm Credit Bank or agricultural credit bank's ability to:

(i) Achieve and maintain established or projected capital levels; or

(ii) Raise funds in the money markets; or

(2) Otherwise expose the Farm Credit Bank or agricultural credit bank to safety and soundness risks.

(e) *Notice to applicants.* Each Farm Credit Bank or agricultural credit bank shall render its decision on an OFI application in as expeditious a manner as is practicable. Upon reaching a decision on an application, the Farm Credit Bank or agricultural credit bank shall provide prompt written notice of its decision to the applicant. When the Farm Credit Bank or agricultural credit bank makes an adverse credit decision on an application, the written notice shall include the specific reason(s) for the decision.

(f) *Reports to the board of directors.* Each Farm Credit Bank and agricultural credit bank shall provide its board of directors with a written annual report regarding the scope of OFI program activities during the preceding fiscal year.

§614.4550 Place of discount.

(a) A Farm Credit Bank or agricultural credit bank may provide funding, discounting, or other similar financial assistance to any OFI applicant that:

(1) Maintains its headquarters in such funding bank's chartered territory; or

(2) Has more than 50 percent of its outstanding loan volume to eligible borrowers who conduct agricultural or aquatic operations in such funding bank's chartered territory.

(b) If the Farm Credit Bank or agricultural credit bank identified in paragraph (a) of this section denies or otherwise fails to approve an OFI's funding request within 60 days of receipt of a ''completed application'' as defined by 12 CFR 202.2(f), the OFI may apply to any other Farm Credit Bank or agricultural credit bank for funding, discounting, or other similar financial assistance.

(c) The Farm Credit Bank or agricultural credit bank may grant its consent for an OFI identified in paragraph (a) of this section to seek financing from another Farm Credit Bank or agricultural credit bank.

(d) No OFI shall be required to terminate its existing funding or discount relationship with a Farm Credit Bank or agricultural credit bank if, at a subsequent time, an OFI relocates its headquarters to the chartered territory of another Farm Credit Bank or agricultural credit bank or the loan volume in the relevant territory falls below 50 percent.

§614.4560 Requirements for OFI funding relationships.

(a) As a condition for extending funding, discount and other similar financial assistance to an OFI, each Farm Credit Bank or agricultural credit bank shall require every OFI to:

(1) Execute a general financing agreement pursuant to the regulations in subpart C of part 614; and

(2) Purchase non-voting stock in its Farm Credit Bank or agricultural credit bank pursuant to the bank's bylaws.

(b) A Farm Credit Bank or agricultural credit bank shall extend funding, discount and other similar financial assistance to an OFI only for purposes and terms authorized under sections 1.10(b) and 2.4(a) and (b) of the Act.

(c) Rural home loans to borrowers who are not *bona fide* farmers, ranchers, and aquatic producers and harvesters are subject to the restrictions in §613.3030 of this chapter. Loans that an OFI makes to processing and marketing operators who supply less than 20 percent of the throughput shall be included in the calculation that §613.3010(b)(1) of this chapter establishes for Farm Credit Banks and agricultural credit banks.

(d) The borrower rights requirements in part C of title IV of the Act, and section 4.36 of the Act, and the regulations in subparts K, L, and N of part 614 shall apply to all loans that an OFI funds or discounts through a Farm Credit Bank or agricultural credit bank, unless such loans are subject to the Truth-in-Lending Act, 15 U.S.C. 1601 *et seq.*

(e) As a condition for obtaining funding, discount and other similar financial assistance from a Farm Credit Bank or agricultural credit bank, all State banks, trust companies, or State-chartered savings associations shall execute a written consent that authorizes their State regulators to furnish examination reports to the Farm Credit Administration upon its request.

Any OFI that is not a depository institution shall consent in writing to examination by the Farm Credit Administration as a condition precedent for obtaining funding, discount and other similar financial assistance from a Farm Credit Bank or agricultural credit bank, and file such consent with its Farm Credit funding bank.

§ 614.4570 Recourse and security.

(a) *Full recourse and guarantee.* All obligations that are funded or discounted through a Farm Credit Bank or agricultural credit bank shall be endorsed with the full recourse or unconditional guarantee of the OFI.

(b) *General collateral.* (1) Each Farm Credit Bank and agricultural credit bank shall take as collateral all notes, drafts, and other obligations that it funds or discounts for each OFI; and

(2) Each Farm Credit Bank and agricultural credit bank shall perfect, in accordance with State law, a senior security interest in any and all obligations and the proceeds thereunder that the OFI pledges as collateral.

(c) *Supplemental collateral.* (1) Each Farm Credit Bank and agricultural credit bank shall develop policies and loan underwriting standards that establish uniform and objective requirements to determine the need and amount of supplemental collateral or other credit enhancements that each OFI shall provide as a condition for obtaining funding, discount and other similar financial assistance from such Farm Credit bank.

(2) The amount, type, and quality of supplemental collateral or other credit enhancements required for each OFI shall be established in the general financing agreement and shall be proportional to the level of risk that the OFI poses to the Farm Credit Bank or agricultural credit bank.

§ 614.4580 Limitation on the extension of funding, discount and other similar financial assistance to an OFI.

(a) No obligation shall be purchased from or discounted for and no loan shall be made or other similar financial assistance extended by a Farm Credit Bank or agricultural credit 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 ten 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.

(b) It shall be unlawful for any national bank that is indebted to any Farm Credit Bank or agricultural credit bank, on paper 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 described in paragraph (a) of this section.

§ 614.4590 Equitable treatment of OFIs and Farm Credit System associations.

(a) Each Farm Credit Bank and agricultural credit bank shall apply comparable and objective loan underwriting standards and pricing requirements to both OFIs and Farm Credit System direct lender associations.

(b) The total charges that a Farm Credit Bank or agricultural credit bank assesses an OFI through capitalization requirements, interest rates, and fees shall be comparable to the charges that the same Farm Credit Bank or agricultural credit bank imposes on its direct lender associations. Any variation between the overall funding costs that OFIs and direct lender associations are charged by the same funding bank shall result from differences in credit risk and administrative costs to the Farm Credit Bank or agricultural credit bank.

§ 614.4600 Insolvency of an OFI.

If an OFI that is indebted to a Farm Credit Bank or agricultural credit bank becomes insolvent, is in process of liquidation, or fails to service its loans properly, the Farm Credit Bank or agricultural credit bank may take over such loans and other assets that the OFI pledged as collateral. Once the Farm Credit Bank or agricultural credit bank exercises its remedies, it shall have the authority to make additional advances, to grant renewals and extensions, and to take such other actions as may be necessary to collect and service

loans to the OFI's borrower. The funding Farm Credit Bank or agricultural credit bank may also liquidate the OFI's loans and other assets in order to achieve repayment of the debt.

Subpart Q—Banks for Cooperatives and Agricultural Credit Banks Financing International Trade

§614.4700 Financing foreign trade receivables.

(a) Banks for cooperatives and agricultural credit banks, 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 and agricultural credit banks 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 and agricultural credit banks to be used as inputs in credit grading decisions.

[46 FR 51879, Oct. 22, 1981, as amended at 55 FR 24886, June 19, 1990; 62 FR 4445, Jan. 30, 1997]

§614.4710 Bankers acceptance financing.

The Funding Corporation is authorized to accept drafts or bills of exchange drawn upon banks for cooperatives and agricultural credit banks. 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 and agricultural credit banks 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 or an agricultural credit bank 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 or an agricultural credit bank 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' or agricultural credit bank's 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 or an agricultural credit bank 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 or an agricultural credit bank shall take corresponding action to minimize foreign exchange risk.

(b) *Purchases of participations in bankers acceptances.* (1) A bank for cooperatives or an agricultural credit bank shall determine limits on purchasing participations in discounted acceptances of another bank for cooperatives or an agricultural credit bank on the same basis as prescribed in § 614.4355 of this part for purchasing participations in loans of another bank for cooperatives or an agricultural credit bank.

(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 or agricultural credit banks 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; 62 FR 4445, Jan. 30, 1997]

§ 614.4720 Letters of credit.

Banks for cooperatives and agricultural credit banks, 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; 62 FR 4445, Jan. 30, 1997]

§614.4800 Guarantees and contracts of suretyship.

A bank for cooperatives or an agricultural credit bank, 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, as amended at 62 FR 4445, Jan. 30, 1997]

§614.4810 Standby letters of credit.

(a) The banks for cooperatives and agricultural credit banks 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 and agricultural credit banks shall evaluate applications for standby letters of credit on the basis of the loan underwriting standards adopted pursuant to §614.4150 of the regulations.

[46 FR 51879, Oct. 22, 1981, as amended at 55 FR 24887, June 19, 1990; 62 FR 4445, Jan. 30, 1997; 62 FR 51015, Sept. 30, 1997]

§614.4900 Foreign exchange.

(a) Before a bank for cooperatives or an agricultural credit bank 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 or an agricultural credit bank 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 or an agricultural credit bank 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 or an agricultural credit bank 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 and agricultural credit banks 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; 62 FR 4445, Jan. 30, 1997]

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

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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, 8.3, 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.

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]

§ 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 develop and implement an interest rate risk management program as set forth in subpart G of this part. The board of directors 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, as amended at 63 FR 39225, July 22, 1998]

§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]

§ 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]

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—Risk Assessment and Management

SOURCE: 63 FR 39225, July 22, 1998, unless otherwise noted.

§ 615.5180 Interest rate risk management by banks—general.

The board of directors of each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall develop and implement an interest rate risk management program tailored to the needs of the institution and consistent with the requirements set forth in § 615.5135 of this part. The program shall establish a risk management process that effectively identifies, measures, monitors, and controls interest rate risk.

§ 615.5181 Bank interest rate risk management program.

(a) The board of directors of each Farm Credit Bank, bank for cooperatives, and agricultural credit bank is responsible for providing effective oversight to the interest rate risk management program and must be knowledgeable of the nature and level of interest rate risk taken by the institution.

(b) Senior management is responsible for ensuring that interest rate risk is properly managed on both a long-range and a day-to-day basis.

§ 615.5182 Interest rate risk management by associations and other Farm Credit System institutions other than banks.

Any association or other Farm Credit System institution other than banks, excluding the Federal Agricultural Mortgage Corporation, with interest rate risk that could lead to significant declines in net income or in the market value of capital shall comply with the requirements of §§ 615.5180 and 615.5181. The interest rate risk management program required under § 615.5181 shall be commensurate with the level of interest rate risk of the institution.

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, core surplus, total surplus, and unallocated surplus needed to assure the institution's continued financial viability and to provide for growth necessary to meet the needs of its borrowers. The minimum capital standards specified in this part are not meant to be adopted as the optimal capital level in the institution's capital adequacy plan. Rather, the standards are intended to serve as minimum levels of capital that each institution must maintain to protect against the credit and other general risks inherent in its operations.

(b) Each Board of Directors shall establish, adopt, and maintain a formal written capital adequacy plan as a part of the financial plan required by § 618.8440 of this chapter. 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 and surplus standards. The plan shall address any projected dividends, patronage distribution, equity requirements, or other action that may decrease the institution's capital or the components thereof for which minimum amounts are required by this part. The plan shall set forth the circumstances in which retirements or revolvements of stock or equities may occur. If the plan provides for retirement or revolvement of equities included in core surplus, in connection with a loan default or the death of a former borrower, the plan must require the institution to make a prior determination that such retirement or revolvement is in the best interest of the institution, and also require the institution to charge off an amount of the indebtedness on the loan equal to the amount of the equities that are retired or canceled. 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.

[53 FR 39247, Oct. 6, 1988, as amended at 62 FR 4446, Jan. 30, 1997]

§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) *Deferred-tax assets that are dependent on future income or future events* means:

(1) Deferred-tax assets arising from deductible temporary differences dependent upon future income that exceed the amount of taxes previously paid that could be recovered through loss carrybacks if existing temporary differences (both deductible and taxable and regardless of where the related tax-deferred effects are recorded on the institution's balance sheet) fully reverse;

(2) Deferred-tax assets dependent upon future income arising from operating loss and tax carryforwards; or

(3) Deferred-tax assets arising from temporary differences that could be recovered if existing temporary differences that are dependent upon other future events (both deductible and taxable and regardless of where the related tax-deferred effects are recorded on the institution's balance sheet) fully reverse.

(e) *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.

(f) *Government agency* means an agency of the United States Government whose obligations are explicitly guaranteed by the United States Government or their successors.

(g) *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.

(h) *Institution* means a Farm Credit bank, Federal land bank association, Federal land credit association, production credit association, agricultural credit association, Farm Credit Leasing Corporation, bank for cooperatives, agricultural credit bank, and their successors.

(i) *Nonagreeing association* means an association that does not have an allotment agreement in effect with a Farm Credit Bank or agricultural credit bank pursuant to §615.5210(e).

(j) *OECD* means the group of countries that are full members of the Organization for Economic Cooperation and Development, regardless of entry date, as well as countries that have concluded special lending arrangements with the International Monetary Fund's General Arrangement to Borrow, excluding any country that has rescheduled its external sovereign debt within the previous 5 years.

(k) *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.

(l) *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) Term preferred stock with an original maturity of at least 5 years and on which, if cumulative, the board of directors has the option to defer dividends, provided that, at the beginning of each of the last 5 years of the term of the stock, the amount that is eligible to be counted as permanent capital is reduced by 20 percent of the original amount of the stock (net of redemptions);

(6) 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

(7) Financial assistance provided by the Farm Credit System Insurance Corporation that the Farm Credit Administration determines appropriate to be considered permanent capital.

(m) *Qualifying bilateral netting contract* means a bilateral netting contract that meets at least the following conditions:

(1) The contract is in writing;

(2) The contract is not subject to a walkaway clause, defined as a provision 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;

(3) The contract creates a single obligation either to pay or to receive the net amount of the sum of positive and negative mark-to-market values for all derivative contracts subject to the qualifying bilateral netting contract;

(4) The institution receives a legal opinion that represents, to a high degree of certainty, that in the event of legal challenge the relevant court and administrative authorities would find the institution's exposure to be the net amount;

(5) The institution establishes a procedure to monitor relevant law and to ensure that the contracts continue to satisfy the requirements of this section; and

(6) The institution maintains in its files adequate documentation to support the netting of a derivatives contract.

(n) *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).

(o) *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.

(p) *Stock* means stock and participation certificates.

(q) *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; 62 FR 4446, Jan. 30, 1997; 63 FR 39225, July 22, 1998]

§615.5205 Minimum permanent capital standards.

Each institution shall at all times maintain permanent capital at a level of at least 7 percent of its risk-adjusted asset base.

[62 FR 4446, Jan. 30, 1997]

§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 issued to repay banks in connection with the capital preservation and loss-sharing agreements described in section 6.9(e)(1) of the Act shall not be considered obligations of any institution subject to this regulation prior to their maturity.

(b) 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 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. The elimination of reciprocal holdings required by this paragraph shall be made prior to making the other adjustments required by this section.

(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 by a service corporation chartered under section 4.25 of the Act and its stockholder institutions shall be eliminated by deducting an amount equal to the institution's investment in the service corporation from its total capital.

(7) Each institution shall deduct from its total capital an amount equal to all goodwill, whenever required.

(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.

(10) The permanent capital of an institution shall exclude the net effect of all transactions covered by the definition of ''accumulated other comprehensive income'' contained in the Statement of Financial Accounting Standards No. 130, as promulgated by the Financial Accounting Standards Board.

(11) For purposes of calculating capital ratios under this part, deferred-tax assets are subject to the conditions, limitations, and restrictions described in this paragraph.

(i) Each institution shall deduct an amount of deferred-tax assets, net of any valuation allowance, from its assets and its total capital that is equal to the greater of:

(A) The amount of deferred-tax assets that are dependent on future income or future events in excess of the amount that is reasonably expected to be realized within 1 year of the most recent calendar quarter-end date, based on financial projections for that year, or

(B) The amount of deferred-tax assets that are dependent on future income or future events in excess of ten (10) percent of the amount of core surplus that exists before the deduction of any deferred-tax assets.

(ii) For purposes of this calculation:

(A) The amount of deferred-tax assets that can be realized from taxes paid in prior carryback years and from the reversal of existing taxable temporary differences shall not be deducted from assets and from equity capital.

(B) All existing temporary differences should be assumed to fully reverse at the calculation date.

(C) Projected future taxable income should not include net operating loss carryforwards to be used within 1 year or the amount of existing temporary differences expected to reverse within that year.

(D) Financial projections shall include the estimated effect of tax-planning strategies that are expected to be implemented to minimize tax liabilities and realize tax benefits. Financial projections for the current fiscal year (adjusted for any significant changes that have occurred or are expected to occur) may be used when applying the capital limit at an interim date within the fiscal year.

(E) The deferred tax effects of any unrealized holding gains and losses on available-for-sale debt securities may be excluded from the determination of the amount of deferred-tax assets that are dependent upon future taxable income and the calculation of the maximum allowable amount of such assets. If these deferred-tax effects are excluded, this treatment must be followed consistently over time.

(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 or foreign banks.

(B) Claims on Federal Reserve Banks.

(C) Goodwill.

(D) Direct claims on and portions of claims unconditionally guaranteed by the United States Treasury, United States Government agencies, or central governments in other OECD countries. A United States Government agency is defined as an instrumentality of the United States Government whose obligations are fully and explicitly guaranteed as to the timely repayment of principal and interest by the full faith and credit of the United States Government.

(ii) *Category 2: 20 Percent.*

(A) Portions of loans and other assets collateralized by United States Government-sponsored agency securities. A United States Government-sponsored agency is defined as an agency originally chartered or established to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

(B) Portions of loans and other assets conditionally guaranteed by the United States Government or its agencies.

(C) Portions of loans and other assets collateralized by securities issued or guaranteed (fully or partially) by the United States Government or its agencies (but only to the extent guaranteed).

(D) Claims on domestic banks (exclusive of demand balances).

(E) Claims on, or guarantees by, OECD banks.

(F) Claims on non-OECD banks with a remaining maturity of 1 year or less.

(G) 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).

(H) Claims on official multinational lending institutions or regional development institutions in which the United States Government is a shareholder or contributor.

(I) Loans and other obligations of and investments in Farm Credit institutions.

(J) Local currency claims on foreign central governments to the extent that the Farm Credit institution has local liabilities in that country.

(K) Cash items in the process of collection.

(iii) *Category 3: 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.

(iv) *Category 4: 100 Percent.*

(A) All other claims on private obligors.

(B) Claims on non-OECD banks with a remaining maturity greater than 1 year.

(C) All other assets not specified above, including but not limited to, leases, fixed assets, and receivables.

(D) 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 2(J).

(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 14 months or less; or

(*2*) Unused commitments with an original maturity of greater than 14 months if:

(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 14 months, 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 contracts.* (A) 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.

CONVERSION FACTOR MATRIX

[In Percent]

Remaining maturity	Interest rate	Exchange rate	Commodity
1 year or less	0.0	1.0	10.0
Over 1 to 5 years	0.5	5.0	12.0
Over 5 years	1.5	7.5	15.0

(B) For any derivative contract that does not fall within one of the categories in the above table, the potential future credit exposure shall be calculated using the commodity conversion factors. The net current exposure for multiple derivative contracts with a single counterparty and subject to a qualifying bilateral netting contract shall be the net sum of all positive and negative mark-to-market values for each derivative contract. The positive sum of the net current exposure shall be added to the adjusted potential future credit exposure for the same multiple contracts with a single counterparty. The adjusted potential future credit exposure shall be computed as

$A_{net} = (0.4 \times A_{gross}) + 0.6\ (NGR \times A_{gross})$ where:

(*1*) A_{net} is the adjusted potential future credit exposure;

(*2*) A_{gross} is the sum of potential future credit exposures determined by multiplying the notional principal amount by the appropriate credit conversion factor; and

(*3*) NGR is the ratio of the net current credit exposure divided by the gross current credit exposure determined as the sum of only the positive mark-to-markets for each derivative contract with the single counterparty.

(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; 62 FR 4446, Jan. 30, 1997; 63 FR 39226, July 22, 1998]

§ 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 [Reserved]

Subpart I—Issuance of Equities

SOURCE: 53 FR 40046, Oct. 13, 1988, unless otherwise noted.

§615.5220 Capitalization bylaws.

(a) 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:

(1) Classes of equities and the manner in which they shall be issued, transferred, converted and retired;

(2) 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;

(3) 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;

(4) For Farm Credit Banks, agricultural credit banks (with respect to loans other than to cooperatives), 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 shall be not less than, 2 percent of the loan amount or $1,000, whichever is less;

(5) For banks for cooperatives and agricultural credit banks (with respect to loans to 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 shall not be less than, 2 percent of the loan amount or $1,000, whichever is less;

(6) 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 established in subpart H of this part are met;

(7) 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

(8) 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.

(b) The board of directors of each service corporation (including the Farm Credit Leasing Services Corporation) shall adopt capitalization bylaws, subject to the approval of its voting shareholders, that set forth the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this section to the extent applicable. Such bylaws shall also set forth the manner in which equities will be retired and the manner in which earnings will be distributed.

[53 FR 40046, Oct. 13, 1988, as amended at 62 FR 4446, Jan. 30, 1997; 63 FR 39227, July 22, 1998]

§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 be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion, except that cumulative voting for directors may be eliminated if 75 percent of the associations that are shareholders of the Farm Credit Bank vote in favor of elimination. In a vote to eliminate cumulative voting, each association shall be accorded one vote.

(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 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.

(5) Each bank shall endeavor to assure that there is a choice of at least two nominees for each elective office to be filled and that the board represents as nearly as possible all types of agriculture in the district. If fewer than two nominees for each position are named, the efforts of the bank to locate two willing nominees shall be documented in the records of the bank. The bank shall also maintain a list of the type or types of agriculture engaged in by each director on its board.

[53 FR 40046, Oct. 13, 1988, as amended at 54 FR 6118, Feb. 8, 1989; 60 FR 57921, Nov. 24, 1995; 62 FR 4446, Jan. 30, 1997; 62 FR 49908, Sept. 24, 1997; 63 FR 39228, July 22, 1998]

§615.5240 Permanent capital requirements.

(a) The capitalization bylaws shall enable the institution to meet the minimum permanent capital adequacy standards established under subparts H and K of this part and the total capital requirements established by the board of directors of the institution.

(b) 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 perpetual 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.

(3) For term preferred stock:

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain, other than the original maturity date, or upon the happening of any event, such as repayment of the loan;

(ii) Retirement must be at not more than book value;

(iii) Dividends may be cumulative, but the board of directors must have the option to defer payment; 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.

(c) Once an institution's board of directors has made a determination that the institution's capital position is adequate, the institution's board of directors may delegate to management the decision whether to retire borrower stock, provided that:

(1) Any such retirements are in accordance with the institution's capital

adequacy plan or capital restoration plan;

(2) The institution's permanent capital ratio will be in excess of 9 percent after any such retirements;

(3) The institution meets and maintains all applicable minimum surplus and collateral standards; and

(4) The aggregate amount of stock purchases, retirements, and the net effect of such activities are reported to the board of directors each quarter.

[53 FR 40046, Oct. 13, 1988, as amended at 62 FR 4446, Jan. 30, 1997]

§ 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 established under subpart H of this part are met;

(iii) Whether the institution presently meets its minimum permanent capital 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) 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 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.

(d) 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; 62 FR 4447, Jan. 30, 1997]

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; or

(ii) Retirement pursuant to §§615.5280 and 615.5290.

(3) *Par value* means:

(i) In the case of stock, par value;

(ii) In the case of participation certificates and other equities, 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.

[53 FR 40048, Oct. 13, 1988; 54 FR 7029, Feb. 16, 1989, as amended at 62 FR 4447, Jan. 30, 1997; 63 FR 39228, July 22, 1998]

§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, or term stock at its stated maturity unless after the retirement the institution would continue to meet the minimum permanent capital standards established under subpart H of this part.

[53 FR 40048, Oct. 13, 1988; 54 FR 7029, Feb. 16, 1989, as amended at 62 FR 4447, Jan. 30, 1997]

§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, Federal land credit 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, 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; 62 FR 13213, Mar. 19, 1997]

§ 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]

Subpart K—Surplus and Collateral Requirements

SOURCE: 62 FR 4447, Jan. 30, 1997, unless otherwise noted.

§615.5301 Definitions.

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

(a) The terms *deferred-tax assets that are dependent on future income or future events, institution, permanent capital,* and *total capital* shall have the meanings set forth in §615.5201.

(b) *Core surplus.* (1) Core surplus means:

(i) Undistributed earnings/unallocated surplus less, for associations only, an amount equal to the net investment in the bank;

(ii) Nonqualified allocated equities (including stock) that are not distributed according to an established plan or practice, *provided that,* in the event that a nonqualified patronage allocation is distributed, other than as required by section 4.14B of the Act, or in connection with a loan default or the death of an equityholder whose loan has been repaid (to the extent provided for in the institution's capital adequacy plan), any remaining nonqualified allocations that were allocated in the same year will be excluded from core surplus.

(iii) Perpetual common or noncumulative perpetual preferred stock (other than allocated stock) that is not retired according to an established plan or practice, *provided that,* in the event that stock held by a borrower is retired, other than as required by section 4.14B of the Act or in connection with a loan default to the extent provided for in the institution's capital plan, the remaining perpetual stock of the same class or series shall be excluded from core surplus;

(iv) A capital instrument or a particular balance sheet entry or account that the Farm Credit Administration has determined to be the functional equivalent of a component of core surplus. The Farm Credit Administration may permit an institution to include all or a portion of such instrument, entry, or account as core surplus, permanently or on a temporary basis, for purposes of this subpart.

(2) For associations only, other allocated equities may also be included in the core surplus ratio to the extent permitted by §615.5330(b) if the following conditions are met:

(i) The allocated equities are includible in total surplus; and

(ii) The allocated equities, if subject to a plan or practice of revolvement or retirement, are not scheduled or intended to be revolved or retired during the next 3 years, provided that, in the event that such allocated equities included in core surplus are retired, other than as required by section 4.14B of the Act, or in connection with a loan default or the death of an equityholder whose loan has been repaid (to the extent provided for in the institution's capital adequacy plan), any remaining such allocated equities that were allocated in the same year will be excluded from core surplus.

(3) The deductions required to be made by an institution in the computation of its permanent capital pursuant to §615.5210(e) (6), (7), (9), and (11) shall also be made in the computation of its core surplus. Deductions required by §615.5210(e)(1) shall also be made to the extent that they do not duplicate deductions calculated pursuant to this section and required by §615.5330(b)(2).

(4) Equities issued by System institutions and held by other System institutions shall not be included in the core surplus of the issuing institution or of the holder, unless approved pursuant to paragraph (b)(1)(iv) of this section, except that equities held in connection with a loan participation shall not be

excluded by the holder. This paragraph shall not apply to investments by an association in its affiliated bank, which are governed by § 615.5301(b)(1)(i).

(5) The core surplus of an institution shall exclude the net effect of all transactions covered by the definition of ''accumulated other comprehensive income'' contained in the Statement of Financial Accounting Standards No. 130, as promulgated by the Financial Accounting Standards Board.

(6) The Farm Credit Administration may, if it finds that a particular component, balance sheet entry, or account has characteristics or terms that diminish its contribution to an institution's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from core surplus.

(c) *Net collateral* means the value of a bank's collateral as defined by § 615.5050 (except that eligible investments as described in § 615.5140 are to be valued at their amortized cost), less an amount equal to that portion of the allocated investments of affiliated associations that is not counted as permanent capital by the bank.

(d) *Net collateral ratio* means a bank's net collateral, divided by the bank's total liabilities.

(e) *Net investment in the bank* means the total investment by an association in its affiliated bank, less reciprocal investments and investments resulting from a loan originating/service agency relationship, including participations.

(f) *Nonqualified allocated equities* means allocations of earnings designated to the institution's members that are not deducted from the gross taxable income of the allocating institution at the time of allocation.

(g) *Perpetual stock or equity* means stock or equity not having a maturity date, not redeemable at the option of the holder, and having no other provisions that will require the future redemption of the issue.

(h) *Qualified allocated equities* means allocations of earnings that are deducted from the gross taxable income of the allocating institution and designated to the institution's members.

(i) *Total surplus* means:

(1) Undistributed earnings/unallocated surplus;

(2) Allocated equities, including allocated surplus and stock, that are not subject to a plan or practice of revolvement or retirement of 5 years or less and are eligible to be included in permanent capital pursuant to § 615.5201(j)(4)(iv); and

(3) Stock (other than allocated stock) that is not purchased or held as a condition of obtaining a loan, provided that it is either perpetual stock or term stock with an original maturity of at least 5 years, and provided that the institution has no established plan or practice of retiring such perpetual stock or of retiring such term stock prior to its stated maturity. The amount of term stock that is eligible to be included in total surplus shall be reduced by 20 percent (net of redemptions) at the beginning of each of the last 5 years of the term of the instrument.

(4) The total surplus of an institution shall exclude the net effect of all transactions covered by the definition of ''accumulated other comprehensive income'' contained in the Statement of Financial Accounting Standards No. 130, as promulgated by the Financial Accounting Standards Board.

(5) A capital instrument or a particular balance sheet entry or account that the Farm Credit Administration has determined to be the functional equivalent of a component of total surplus. The Farm Credit Administration may permit one or more institutions to include all or a portion of such instrument, entry, or account as total surplus, permanently or on a temporary basis, for purposes of this subpart.

(6) The Farm Credit Administration may, if it finds that a particular component, balance sheet entry, or account has characteristics or terms that diminish its contribution to an institution's ability to absorb losses, require the deduction of all or a portion of such component, entry, or account from total surplus.

(7) Any deductions made by an institution in the computation of its permanent capital pursuant to § 615.5210(e) shall also be made in the computation of its total surplus.

[62 FR 4447, Jan. 30, 1997; 62 FR 19219, Apr. 21, 1997; 63 FR 39228, July 22, 1998]

§615.5330 Minimum surplus ratios.

(a) *Total surplus.* (1) Each institution shall achieve and at all times maintain a ratio of a least 7 percent of total surplus to the risk-adjusted asset base.

(2) The risk-adjusted asset base is the total dollar amount of the institution's assets adjusted in accordance with §615.5301(i)(7) and weighted on the basis of risk in accordance with §615.5210(f).

(b) *Core surplus.* (1) Each institution shall achieve and at all times maintain a ratio of core surplus to the risk-adjusted asset base of a least 3.5 percent, of which no more than 2 percentage points may consist of allocated equities otherwise includible pursuant to §615.5301(b).

(2) Each association shall compute its core surplus ratio by deducting an amount equal to the net investment in the bank from its core surplus.

(3) The risk-adjusted asset base is the total dollar amount of the institution's assets adjusted in accordance with §§615.5301(b)(3) and 615.5330(b)(2), and weighted on the basis of risk in accordance with §615.5210(f).

(c) An institution shall compute its risk-adjusted asset base, total surplus, and core surplus ratios using average daily balances for the most recent 3 months.

[63 FR 39228, July 22, 1998]

§615.5335 Bank net collateral ratio.

(a) Each bank shall achieve and at all times maintain a net collateral ratio of at least 103 percent.

(b) At a minimum, a bank shall compute its net collateral ratio as of the end of each month. A bank shall have the capability to compute its net collateral ratio a day after the close of a business day using the daily balances outstanding for assets and liabilities for that date.

[63 FR 39229, July 22, 1998]

§615.5336 Compliance and reporting.

(a) *Noncompliance and reporting.* An institution that meets the minimum applicable surplus ratios and net collateral ratio established in §§615.5330 and 615.5335 at or after the end of the quarter in which these regulations become effective and subsequently falls below one or more minimum requirements shall be in violation of the applicable regulations. Such institution shall report its noncompliance to the Farm Credit Administration within 20 calendar days following the month end in which the institution initially determines that it is not in compliance with the requirements.

(b) *Initial compliance and reporting requirements.*

(1) An institution that fails to satisfy one or more of its minimum applicable surplus and net collateral ratios at the end of the quarter in which these regulations become effective shall report its initial noncompliance to the Farm Credit Administration within 20 days following such quarter end and shall also submit a capital restoration plan for achieving and maintaining the standards, demonstrating appropriate annual progress toward meeting the goal, to the Farm Credit Administration within 60 days following such quarter end. If the capital restoration plan is not approved by the Farm Credit Administration, the Agency shall inform the institution of the reasons for disapproval, and the institution shall submit a revised capital restoration plan within the time specified by the Farm Credit Administration.

(2) *Approval of compliance plans.* In determining whether to approve a capital restoration plan submitted under this section, the FCA shall consider the following factors, as applicable:

(i) The conditions or circumstances leading to the institution's falling below minimum levels, the exigency of those circumstances, and whether or not they were caused by actions of the institution or were beyond the institution's control;

(ii) The overall condition, management strength, and future prospects of the institution and, if applicable, affiliated System institutions;

(iii) The institution's capital, adverse assets (including nonaccrual and nonperforming loans), allowance for loss, and other ratios compared to the ratios of its peers or industry norms;

(iv) How far an institution's ratios are below the minimum requirements;

(v) The estimated rate at which the institution can reasonably be expected to generate additional earnings;

(vi) The effect of the business changes required to increase capital;

(vii) The institution's previous compliance practices, as appropriate;

(viii) The views of the institution's directors and senior management regarding the plan; and

(ix) Any other facts or circumstances that the FCA deems relevant.

(3) An institution shall be deemed to be in compliance with the surplus and collateral requirements of this subpart if it is in compliance with a capital restoration plan that is approved by the Farm Credit Administration within 180 days following the end of the quarter in which these regulations become effective.

Subpart L—Establishment of Minimum Capital Ratios for an Individual Institution

SOURCE: 62 FR 4448, Jan. 30, 1997, unless otherwise noted.

§ 615.5350 General—Applicability.

(a) The rules and procedures specified in this subpart are applicable to a proceeding to establish required minimum capital ratios that would otherwise be applicable to an institution under §§ 615.5205, 615.5330, and 615.5335. The Farm Credit Administration is authorized to establish such minimum capital requirements for an institution as the Farm Credit Administration, in its discretion, deems to be necessary or appropriate in light of the particular circumstances of the institution. Proceedings under this subpart also may be initiated to require an institution having capital ratios greater than those set forth in §§ 615.5205, 615.5330, or 615.5335 to continue to maintain those higher ratios.

(b) The Farm Credit Administration may require higher minimum capital ratios for an individual institution in view of its circumstances. For example, higher capital ratios may be appropriate for:

(1) An institution receiving special supervisory attention;

(2) An institution that has, or is expected to have, losses resulting in capital inadequacy;

(3) An institution with significant exposure due to operational risk, interest rate risk, the risks from concentrations of credit, certain risks arising from other products, services, or related activities, or management's overall inability to monitor and control financial risks presented by concentrations of credit and related services activities;

(4) An institution exposed to a high volume of, or particularly severe, problem loans;

(5) An institution that is growing rapidly; or

(6) An institution that may be adversely affected by the activities or condition of System institutions with which it has significant business relationships or in which it has significant investments.

(7) An institution with significant exposures to declines in net income or in the market value of its capital due to a change in interest rates and/or the exercising of embedded or explicit options.

[62 FR 4448, Jan. 30, 1997, as amended at 63 FR 39229, July 22, 1998]

§ 615.5351 Standards for determination of appropriate individual institution minimum capital ratios.

The appropriate minimum capital ratios for an individual institution cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based in part on subjective judgment grounded in Agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(a) The conditions or circumstances leading to the Farm Credit Administration's determination that higher minimum capital ratios are appropriate or necessary for the institution;

(b) The exigency of those circumstances or potential problems;

(c) The overall condition, management strength, and future prospects of the institution and, if applicable, affiliated institutions;

(d) The institution's capital, adverse assets (including nonaccrual and nonperforming loans), allowance for loss, and other ratios compared to the ratios of its peers or industry norms; and

(e) The views of the institution's directors and senior management.

§615.5352 Procedures.

(a) *Notice.* When the Farm Credit Administration determines that minimum capital ratios greater than those set forth in §§615.5205, 615.5330, or 615.5335 are necessary or appropriate for a particular institution, the Farm Credit Administration will notify the institution in writing of the proposed minimum capital ratios and the date by which they should be reached (if applicable) and will provide an explanation of why the ratios proposed are considered necessary or appropriate for the institution.

(b) *Response.* (1) The institution may respond to any or all of the items in the notice. The response should include any matters which the institution would have the Farm Credit Administration consider in deciding whether individual minimum capital ratios should be established for the institution, what those capital ratios should be, and, if applicable, when they should be achieved. The response must be in writing and delivered to the designated Farm Credit Administration official within 30 days after the date on which the institution received the notice. In its discretion, the Farm Credit Administration may extend the time period for good cause. The Farm Credit Administration may shorten the time period with the consent of the institution or when, in the opinion of the Farm Credit Administration, the condition of the institution so requires, provided that the institution is informed promptly of the new time period.

(2) Failure to respond within 30 days or such other time period as may be specified by the Farm Credit Administration shall constitute a waiver of any objections to the proposed minimum capital ratios or the deadline for their achievement.

(c) *Decision.* After the close of the institution's response period, the Farm Credit Administration will decide, based on a review of the institution's response and other information concerning the institution, whether individual minimum capital ratios should be established for the institution and, if so, the ratios and the date the requirements will become effective. The institution will be notified of the decision in writing. The notice will include an explanation of the decision, except for a decision not to establish individual minimum capital requirements for the institution.

(d) *Submission of plan.* The decision may require the institution to develop and submit to the Farm Credit Administration, within a time period specified, an acceptable plan to reach the minimum capital ratios established for the institution by the date required.

(e) *Reconsideration based on change in circumstances.* If, after the Farm Credit Administration's decision in paragraph (c) of this section, there is a change in the circumstances affecting the institution's capital adequacy or its ability to reach the required minimum capital ratios by the specified date, either the institution or the Farm Credit Administration may propose a change in the minimum capital ratios for the institution, the date when the minimums must be achieved, or the institution's plan (if applicable). The Farm Credit Administration may decline to consider proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the Farm Credit Administration's original decision and any plan required under that decision shall continue in full force and effect.

§615.5353 Relation to other actions.

In lieu of, or in addition to, the procedures in this subpart, the required minimum capital ratios for an institution may be established or revised through a written agreement or cease and desist proceedings under part C of title V of the Act, or as a condition for approval of an application.

§615.5354 Enforcement.

An institution that does not have or maintain the minimum capital ratios applicable to it, whether required in subparts H and K of this part, in a decision pursuant to this subpart, in a written agreement or temporary or final order under part C of title V of the Act, or in a condition for approval of an application, or an institution that has failed to submit or comply

with an acceptable plan to attain those ratios, will be subject to such administrative action or sanctions as the Farm Credit Administration considers appropriate. These sanctions may include the issuance of a capital directive pursuant to subpart M of this part or other enforcement action, assessment of civil money penalties, and/or the denial or condition of applications.

Subpart M—Issuance of a Capital Directive

SOURCE: 62 FR 4449, Jan. 30, 1997, unless otherwise noted.

§ 615.5355 Purpose and scope.

(a) This subpart is applicable to proceedings by the Farm Credit Administration to issue a capital directive under sections 4.3(b) and 4.3A(e) of the Act. A capital directive is an order issued to an institution that does not have or maintain capital at or greater than the minimum ratios set forth in §§ 615.5205, 615.5330, and 615.5335; or established for the institution under subpart L, by a written agreement under part C of title V of the Act, or as a condition for approval of an application. A capital directive may order the institution to:

(1) Achieve the minimum capital ratios applicable to it by a specified date;

(2) Adhere to a previously submitted plan to achieve the applicable capital ratios;

(3) Submit and adhere to a plan acceptable to the Farm Credit Administration describing the means and time schedule by which the institution shall achieve the applicable capital ratios;

(4) Take other action, such as reduction of assets or the rate of growth of assets, restrictions on the payment of dividends or patronage, or restrictions on the retirement of stock, to achieve the applicable capital ratios, or reduce levels of interest rate and other risk exposures, or strengthen management expertise, or improve management information and measurement systems; or

(5) A combination of any of these or similar actions.

(b) A capital directive may also be issued to the board of directors of an institution, requiring such board to comply with the requirements of section 4.3A(d) of the Act prohibiting the reduction of permanent capital.

(c) A capital directive issued under this rule, including a plan submitted under a capital directive, is enforceable in the same manner and to the same extent as an effective and outstanding cease and desist order which has become final as defined in section 5.25 of the Act. Violation of a capital directive may result in assessment of civil money penalties in accordance with section 5.32 of the Act.

[62 FR 4449, Jan. 30, 1997, as amended at 63 FR 39229, July 22, 1998]

§ 615.5356 Notice of intent to issue a capital directive.

The Farm Credit Administration will notify an institution in writing of its intention to issue a capital directive. The notice will state:

(a) The reasons for issuance of the capital directive;

(b) The proposed contents of the capital directive, including the proposed date for achieving the minimum capital requirement; and

(c) Any other relevant information concerning the decision to issue a capital directive.

§ 615.5357 Response to notice.

(a) An institution may respond to the notice by stating why a capital directive should not be issued and/or by proposing alternative contents for the capital directive or seeking other appropriate relief. The response shall include any information, mitigating circumstances, documentation, or other relevant evidence that supports its position. The response may include a plan for achieving the minimum capital ratios applicable to the institution. The response must be in writing and delivered to the Farm Credit Administration within 30 days after the date on which the institution received the notice. In its discretion, the Farm Credit Administration may extend the time period for good cause. The Farm Credit Administration may shorten the 30-day time period:

(1) When, in the opinion of the Farm Credit Administration, the condition of the institution so requires, provided

that the institution shall be informed promptly of the new time period;

(2) With the consent of the institution; or

(3) When the institution already has advised the Farm Credit Administration that it cannot or will not achieve its applicable minimum capital ratios.

(b) Failure to respond within 30 days or such other time period as may be specified by the Farm Credit Administration shall constitute a waiver of any objections to the proposed capital directive.

§615.5358 Decision.

After the closing date of the institution's response period, or receipt of the institution's response, if earlier, the Farm Credit Administration may seek additional information or clarification of the response. Thereafter, the Farm Credit Administration will determine whether or not to issue a capital directive, and if one is to be issued, whether it should be as originally proposed or in modified form.

§615.5359 Issuance of a capital directive.

(a) A capital directive will be served by delivery to the institution. It will include or be accompanied by a statement of reasons for its issuance.

(b) A capital directive is effective immediately upon its receipt by the institution, or upon such later date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, or terminated by the Farm Credit Administration.

§615.5360 Reconsideration based on change in circumstances.

Upon a change in circumstances, an institution may request the Farm Credit Administration to reconsider the terms of its capital directive or may propose changes in the plan to achieve the institution's applicable minimum capital ratios. The Farm Credit Administration also may take such action on its own motion. The Farm Credit Administration may decline to consider requests or proposals that are not based on a significant change in circumstances or are repetitive or frivolous. Pending a decision on reconsideration, the capital directive and plan shall continue in full force and effect.

§615.5361 Relation to other administrative actions.

A capital directive may be issued in addition to, or in lieu of, any other action authorized by law, including cease and desist proceedings, civil money penalties, or the conditioning or denial of applications. The Farm Credit Administration also may, in its discretion, take any action authorized by law, in lieu of a capital directive, in response to an institution's failure to achieve or maintain the applicable minimum capital ratios.

Subpart 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), respectively, 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.

[61 FR 67192, Dec. 20, 1996, as amended at 62 FR 53229, Oct. 14, 1997]

§ 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 either registered or bearer definitive form.

[61 FR 67192, Dec. 20, 1996, as amended at 62 FR 53229, Oct. 14, 1997]

§615.5452 Law governing rights and obligations of Federal Reserve Banks, Farm Credit banks, and Funding Corporation; rights of any person against 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 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 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.

[61 FR 67192, Dec. 20, 1996, as amended at 62 FR 53229, Oct. 14, 1997]

§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, 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.

[62 FR 67192, Dec. 20, 1996, as amended at 62 FR 53229, Oct. 14, 1997]

§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 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.

[61 FR 67192, Dec. 20, 1996, as amended at 62 FR 53229, Oct. 14, 1997]

§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 either registered or 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 the applicable date of call of the Farm Credit securities.

[61 FR 67192, Dec. 20, 1996, as amended at 62 FR 53230, Oct. 14, 1997]

§ 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.

(c) *Conversion of definitive securities into book-entry securities.* Definitive Farm Credit securities may be converted to book-entry form in accordance with the terms of the applicable securities documentation and Federal Reserve Operating Circular.

[61 FR 67192, Dec. 20, 1996, as amended at 62 FR 53230, Oct. 14, 1997]

§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—REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

Sec.
617.1 Purpose and scope.
617.2 Referrals.
617.3 Notification of board of directors and bonding company.
617.4 Institution responsibilities.

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

SOURCE: 62 FR 24566, May 6, 1997, unless otherwise noted.

§617.1 Purpose and scope.

(a) This part applies to all institutions of the Farm Credit System as defined in section 1.2(a) of the Farm Credit Act of 1971, as amended, (Act) (12 U.S.C. 2002(a)) including, but not limited to, associations, banks, service corporations chartered under section 4.25 of the Act, the Federal Farm Credit Banks Funding Corporation, the Farm Credit System Financial Assistance Corporation, the Farm Credit Leasing Services Corporation, and the Federal Agricultural Mortgage Corporation (hereinafter, institutions). The purposes of this part are to ensure public confidence in the Farm Credit System, to ensure the reporting of known or suspected criminal activity, to reduce potential losses to institutions, and to ensure the safety and soundness of institutions. This part requires that institutions use the Farm Credit Administration Criminal Referral Form (hereinafter FCA Referral Form) to notify the appropriate Federal authorities when any known or suspected Federal criminal violations of the type described in §617.2 are discovered by institutions.

(b) The specific referral requirements of this part apply to known or suspected criminal violations of the United States Code involving the assets, operations, or affairs of an institution. This part prescribes procedures for referring those violations to the proper Federal authorities and the Farm Credit Administration. No specific procedural requirements apply to the referral of violations of State or local laws.

(c) Nothing in this part should be construed as reducing in any way an institution's ability to report known or suspected criminal activities to the appropriate investigatory or prosecuting authorities, whether Federal, State, or local, even when the circumstances in which a report is required under §617.2 are not present.

(d) It shall be the responsibility of each System institution to determine whether there appears to be a reasonable basis to conclude that a criminal violation has been committed and, if so, to report the matter to the proper law enforcement authorities for consideration of prosecution.

(e) Each referral required by §617.2(a) shall be made on the FCA Referral Form in accordance with the FCA Referral Form instructions relating to its filing and distribution.

§617.2 Referrals.

(a) Each institution and its board of directors shall exercise due diligence to ensure the discovery, appropriate investigation, and reporting of criminal activity. Within 30 calendar days of determining that there is a known or suspected criminal violation of the United States Code involving or affecting its assets, operations, or affairs, the institution shall refer such criminal violation to the appropriate regional offices of the United States Attorney, and the Federal Bureau of Investigation or the United States Secret Service or both, using the FCA Referral Form. A copy of the completed FCA Referral Form, accompanied by any relevant documentation, shall be provided at the same time to the Farm Credit Administration's Office of General Counsel. In the event that a Farm Credit bank makes a loan through a Federal land bank association which services the loan, the Federal land bank association must inform the Farm Credit bank of any known or suspected violation involving that loan and the Farm Credit bank shall refer the violation to Federal law enforcement authorities under this section. A report is required in circumstances where there is:

(1) Any known or suspected criminal activity (e.g., theft, embezzlement), mysterious disappearance, unexplained

shortage, misapplication, or other defalcation of property and/or funds, regardless of amount, where an institution employee, officer, director, agent, or other person participating in the conduct of the affairs of such an institution is suspected;

(2) Any known or suspected criminal activity involving an actual or potential loss of $5,000 or more, through false statements or other fraudulent means, where the institution has a substantial basis for identifying a possible suspect or group of suspects and the suspect(s) is not an institution employee, officer, director, agent, or other person participating in the conduct of the affairs of such an institution;

(3) Any known or suspected criminal activity involving an actual or potential loss of $25,000 or more, through false statements or other fraudulent means, where the institution has no substantial basis for identifying a possible suspect or group of suspects; or

(4) Any known or suspected criminal activity involving a financial transaction in which the institution was used as a conduit for such criminal activity (such as money laundering/structuring schemes).

(b) In circumstances where there is a known or suspected violation of State or local criminal law, the institution shall notify the appropriate State or local law enforcement authorities.

(c) In addition to the requirements of paragraph (a) of this section, the institution shall immediately notify by telephone the appropriate Federal law enforcement authorities and FCA offices specified on the FCA Referral Form upon determining that a known or suspected criminal violation of Federal law requiring urgent attention has occurred or is ongoing. Such cases include, but are not limited to, those where:

(1) There is a likelihood that the suspect(s) will flee;

(2) The magnitude or the continuation of the known or suspected criminal violation may imperil the institution's continued operation; or

(3) Key institution personnel are involved.

§ 617.3 Notification of board of directors and bonding company.

(a) The institution's board of directors shall be promptly notified of any criminal referral by the institution, except that if the criminal referral involves a member of the board of directors, discretion may be exercised in notifying such member of the referral.

(b) The institution involved shall promptly make all required notifications under any applicable surety bond or other contract for protection.

§ 617.4 Institution responsibilities.

Each institution shall establish effective policies and procedures designed to ensure compliance with this part, including, but not limited to, adequate internal controls.

PART 618—GENERAL PROVISIONS

Subpart A—Related Services

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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 §§613.3000 (a) and (b), 613.3010, and 613.3300 of this chapter.

(b) Banks for cooperatives may offer related services to entities eligible to borrow as defined in §§613.3100, 613.3200, and 613.3300 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.

[60 FR 34099, June 30, 1995, as amended at 62 FR 4450, Jan. 30, 1997]

§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 [Reserved]

§ 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]

§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 transactions or experience with a borrower, such as amounts of loans, terms, and payment records, may be given by a bank or association to any reliable organization for its confidential use in contemplation of the extension of credit or to a consumer reporting agency.

(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; 62 FR 25831, May 12, 1997]

§ 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]

§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]

§ 618.8340 [Reserved]

Subpart H—Disposition of Obsolete Records

§ 618.8360 [Reserved]

§ 618.8370 [Reserved]

Subpart I [Reserved]

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), 615.5330 (c) or (d), and 615.5335(b).

[53 FR 39250, Oct. 6, 1988, as amended at 62 FR 4450, Jan. 30, 1997]

PART 619—DEFINITIONS

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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]

§619.9050 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]

§619.9110 Consolidation.

Creation of one new organizational entity from two or more existing entities or parts thereof.

§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]

§619.9155 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]

§ 619.9170 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]

§ 619.9195 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.

§ 619.9230 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.

§ 619.9330 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

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620.1 Definitions.
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Subpart B—Annual Report to Shareholders

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Subpart E—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 F—Bank Director Disclosure Requirements

620.30 Disclosure statement for bank director candidates.
620.31 Contents of disclosure statements.

Subpart G—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(l) 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) *Report* refers to the annual report, quarterly report, notice, or information statement required by the part unless otherwise specified.

(p) *Senior officer* means any person designated by the board of directors as responsible for a major management function.

(q) *Shareholder* means a holder of any equity interest in an institution.

(r) *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; 62 FR 15092, Mar. 31, 1997; 63 FR 39229, July 22, 1998]

§ 620.2 Preparing and filing the reports.

For the purposes of this part, the following shall apply:

(a) Three copies of each report required by this section, 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 Farm Credit Administration must receive the report the report within the period prescribed under applicable subpart sections. The 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 or notice filed under this section, each member of the board or one of the following board members formally designated by action of the board to certify reports of condition and performance on behalf of the 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 E of this part shall be deemed to violate any regulation of the Farm Credit Administration.

(g) Each Farm Credit institution shall present its reports in accordance with generally accepted accounting principles and in a manner that provides the most meaningful disclosure to shareholders.

(1) Any Farm Credit institution that presents its annual and quarterly financial statements on a combined or consolidated basis shall also include in the report the statement of condition and statement of income of the institution on a stand-alone basis. The stand-alone statements may be in summary form and shall disclose the basis of presentation if different from accounting policies of the combined or consolidated statements.

(2) Any bank that prepares its financial statements on a stand-alone basis shall provide in the footnotes accompanying its annual report supplemental information containing a condensed statement of condition and statement of income for the bank's related associations on a combined basis. The condensed statements may be unaudited and shall disclose the basis of presentation if different from accounting policies of the bank-only statements.

(h)(1) Each annual report or notice shall include a statement in a prominent location within the report or notice that the institution's quarterly reports are available free of charge on request. The statement shall include approximate dates of availability of the quarterly reports and the telephone numbers and addresses where shareholders may obtain a copy of the reports.

(2) Each association shall include a statement in a prominent location within each report that the shareholders' investment in the association may be materially affected by the financial condition and results of operations of the related bank an (if not otherwise provided) that a copy of the bank's financial reports to shareholders will be made available free of charge on request. The statement shall also include the telephone numbers and addresses where shareholders may obtain copies of the related bank's financial reports.

(3) Each institution shall, after receiving a request for a report, mail or otherwise furnish the report to the requestor. The first copy of the requested report shall be provided to the requestor free of charge.

(i) Any events that have affected one or more related organizations of the reporting institution that are likely to have a material effect on the financial condition, results of operations, cost of funds, or reliability of sources of funds of the reporting institution shall be considered significant events for the reporting institution and shall be disclosed in the reports. Any significant event affecting the reporting institution that occurred during the preceding fiscal quarters that continues to have a material effect on the reporting institution shall be considered significant events of the current fiscal quarter and shall be disclosed in the reports.

[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; 62 FR 15092, Mar. 31, 1997]

§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)(1) Any bank that presents its financial statements on a combined basis shall distribute in 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.

(2) Any bank that presents its financial statements on a bank-only basis shall distribute its annual report to the shareholders of related associations within the period required by paragraph (a) of this section in all instances where the bank experiences a significant event that has a material effect on the associations. 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; 62 FR 15093, Mar. 31, 1997]

§ 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 financing 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 financing institutions (OFIs), 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 restriction regarding retirement of stock and distribution of earnings pursuant to § 615.5215, and any requirements to add capital under a plan approved by the Farm Credit Administration pursuant to §§ 615.5330, 615.5335, 615.5351, or 615.5357.

(2) Describe regulatory minimum 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 financing 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 financing data.* Furnish in comparative columnar form for each of the last 5 fiscal years the following financing 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 financing 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 banks* (on a bank-only basis):

(i) Permanent capital ratio.

(ii) Total surplus ratio.

(iii) Core surplus ratio.

(iv) Net collateral ratio.

(4) *For all associations:*

(i) Permanent capital ratio.

(ii) Total surplus ratio.

(iii) Core surplus ratio.

(g) *Management's discussion and analysis of financing condition and results of operations.* Fully discuss any material aspects of the institution's financing condition, changes in financing 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 financing condition, changes in financing 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 financing 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 financing 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, financing 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) Discuss any events affecting a related organization that are likely to have a material effect on the reporting institution's financing 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 permanent capital, core and total surplus, and net collateral requirements, 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 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 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						

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					
(X)	199X					
(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 financing 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 financing 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 financing statements shall be accompanied by a letter signed by the chief executive officer and the chairman of the board representing that the financing statements, in the opinion of

management, fairly present the financing 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; 62 FR 4451, Jan. 30, 1997; 62 FR 15093, Mar. 31, 1997; 63 FR 36549, July 7, 1998; 63 FR 39229, July 22, 1998]

Subpart C—Quarterly Report

§ 620.10 Preparing the quarterly report.

(a) Each Farm Credit bank and direct lender association shall prepare 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) The report shall contain, at a minimum, the information specified in § 620.11 and, in addition, such other material information (including significant events) as is necessary to make the required disclosures, in light of the circumstances under which they are made, not misleading.

[62 FR 15093, Mar. 31, 1997]

§ 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—Notice to Shareholders

SOURCE: 62 FR 15093, Mar. 31, 1997, unless otherwise noted.

§ 620.15 Notice.

(a) Each Farm Credit bank and direct lender association shall prepare, file with the farm Credit Administration, and distribute a notice to shareholders, within 30 days following the monthend that the institution initially determines that it is not in compliance with the minimum permanent capital standards prescribed under § 615.5205 of this chapter.

(b) An institution that has given notice to shareholders pursuant to paragraph (a) of this section or subsequent notice pursuant to this paragraph shall also prepare, file with the Farm Credit Administration, and distribute to shareholders a notice within 45 days following the end of any subsequent quarter at which the institution's permanent capital ratio decreases by one-half of 1 percent or more from the level reported in the most recent notice distributed to shareholders.

(c) Each institution required to prepare a notice under § 620.15 (a) or (b) shall distribute the notice to shareholders by mail or otherwise furnish the information required in the notice by publishing it in any publication with circulation wide enough to be reasonably assured that all of the institution's shareholders have access to the information in a timely manner.

§ 620.17 Contents of the notice.

(a) The information required to be in a notice must be conspicuous, easily understandable, and not misleading.

(b) A notice, at a minimum, shall include:

(1) A statement that:

(i) Briefly describes the regulatory minimum permanent capital standard established by the Farm Credit Administration and the notice requirement of §620.15(a);

(ii) Indicates the institution's current level of permanent capital; and

(iii) Notifies shareholders that the institution's permanent capital is below the Farm Credit Administration regulatory minimum standard.

(2) A statement of the effect that noncompliance has had on the institution and its shareholders, including whether the institution is currently prohibited by statute or regulation from retiring stock or distributing earnings or whether the Farm Credit Administration has issued a capital directive or other enforcement action to the institution.

(3) A complete description of any event(s) that may have significantly contributed to the institution's noncompliance with the minimum permanent capital standard.

(4) A statement that the institution is required by regulation to distribute another notice to shareholders within 45 days following the end of any subsequent quarter at which the institution's permanent capital ratio decreases by one half of one percent or more from the level reported in the notice.

Subpart E—Association Annual Meeting Information Statement

SOURCE: 51 FR 8656, Mar. 13, 1986, unless otherwise noted. Redesignated at 56 FR 29421, June 27, 1991, and further redesignated at 62 FR 15093, Mar. 31, 1997.

§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 incorporate by reference the annual report to shareholders required by subpart B of this part and contain the information specified in §620.21 and such other material information as is necessary to make the required statement, in light of the circumstances under which it is made, not misleading.

[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; 62 FR 15094, Mar. 31, 1997]

§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 F—Bank Director Disclosure Requirements

SOURCE: 53 FR 50399, Dec. 15, 1988, unless otherwise noted. Redesignated at 56 FR 29421, June 27, 1991, and further redesignated at 62 FR 15093, Mar. 31, 1997.

§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.

§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.

Subpart G—Annual Report of Condition of the Federal Agricultural Mortgage Corporation

SOURCE: 58 FR 48791, Sept. 20, 1993, unless otherwise noted. Redesignated at 62 FR 15093, Mar. 31, 1997.

§ 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.

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.
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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

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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

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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

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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 626—NONDISCRIMINATION IN LENDING

Sec.

626.6000 Definitions.
626.6005 Nondiscrimination in lending and other services.
626.6010 Nondiscrimination in applications.
626.6015 Nondiscriminatory appraisal.
626.6020 Nondiscriminatory advertising.
626.6025 Equal housing lender poster.
626.6030 Complaints.

AUTHORITY: Secs. 1.5, 2.2, 2.12, 3.1, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2073, 2093, 2122, 2243, 2252); 42 U.S.C. 3601 *et seq.*; 15 U.S.C. 1691 *et seq.*; 12 CFR 202, 24 CFR 100, 109, 110.

SOURCE: Subpart E of part 613 added at 37 FR 11421, June 7, 1972, and 57 FR 13637, Apr. 17, 1992. Redesignated as part 626 at 62 FR 4441, Jan. 30, 1997.

§626.6000 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. Redesignated at 62 FR 4441, Jan. 30, 1997]

§626.6005 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. Redesignated at 62 FR 4441, Jan. 30, 1997]

§ 626.6010 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. Redesignated at 62 FR 4441, Jan. 30, 1997]

§ 626.6015 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. Redesignated at 62 FR 4441, Jan. 30, 1997]

§ 626.6020 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. Redesignated at 62 FR 4441, Jan. 30, 1997]

§ 626.6025 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 § 626.6020(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. Redesignated at 62 FR 4441, Jan. 30, 1997, as amended at 62 FR 4451, Jan. 30, 1997]

§ 626.6030 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. Redesignated at 62 FR 4441, Jan. 30, 1997]

PART 627—TITLE IV CONSERVATORS, RECEIVERS, AND VOLUNTARY LIQUIDATIONS

Subpart A—General

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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.
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627.2755 Payment of claims.
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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.

Subpart D—Voluntary Liquidation

627.2795 Voluntary liquidation.
627.2797 Preservation of equity.

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, receiverships, and voluntary liquidations.

[63 FR 5724, Feb. 4, 1998]

§ 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, in that the assets of the institution are less than its obligations to creditors and others, including its members. For purposes of determining insolvency, ''obligations to members'' shall not include stock or allocated equities held by current or former borrowers.

(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, including having insufficient capital or otherwise. For purposes of this regulation, ''unsafe or unsound condition'' shall include, but shall not be limited to, the following conditions:

(i) For banks, a net collateral ratio below 102 percent.

(ii) For associations, a default by the association of one or more terms of its general financing agreement with its affiliated bank that the Farm Credit Administration determines to be a material default.

(iii) For all institutions, permanent capital of less than one-half the minimum required level for the institution.

(iv) For all institutions, a total surplus ratio of less than 2 percent.

(v) For associations, stock impairment.

(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; 63 FR 39229, July 22, 1998]

§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 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.

(b) The receiver appointed for a Farm Credit institution shall be the Insurance Corporation.

(c) 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.

(d) 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.

(e) 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.

[57 FR 46482, Oct. 9, 1992, as amended at 63 FR 5724, Feb. 4, 1998]

§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) Notwithstanding paragraph (a) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

[57 FR 46482, Oct. 9, 1992, as amended at 63 FR 5724, Feb. 4, 1998]

§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.

Subpart D—Voluntary Liquidation

SOURCE: 63 FR 5725, Feb. 4, 1998, unless otherwise noted.

§627.2795 Voluntary liquidation.

(a) A Farm Credit institution may voluntarily liquidate by a resolution of its board of directors, but only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board. Upon adoption of such resolution to liquidate, the Farm Credit institution shall submit the proposed voluntary liquidation plan to the Farm Credit Administration for preliminary approval. The Farm Credit Administration Board, in its discretion, may appoint a receiver as part of an approved liquidation plan. If a receiver is appointed for the Farm Credit institution as part of a voluntary liquidation, the receivership shall be conducted pursuant to subpart B of this part, except to the extent that an approved plan of liquidation provides otherwise.

(b) If the Farm Credit Administration Board gives preliminary approval to the liquidation plan, the board of directors of the Farm Credit institution shall submit the resolution to liquidate and the liquidation plan to the stockholders for approval.

(c) The resolution to liquidate and the liquidation plan shall be approved by the stockholders if agreed to by at least a majority of the voting stockholders of the institution voting, in person or by written proxy, at a duly authorized stockholders' meeting.

(d) The Farm Credit Administration Board will consider final approval of the liquidation plan after an affirmative stockholder vote on the resolution to liquidate.

(e) Any subsequent amendments, modifications, revisions, or adjustments to the liquidation plan shall require Farm Credit Administration Board approval.

(f) The Farm Credit Administration Board, in its discretion, reserves the right to terminate or modify the liquidation plan at any time.

§ 627.2797 Preservation of equity.

(a) Immediately upon the adoption of a resolution by its board of directors to voluntarily liquidate a Farm Credit institution, the capital stock, participation certificates, equity reserves, and allocated equities of the Farm Credit institution shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities. Such activities could resume if the stockholders of the Farm Credit institution disapprove the resolution to liquidate or the Farm Credit Administration Board disapproves the liquidation plan. In the event the resolution to liquidate is approved by the stockholders of the Farm Credit institution and the liquidation plan is approved by the Farm Credit Administration Board, the liquidation plan shall govern disposition of the equities of the Farm Credit institution, except that if the Farm Credit institution is placed in receivership, the provisions of § 627.2730(a) shall govern further disposition of the equities of the Farm Credit institution.

(b) Notwithstanding paragraph (a) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

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.
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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).

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) Information in documents prepared for investors in connection with the offering of debt securities issued through the Federal Farm Credit Banks Funding Corporation may be incorporated by reference in the annual and quarterly reports in answer or partial answer to any item required in the reports under this part. A complete description of any offering documents incorporated by reference must be clearly identified in the report (e.g., *Federal Farm Credit Banks Consolidated Systemwide Bonds and Discount Notes*—Offering Circular issued on [insert date]). Offering documents incorporated by reference in either an annual or quarterly report prepared under this part must be filed with the Chief Examiner, Farm Credit Administration, McLean, Virginia 22102–5090, either prior to or at the time of submission of the report under paragraph (h) of this section. Any offering document incorporated by reference is subject to the delivery and availability requirements set forth in §630.4(a) (5) and (6).

(g) 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.

(h) 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.

[59 FR 46724, Sept. 12, 1994, as amended at 62 FR 15094, Mar. 31, 1997]

§ 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), 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 yearend 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.

[59 FR 46742, Sept. 12, 1994, as amended at 63 FR 36549, July 7, 1998]

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]

Subpart C—Receiver and Conservator

650.50 Grounds for appointment of a receiver or conservator.
650.51 Action for removal of receiver or conservator.
650.52 Voluntary liquidation.
650.55 Appointment of a receiver.
650.56 Powers and duties of the receiver.
650.57 Report to Congress.
650.58 Preservation of equity.
650.59 Notice to stockholders.
650.60 Creditor claims.
650.61 Priority of claims.
650.62 Payment of claims.
650.63 Inventory, audit, and reports.
650.64 Final discharge and release of the receiver.
650.65 Appointment of a conservator.
650.66 Powers and duties of the conservator.
650.67 Inventory, examination, and reports to stockholders.
650.68 Final discharge and release of the conservator.

AUTHORITY: Secs. 4.12, 5.9, 5.17, 8.11, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb–6,2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

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]

Subpart C—Receiver and Conservator

SOURCE: 62 FR 43636, Aug. 15, 1997, unless otherwise noted.

§ 650.50 Grounds for appointment of a receiver or conservator.

(a) The grounds for the appointment of a receiver or conservator for the Corporation are:

(1) The Corporation is insolvent. For purposes of this paragraph, insolvent means:

(i) The assets of the Corporation are less than its obligations to its creditors and others; or

(ii) The Corporation is unable to pay its debts as they fall due in the ordinary course of business;

(2) There has been a substantial dissipation of the assets or earnings of the Corporation due to the violation of any law, rule, or regulation, or the conduct of an unsafe or unsound practice;

(3) The Corporation is in an unsafe or unsound condition to transact business;

(4) The Corporation has committed a willful violation of a final cease-and-desist order issued by the Farm Credit Administration Board;

(5) The Corporation 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 Corporation for inspection to any examiner or any lawful agent of the Farm Credit Administration Board.

(b) In addition to the grounds set forth in paragraph (a) of this section, a receiver can be appointed for the Corporation if the Farm Credit Administration Board determines that the appointment of a conservator would not be appropriate when one of the following conditions exists:

(1) The authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended; or

(2) The Corporation is classified under section 8.35 of the Act as within enforcement level III or IV and the alternative actions available under subtitle B of title VIII of the Act are not satisfactory.

(c) In addition to the grounds set forth in paragraph (a) of this section, a conservator can be appointed for the Corporation if:

(1) The Corporation is classified under section 8.35 of the Act as within enforcement level III or IV; or

(2) The authority of the Corporation to purchase qualified loans or issue or guarantee loan-backed securities is suspended.

§ 650.51 Action for removal of receiver or conservator.

Upon the appointment of a receiver or conservator for the Corporation by the Farm Credit Administration Board pursuant to § 650.50 of this subpart, the Corporation may, within 30 days of such appointment, bring an action in the United States District Court for the District of Columbia, for an order requiring the Farm Credit Administration Board to remove the receiver or conservator and, if the charter has been canceled, to rescind the cancellation of the charter. Notwithstanding any other provision of this part, the Corporation'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 the Corporation's board of directors.

§ 650.52 Voluntary liquidation.

(a) The Corporation may voluntarily liquidate by a resolution of its board of directors, but only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board. Upon adoption of such resolution, the Corporation shall submit the resolution and proposed voluntary liquidation plan to the Farm Credit Administration Board for preliminary approval. The Farm Credit Administration Board, in its discretion, may appoint a receiver as part of an approved liquidation plan. If a receiver is appointed for the Corporation as part of a voluntary liquidation, the receivership shall be conducted pursuant to the regulations of this part, except to the extent that an approved plan of liquidation provides otherwise.

(b) If the Farm Credit Administration Board gives preliminary approval to the liquidation plan, the board of directors of the Corporation shall submit the resolution to liquidate to the stockholders for a vote in accordance with the bylaws of the Corporation.

(c) The Farm Credit Administration Board will consider final approval of the resolution to voluntarily liquidate and the liquidation plan after an affirmative stockholder vote on the resolution.

§650.55 Appointment of a receiver.

(a) The Farm Credit Administration Board may in its discretion appoint, ex parte and without prior notice, a receiver for the Corporation provided that one or more of the grounds for appointment as set forth in §650.50 of this subpart exist.

(b) Upon the appointment of the receiver, the Chairman of the Farm Credit Administration Board shall immediately notify the Corporation and shall publish a notice of the appointment in the FEDERAL REGISTER.

(c) Upon the issuance of the order placing the Corporation into liquidation and appointing the receiver, all rights, privileges, and powers of the board of directors, officers, and employees of the Corporation shall be vested exclusively in the receiver. The Farm Credit Administration Board may cancel the charter of the Corporation on such date as the Farm Credit Administration Board determines is appropriate, but not later than the conclusion of the receivership and discharge of the receiver.

§650.56 Powers and duties of the receiver.

(a) *General.* (1) Upon appointment as receiver, the receiver shall take possession of the Corporation in order to wind up the business operations of the Corporation, collect the debts owed to the Corporation, 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 the Corporation's operation as provided for in this part.

(2) Upon its appointment as receiver, the receiver automatically succeeds to:

(i) All rights, titles, powers, and privileges of the Corporation and of any stockholder, officer, or director of the Corporation with respect to the Corporation and the assets of the Corporation; and

(ii) Title to the books, records, and assets of the Corporation in the possession of any other legal custodian of the Corporation.

(3) The receiver of the Corporation serves as the trustee of the receivership estate and conducts its operations for the benefit of the creditors and stockholders of the Corporation.

(b) *Specific powers.* The receiver may:

(1) Exercise all powers as are conferred upon the officers and directors of the Corporation under law and the charter, articles, and bylaws of the Corporation.

(2) Take any action the receiver considers appropriate or expedient to carry on the business of the Corporation during the process of liquidating its assets and winding up its affairs.

(3) Borrow funds in accordance with section 8.41(f) of the Act to meet the ongoing administrative expenses or other liquidity needs of the receivership.

(4) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the Corporation's assets or property or rehabilitate or improve such property and assets.

(5) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the Corporation has a lien or in which the Corporation has a financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property.

(6) Investigate any matter related to the conduct of the business of the Corporation, including, but not limited to, any claim of the Corporation against any individual or entity, and institute appropriate legal or other proceedings to prosecute such claims.

(7) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by or against the Corporation or in which the Corporation or its creditors or

stockholders have any interest, and represent in every way the Corporation, its stockholders and creditors.

(8) 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.

(9) Hire any agents or employees necessary for proper administration of the receivership.

(10) 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 Corporation's officers by authority of its board of directors.

(11) Sell for cash or otherwise any mortgage, deed of trust, chose in action, note, contract, judgment or decree, stock, or debt owed to the Corporation, or any property (real or personal, tangible or intangible).

(12) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership.

(13) 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.

(14) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the Corporation or receiver.

(15) Pay, out of the assets of the Corporation, all expenses of the receivership (including compensation to personnel employed to represent or assist the receiver) and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver.

(16) Pay, out of the assets of the Corporation, all approved claims of indebtedness in accordance with the priorities established in this part.

(17) Take all actions and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power.

(18) 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.

§ 650.57 Report to Congress.

On a determination by the receiver that there are insufficient assets of the receivership to pay all valid claims against the receivership, the receiver shall submit to the Secretary of the Treasury and Congress a report on the financial condition of the receivership.

§ 650.58 Preservation of equity.

(a) Except as provided for upon final distribution of the assets of the Corporation pursuant to § 650.62 of this subpart, no capital stock, equity reserves, or other allocated equities of the Corporation in receivership shall be issued, allocated, retired, sold, distributed, transferred, or assigned.

(b) Immediately upon the adoption of a resolution by its board of directors to voluntarily liquidate the Corporation, the capital stock, equity reserves, and allocated equities of the Corporation shall not be issued, allocated, retired, sold, distributed, transferred, or assigned. Such activities could resume if the stockholders of the Corporation or the Farm Credit Administration Board disapprove the resolution. In the event the resolution is approved by the stockholders of the Corporation and the Farm Credit Administration Board, the liquidation plan shall govern disposition of the equities of the Corporation as provided in § 650.52 of this subpart.

§ 650.59 Notice to stockholders.

As soon as practicable after a receiver takes possession of the Corporation, the receiver shall notify, by first class mail, each holder of stock of the following matters:

(a) The number of shares such holder owns;

(b) That the stock and other equities of the Corporation may not be retired or transferred until the liquidation is completed, whereupon the receiver will distribute a liquidating dividend, if any, to the stockholders; and

(c) Such other matters as the receiver or the Farm Credit Administration Board deems necessary.

§650.60 Creditor claims.

(a) Upon appointment, the receiver shall promptly publish a notice to creditors to present their claims against the Corporation, 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 Corporation'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 Corporation'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 that 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 part and in such manner and amounts as the receiver deems appropriate. In the event the Corporation has a claim against a creditor of the Corporation, the receiver shall offset the amount of such claim against the claim asserted by such creditor.

§650.61 Priority of claims.

The following priority of claims shall apply to the distribution of the assets of the Corporation in liquidation:

(a) All costs, expenses, and debts incurred by the receiver in connection with the administration of the receivership, all Farm Credit Administration assessments for the costs of supervising and examining the Corporation, and any amounts borrowed pursuant to §650.56(b)(3).

(b) Administrative expenses of the Corporation, 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 that were authorized and reimbursable under a preexisting expense reimbursement policy and that, in the opinion of the receiver, are of benefit to the receivership, and shall not include wages or salaries of employees of the Corporation.

(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 Corporation 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 Corporation 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 of the Corporation, 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.

§ 650.62 Payment of claims.

(a) All claims of each class described in § 650.61 of this subpart 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 all claims in a class in full, distribution to that class will be on a pro rata basis.

(b) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the Corporation, if any, to the owners of stock and other equities in accordance with the priorities for impairment set forth in section 8.4(e)(3) of the Act and the bylaws of the Corporation.

§ 650.63 Inventory, audit, and reports.

(a) As soon as practicable after taking possession of the Corporation, the receiver shall take an inventory of the assets and liabilities as of the date possession was taken.

(b) The receivership shall be audited on an annual basis by a certified public accountant selected by the receiver.

(c) The receiver shall make an annual accounting or report, as appropriate, available for review upon request to any stockholder of the Corporation or any member of the public, with a copy provided to the Farm Credit Administration.

(d) As soon as practicable after final distribution, 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.

§ 650.64 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.

§ 650.65 Appointment of a conservator.

(a) The Farm Credit Administration Board may in its discretion appoint, ex parte and without prior notice, a conservator for the Corporation provided that one or more of the grounds for appointment as set forth in § 650.50 of this subpart exist;

(b) Upon the appointment of a conservator, the Chairman of the Farm Credit Administration shall immediately notify the Corporation and shall publish a notice of the appointment in the FEDERAL REGISTER.

(c) As soon as practicable after the conservator takes possession of the Corporation, the conservator shall notify, by first class mail, each holder of stock in the Corporation of the establishment of the conservatorship and shall describe the effect of the conservatorship on the Corporation's operations and equity holdings.

(d) Upon the issuance of the order placing the Corporation in conservatorship, all rights, privileges, and powers of the board of directors, officers, and employees of the Corporation are vested exclusively in the conservator.

(e) The Farm Credit Administration Board may, at any time, terminate the conservatorship and direct the conservator to turn over the Corporation's operations to such management as the Farm Credit Administration Board may designate, in which event the provisions of this subpart shall no longer apply.

§ 650.66 Powers and duties of the conservator.

(a) The conservator shall direct the Corporation's further operation until the Farm Credit Administration Board decides that the Corporation can operate without the conservatorship or places the Corporation into receivership. Upon correction or resolution of the problem or condition that provided the basis for the appointment, the Farm Credit Administration Board may turn the Corporation 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 Corporation, to conserve and preserve the Corporation's assets and property, and otherwise protect the interests of the Corporation, its stockholders, and creditors as provided in this subpart.

(c) The conservator serves as the trustee of the Corporation and conducts its operations for the benefit of the creditors and stockholders of the Corporation.

(d) The conservator may exercise the powers that a receiver of the Corporation may exercise under any of the provisions of §650.56(b) of this subpart, except paragraphs (b)(2) and (b)(16). In interpreting the applicable paragraphs for purposes of this section, the terms ''conservator'' and ''conservatorship'' shall be read for ''receiver'' and ''receivership''.

(e) The conservator may also take any other action the conservator considers appropriate or expedient to the continuing operation of the Corporation.

§650.67 Inventory, examination, and reports to stockholders.

(a) As soon as practicable after taking possession of the Corporation, the conservator shall take an inventory of the assets and liabilities of the Corporation as of the date possession was taken. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The conservatorship shall be examined by the Farm Credit Administration in accordance with section 8.11 of the Act.

(c) The conservatorship shall prepare and file financial reports and other documents in accordance with the requirements of §620.40 and part 621 of this chapter. The conservator of the Corporation shall provide the certification required in §621.14 of this chapter.

§650.68 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.