

§611.1152

System institution means each System bank under titles I or III of the Act, each System association under title II of the Act, and each service corporation chartered under section 4.25 of the Act.

Third-party UBE means a UBE that is owned or controlled by one or more non-System persons or entities as the term “control” is defined under GAAP.

UBE means a Limited Partnership (LP), Limited Liability Partnership (LLP), Limited Liability Limited Partnership (LLL), Limited Liability Company (LLC), Business or other Trust Entity (TE), or other business entity established and maintained under State law that is not incorporated under any law or chartered under Federal law.

UBE business activity means the services and functions delivered by a UBE for one or more System institutions.

Unusual and complex collateral means acquired property that may expose the owner to risks beyond those commonly associated with loans, including, but not limited to, acquired industrial or manufacturing properties where there is increased risk of incurring potential environmental or other liabilities that may accrue to the owners of such properties.

§611.1152 Authority over equity investments in UBEs for business activity.

(a) *Regulation, supervisory, oversight, examination and enforcement authority.* FCA has regulatory, supervisory, oversight, examination and enforcement authority over each System institution’s equity investment in or control of a UBE and the services and functions that a UBE performs for the System institution. This includes FCA’s authority to require a System institution’s dissolution of, disassociation from, or divestiture of an equity investment in a UBE, or to otherwise condition the approval of equity investments in UBEs.

(b) *Assessing UBE investments and business activity.* In accordance with section 5.15 of the Act, the cost of regulating and examining System institutions’ activities involving UBEs will be taken into account when assessing a

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System institution for the cost of administering the Act.

§611.1153 General restrictions and prohibitions on the use of UBEs.

(a) *Authorized UBE business activity.* All UBE business activity must be:

(1) Necessary or expedient to the business of one or more System institutions owning the UBE; and

(2) In no instance greater than the functions and services that one or more System institutions owning the UBE are authorized to perform under the Act and as determined by the FCA.

(b) *Circumvention of cooperative principles.* System institutions are prohibited from using UBEs to engage in direct lending activities or any other activity that would circumvent the application of cooperative principles, including borrower rights as described in section 4.14A of the Act, or stock ownership, voting rights or patronage as described in section 4.3A of the Act.

(c) *Transparency and the avoidance of conflicts of interest.* Each System institution must ensure that:

(1) The UBE is held out to the public as a separate or subsidiary entity;

(2) The business transactions, accounts, and records of the UBE are not commingled with those of the System institution; and

(3) All transactions between the UBE and System institution directors, officers, employees, and agents are conducted at arm’s length, in the interest of the System institution, and in compliance with standards of conduct rules in §§ 612.2130 through 612.2270.

(d) *Limit on one-member UBEs.* A UBE owned solely by a single System institution (including between and among a parent agricultural credit association and its production credit association and Federal land credit association subsidiaries and between a parent agricultural credit bank and its subsidiary Farm Credit Bank) as a one-member UBE is limited to the following special purposes:

(1) Acquiring and managing the unusual or complex collateral associated with loans; and

(2) Providing limited services such as electronic transaction, fixed asset,

trustee or other services that are integral to the daily internal operations of a System institution.

(e) *Limit on UBE partnerships.* A System institution operating through a parent-subsidiary structure may not create a UBE partnership between or among the parent agricultural credit association and its production credit association and Federal land credit association subsidiaries or between a parent Agricultural Credit Bank and its Farm Credit Bank subsidiary.

(f) *Prohibition on UBE subsidiaries.* Except as provided in this paragraph, a System institution may not create a subsidiary of a UBE that it has organized or invested in under this subpart or enable the UBE itself to create a subsidiary or any other type of affiliated entity. A System institution may establish a UBE as a subsidiary of a UBE formed pursuant to paragraph (d)(1) of this section to hold each investor's pro-rata interest in acquired property provided that the loan collateral at issue involves a multi-lender transaction that includes System and non-System lenders.

(g) *Limit on potential liability.*

(1) Each System institution's equity investment in a UBE must be established in a manner that will limit potential exposure of the System institution to no more than the amount of its investment in the UBE.

(2) A System institution cannot become a general partner of any partnership other than an LLLP.

(h) *Limit on amount of equity investment in UBEs.* The aggregate amount of equity investments that a single System institution is authorized to hold in UBEs must not exceed one percent of the institution's total outstanding loans, calculated at the time of each investment. On a case-by-case basis, FCA may approve an exception to this limitation that would exceed the one-percent aggregate limit. Conversely, FCA may impose a percentage limit lower than the one-percent aggregate limit based on safety or soundness and other relevant concerns. This one-percent aggregate limit does not apply to equity investments in one-member UBEs formed for acquired property as permitted in paragraph (d)(1) of this section. Any equity investment made

in a UBE by a service corporation must be attributed to its System institution owners based on the ownership percentage of each bank or association.

(i) *Prohibition on relationship with a third-party UBE.* A System institution is prohibited from:

(1) Making any equity investment in a third-party UBE except as may be authorized on a case-by-case basis under §615.5140(e) of this chapter for de minimis and passive investments. Such requests would be considered outside of this rule.

(2) Serving as the general partner or manager of a third-party UBE; or

(3) Being designated as the primary beneficiary of a third-party UBE, either alone or with other System institutions.

(j) *Limitation on non-System equity investments.* Non-System persons or entities may not invest in a UBE that is controlled by a System institution except that non-System persons or entities may own 20 percent or less of the equity of a System-controlled UBE organized to deliver services integral to the daily internal operations of a System institution.

(k) *UBEs formed for acquiring and managing collateral.* The provisions of paragraphs (i) and (j) of this section do not apply to UBEs formed for the purpose of acquiring and managing unusual or complex collateral associated with multiple-lender loan transactions in which non-System persons or entities are participants.

§611.1154 Notice of equity investments in UBEs.

(a) *Applicability.* This notice provision is applicable only to System institutions that wish to make an equity investment in UBEs whose activities are limited to the following purposes:

(1) Acquiring and managing unusual or complex collateral associated with loans;

(2) Providing hail or multi-peril crop insurance services in collaboration with another System institution in accordance with §618.8040 of this chapter; and

(3) Any other UBE business activity that FCA determines to be appropriate for this notice provision.