

SUBCHAPTER A—ADMINISTRATIVE PROVISIONS

PART 600—ORGANIZATION AND FUNCTIONS

Subpart A—Farm Credit Administration

Sec.

600.1 The Farm Credit Act.

600.2 Farm Credit Administration.

600.3 Farm Credit Administration Board.

600.4 Organization of the Farm Credit Administration.

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

600.10 Service of Process.

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

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

Subpart A—Farm Credit Administration

SOURCE: 70 FR 69645, Nov. 17, 2005, unless otherwise noted.

§ 600.1 The Farm Credit Act.

The Farm Credit Act of 1971, Public Law 92-181 recodified and replaced the prior laws under which the Farm Credit Administration (FCA) and the institutions of the Farm Credit System (System or FCS) 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 The prior laws, which were repealed and superseded by the Act, are identified in section 5.40(a) of the Act.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: Public Law 94-184, December 31, 1975; Public Law 95-443, October 10, 1978; Public Law 96-592, December 24, 1980; Public Law 99-190, December 19, 1985; Public Law 99-198, December 23, 1985; Public Law 99-205, December 23, 1985; Public Law 99-509, October 21, 1986; Public Law 100-233, January 6, 1988; Public Law 100-399, August 17, 1988; Public Law 100-460, October 1, 1988; Public Law 101-73, August 9, 1989; Public Law 101-220, December 12, 1989; Public Law 101-624, November 28, 1990; Public Law 102-237, December 13, 1991; Public Law 102-552, October 28, 1992; Public Law 103-376, October 19, 1994; Public

Law 104-105, February 10, 1996; Public Law 104-316, October 19, 1996; Public Law 107-171, May 13, 2002; Public Law 110-246, June 18, 2008. The law is codified at 12 U.S.C. 2000, *et seq.*

[80 FR 68423, Nov. 5, 2015]

§ 600.2 Farm Credit Administration.

(a) *Background.* The Farm Credit Administration is an independent, non-appropriated fund agency in the executive branch of the Federal Government. The FCA Board and employees carry out the FCA's functions, powers, and duties.

(b) *Locations.* FCA's headquarters address is 1501 Farm Credit Drive, McLean, Virginia 22102-5090. The FCA has the following field offices:

1501 Farm Credit Drive, McLean, VA 22102-5090

7900 International Drive, Suite 200, Bloomington, MN 55425-2563

500 East John Carpenter Freeway, Suite 400, Irving, TX 75062-3906

8101 East Prentice Avenue, Suite 1200, Greenwood Village, CO 80111-2939

2180 Harvard Street, Suite 300, Sacramento, CA 95815-3323.

[70 FR 69645, Nov. 17, 2005, as amended at 80 FR 40897, July 14, 2015; 81 FR 47691, July 22, 2016]

§ 600.3 Farm Credit Administration Board.

(a) *FCA Board.* The President appoints the three full-time Board members with the advice and consent of the Senate. The Board manages, administers, and establishes policies for FCA. The Board promulgates the rules and regulations implementing the Farm Credit Act of 1971, as amended, and provides for the examination of Farm Credit System institutions.

(b) *Chairman of the FCA Board.* The Chairman of the Board is FCA's Chief Executive Officer. The Chairman directs the implementation of the policies and regulations adopted by the Board and, after consulting the Board, the execution of the administrative functions and duties of FCA. In carrying out the Board's policies, the Chairman acts as the spokesperson for the Board and represents the Board and

§ 600.4

FCA in their official relations within the Federal Government.

§ 600.4 Organization of the Farm Credit Administration.

(a) *Offices and functions.* The primary offices of the FCA are:

(1) *Office of Inspector General.* The Office of Inspector General conducts independent audits, inspections, and investigations of Agency programs and operations and reviews proposed legislation and regulations.

(2) *Secretary to the Board.* The Secretary to the Board serves as the parliamentarian for the Board and keeps permanent and complete records and minutes of the acts and proceedings of the Board.

(3) *Equal Employment and Inclusion Director.* The Office of Equal Employment and Inclusion manages and directs the Agency-wide Diversity, Inclusion, and Equal Employment Opportunity Program for FCA and FCSIC. The office serves as the chief liaison with the Equal Employment Opportunity Commission and the Office of Personnel Management on all EEO, diversity, and inclusion issues. The office provides counsel and leadership to Agency management to carry out its continuing policy and program of non-discrimination, affirmative action, and diversity.

(4) *Designated Agency Ethics Official.* The Designated Agency Ethics Official is designated by the FCA Chairman to administer the provisions of title I of the Ethics in Government Act of 1978, as amended, to coordinate and manage FCA's ethics program and to provide liaison to the Office of Government Ethics with regard to all aspects of FCA's ethics program.

(5) *Office of Congressional and Public Affairs.* The Office of Congressional and Public Affairs performs Congressional liaison duties and coordinates and disseminates Agency communications.

(6) *Office of Secondary Market Oversight.* The Office of Secondary Market Oversight regulates and examines the Federal Agricultural Mortgage Corporation for safety and soundness and compliance with law and regulations.

(7) *Office of the Chief Operating Officer.* The Chief Operating Officer has broad responsibility for planning, di-

12 CFR Ch. VI (1-1-18 Edition)

recting, and controlling the operations of the Offices of Management Services, Examination, Regulatory Policy, and General Counsel in accordance with the operating philosophy and policies of the FCA Board.

(8) *Office of Agency Services.* The Office of Agency Services manages human capital and administrative services for the Agency. This includes providing the following services to the Agency: Staffing and placement, job evaluation, compensation and benefits, payroll administration, performance management and awards, employee relations, employee training and development, contracting, acquisitions, records and property management, supply services, agency purchase cards, design, publication, and mail service.

(9) *Office of the Chief Financial Officer.* The Office of the Chief Financial Officer manages and delivers timely, accurate, and reliable financial services to the Agency. The office establishes financial policies and procedures and oversees the formulation and execution of the Agency's budget. The office reports periodically on the status of the Agency's financial position, results of operations, and budgetary resources. It also oversees the Agency's travel management, internal controls, and personnel security programs.

(10) *Office of Regulatory Policy.* The Office of Regulatory Policy develops policies and regulations for the FCA Board's consideration; evaluates regulatory and statutory prior approvals; manages the Agency's chartering activities; and analyzes policy and strategic risks to the System.

(11) *Office of Examination.* The Office of Examination evaluates the safety and soundness of FCS institutions and their compliance with law and regulations and manages FCA's enforcement and supervision functions.

(12) *Office of Information Technology.* The Office of Information Technology manages and delivers the Agency's information technology, data analysis infrastructure, and the security supporting Agency technology resources.

(13) *Office of General Counsel.* The Office of General Counsel provides legal advice and services to the FCA Chairman, the FCA Board, and Agency staff.

Farm Credit Administration

Pt. 602

(b) *Additional information.* You may obtain more information on the FCA's organization by visiting our Web site at <http://www.fca.gov>. You may also contact the Office of Congressional and Public Affairs:

(1) In writing at FCA, 1501 Farm Credit Drive, McLean, Virginia 22102-5090;

(2) By email at info-line@fca.gov; or

(3) By telephone at (703) 883-4056.

[81 FR 47691, July 22, 2016]

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

§ 600.10 Service of Process.

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

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

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

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

PART 601—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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

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

Board members, officers, and other employees of the Farm Credit Administration are subject to the Standards of Ethical Conduct for Employees of the

Executive Branch at 5 CFR part 2635, the Farm Credit Administration regulation at 5 CFR part 4101, which supplements the Executive Branch-wide Standards, and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[60 FR 30782, June 12, 1995]

PART 602—RELEASING INFORMATION

Subpart A—Information and Records Generally

Sec.

602.1 Purpose and scope.

602.2 Disclosing reports of examination and other non-public information.

Subpart B—Availability of Records of the Farm Credit Administration

602.3 Definitions.

602.4 How to make a request.

602.5 FCA response to requests for records.

602.6 FOIA exemptions.

602.7 Confidential business information.

602.8 Appeals.

602.9 Current FOIA index.

Subpart C—FOIA Fees

602.10 Definitions.

602.11 Fees by type of requester.

602.12 Fees.

602.13 Fee waiver.

602.14 Advance payments—notice.

602.15 Interest on unpaid fees.

602.16 Combining requests.

Subpart D—Testimony and Production of Documents in Legal Proceedings in Which FCA is Not a Named Party

602.17 Policy.

602.18 Definitions.

602.19 Request for testimony or production of documents.

602.20 Testimony of FCA employees.

602.21 Production of FCA documents.

602.22 Fees.

602.23 Responses to demands served on FCA employees.

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

Subpart E—Release of Records in Public Rulemaking Files

602.25 General.

AUTHORITY: Secs. 5.9, 5.17, 5.59 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2277a-8); 5 U.S.C. 301, 552; 12 U.S.C. 1821(t); 52 FR 10012; E.O. 12600; 52 FR 23781, 3 CFR 1987, p. 235.

§ 602.1

SOURCE: 64 FR 41770, Aug. 2, 1999, unless otherwise noted.

Subpart A—Information and Records Generally

§ 602.1 Purpose and scope.

This part contains FCA's rules for disclosing our records or information; processing requests for records under the Freedom of Information Act (5 U.S.C. 552, as amended)(FOIA); FOIA fees; disclosing otherwise exempt information in litigation when FCA is not a party; and getting documents in public rulemaking files. Part 603 of this chapter tells you how to get records about yourself under the Privacy Act of 1974, 5 U.S.C. 552a.

§ 602.2 Disclosing reports of examination and other non-public information.

(a) *Disclosure by FCA.* Reports of examination are FCA property. We prepare them for our confidential use and the use of the institution examined. We do not give reports of examination to the public. Except as provided in this section, only the Chairman or the Chairman's designee may consent to disclosing reports of examination of Farm Credit System institutions and other institutions subject to our examination. You may send a written request to our General Counsel that explains why we should give permission.

(b) *Disclosure by Farm Credit System institutions.* An institution that we have examined may disclose its report of examination to its officers, directors, and agents, such as its attorney or accountant, if they agree to keep the report confidential. In addition, banks may disclose their reports of examination to their affiliated associations, associations may disclose their reports to their supervisory bank, and service corporations may disclose their reports of examination to the institutions that own them. An institution may not disclose these institutions' reports of examination to any other person without our written permission.

(c) *Disclosure to the Farm Credit System Insurance Corporation.* Without waiving any privilege or limiting any of the requirements of section 5.59 of the Farm Credit Act of 1971, as amended, we may

12 CFR Ch. VI (1–1–18 Edition)

disclose reports of examination and other examination and non-public information, including data from reports of System accounts and exposures received pursuant to § 621.15 of this chapter, to the Farm Credit System Insurance Corporation pursuant to confidentiality and data security agreements executed between the agencies.

(d) *Disclosure to governmental entities.* Without waiving any privilege, we will disclose reports of examination to other Federal government entities:

(1) In response to a Federal court order;

(2) In response to a request of either House or a Committee or Subcommittee of Congress; or

(3) When requested for confidential use in an official investigation by authorized representatives of other Federal agencies.

[64 FR 41770, Aug. 2, 1999, as amended at 78 FR 77561, Dec. 24, 2013]

Subpart B—Availability of Records of the Farm Credit Administration

§ 602.3 Definitions.

Appeal means a request under the FOIA asking for the reversal of a decision.

Business information means trade secrets or other commercial or financial information that is privileged or confidential.

Business submitter means any person or entity that gives business information to the Government.

FOIA request means a written request for FCA records, made by any person or entity that either directly or indirectly invokes the FOIA or this part.

Record means all documentary materials, such as books, papers, maps, photographs, and machine-readable materials, regardless of physical form or characteristics (for example, electronic format) in our possession and control when we receive your FOIA request.

§ 602.4 How to make a request.

(a) *How to make and address a request.* Your request for records must be in writing and addressed to the FOIA Officer, Farm Credit Administration. You may send it:

Farm Credit Administration

§ 602.7

(1) By mail to 1501 Farm Credit Drive, McLean, Virginia 22102-5090;

(2) By facsimile to (703) 790-0052; or

(3) By E-mail to foiaofficer@fca.gov.

(b) *Description of requested records.* You must describe the requested records in enough detail to let us find them with a reasonable effort. If the description is inadequate, we will ask you to provide more information and the 20-day response period under § 602.5(a) will not begin until we receive your reply.

(c) *Faster response.* You may ask for a faster response to your FOIA request by giving us a statement, certified to be true, that you have a “compelling need.” The FOIA Officer will tell you within 10 calendar days after receiving the request whether we will respond to it faster. If so, we will respond to your request as soon as we can. A *compelling need* means:

(1) Someone’s life or physical safety may be in danger if we do not respond to the request faster; or

(2) You urgently need to tell the public about Federal government activity as a representative of the news media.

(d) *Request for personal information.* If you or your representative requests your personal information, we may require you to give us a notarized request, identify yourself under penalty of perjury, or provide other proof of your identity.

(e) *Fees.* When making a request, you must tell us the most you are willing to pay. Our charges are in the fee tables in §§ 602.11 and 602.12. You may also want to tell us the purpose of your request so we can classify your request for fee purposes.

(f) *Other requests.* To ensure the public has timely information about our activities, the Office of Congressional and Public Affairs will make available copies of public documents, such as the FCA annual report and media advisories.

§ 602.5 FCA response to requests for records.

(a) *Response time.* Within 20 business days of receiving your request, the FOIA Officer will tell you whether we have granted or denied it. If you send your request to the wrong address, the 20-day response time will not begin

until the FOIA Officer receives your request.

(b) *Extension of response time.* In “unusual circumstances,” the FOIA Officer may extend the 20-day response time for up to 10 more business days by telling you in writing why we need more time and the date we will mail you our response. As used in this subpart, “unusual circumstances” means our need to:

(1) Search for and get the requested records from field offices or other locations;

(2) Search for, get, and review many records identified in a single request;

(3) Consult with another Federal agency having a substantial interest in the request; or

(4) Consult with two or more FCA offices having a substantial interest in the request.

(c) *Referrals.* If you ask for records we have that another Federal agency originated, we will refer the request to the originating agency and tell you about the referral. If you should have sent your request to another Federal agency, we will refer the request to that agency and so advise you.

§ 602.6 FOIA exemptions.

The FOIA allows agencies to withhold documents in certain categories. For instance, we do not have to give you documents that relate to our examination of institutions or that would violate the personal privacy of an individual. If we do not give you a document because the FOIA does not require us to, we will tell you which FOIA exemption applies to our decision.

§ 602.7 Confidential business information.

(a) *FCA disclosure.* FCA may disclose business information from a business submitter only under this section. This section will not apply if:

(1) We decide the business submitter has no valid basis to object to disclosure;

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

(3) Law (other than the FOIA) requires disclosure of the information.

§ 602.8

(b) *Notice by FCA.* When we receive a request for confidential business information, the FOIA Officer will promptly tell the requester and the business submitter in writing that the responsive records may be free from disclosure under the FOIA. We will give the business submitter a reasonable time to object to the proposed disclosure of the responsive records and tell the requester whenever:

(1) The business submitter has in good faith labeled the information a trade secret or commercial or financial information that is privileged or confidential. We will provide such notice for 10 years after receiving the information unless the business submitter justifies the need for a longer period; or

(2) We believe that disclosing the information may result in commercial or financial injury to the business submitter.

(c) *Objection to release.* A business submitter who objects to our releasing the requested information should tell us in writing why the information is a trade secret or commercial or financial information that is privileged or confidential.

(d) *FCA response.* (1) We will consider carefully a business submitter's objections. If we decide to disclose business information over the submitter's objection, the FOIA Officer will explain to the submitter in writing why we disagreed with the submitter's objection and describe the business information to be disclosed.

(2) We will tell the requester and the submitter the proposed disclosure date at the same time.

(3) If a submitter sues to prevent release, we will promptly tell the requester and will not disclose the business information until after the court's decision.

(4) If a requester sues to compel disclosure, we will promptly tell the business submitter.

§ 602.8 Appeals.

(a) *How to appeal.* You may appeal a total or partial denial of your FOIA request within 90 calendar days of the date of the denial letter. Your appeal must be in writing and addressed to the Director, Office of Agency Services

12 CFR Ch. VI (1–1–18 Edition)

(OAS), Farm Credit Administration. You may send it:

(1) By mail to 1501 Farm Credit Drive, McLean, Virginia 22102-5090;

(2) By facsimile to (703) 893-2608; or

(3) By Email to foiaappeal@fca.gov. You also have the right to seek dispute resolution services from FCA's FOIA Public Liaison and the Office of Government Information Services.

(b) *FCA action on appeal.* Within 20 business days of receiving your appeal, the OAS Director will tell you, in writing, whether we have granted or denied it. If you send your appeal to the wrong address, the 20-day response time will not begin until the OAS Director receives your appeal.

(c) *Unusual circumstances.* In unusual circumstances, the OAS Director may extend the 20-day response time by telling you in writing why we need more time and the date we will mail you our response. All extensions, including any extension of the response time for the first request, may not total more than 10 business days.

(d) *How to seek dispute resolution services.* Requesters may seek dispute resolution services from:

(1) FCA's FOIA Public Liaison;

(i) By mail addressed to FOIA Public Liaison, 1501 Farm Credit Drive, McLean, Virginia 22101-5090;

(ii) By facsimile at 703-790-3260; or

(iii) By Email at FOIAPublicLiaison@fca.gov.

(2) Office of Government Information Services;

(i) By mail to Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, Maryland, 20740-6001;

(ii) By facsimile at (202) 741-5769; or

(iii) By Email at ogis@nara.gov.

[64 FR 41770, Aug. 2, 1999, as amended at 70 FR 69645, Nov. 17, 2005; 81 FR 47692, July 22, 2016; 81 FR 63366, Sept. 15, 2016]

§ 602.9 Current FOIA index.

FCA will make a current index available for public inspection and copying, as required by the FOIA. We will give you an index for the cost of copying it. Because we rarely receive requests for an index, we have not published one in the FEDERAL REGISTER.

Subpart C—FOIA Fees

§ 602.10 Definitions.

Commercial use request means an information request by an individual or entity seeking information for a use or purpose that furthers the commercial, trade, or profit interests of that individual or entity.

Direct costs means the costs FCA incurs in searching for and reproducing documents to respond to a FOIA request. For a commercial use request, it also means the costs we incur in reviewing documents to respond to the request. Direct costs include the prorated cost of the salary of the employee performing the work (based on the basic rate of pay plus 16 percent to cover benefits) and the cost of operating reproduction equipment. They do not include overhead expenses.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education that runs a program of scholarly research.

Noncommercial scientific institution means a nonprofit institution that conducts scientific research that is not intended to promote any particular product or industry.

Pages mean 8-1/2 × 11 inch or 11 × 14 inch paper copies.

Representative of the news media means any person actively gathering news for an entity that publishes or broadcasts news to the public. *News* means information about current events or of current interest to the public.

Reproduce (or reproduction) means copying a record.

Review means looking at documents found in response to a FOIA request to decide whether any portion should be withheld. It does not include the time spent resolving legal or policy issues.

Search means all time spent looking for material responsive to a FOIA request, including page-by-page or line-by-line identification of material within documents.

§ 602.11 Fees by type of requester.

Depending on your identity and the purpose of your request, the FCA may charge you the direct costs of searching for responsive records, reviewing the records, and reproducing them. If necessary, we will seek clarification before classifying the request.

(a) *Educational institutions and noncommercial scientific institutions.* We charge fees for reproduction costs only. The first 100 pages are free. You must show that the request is sanctioned by an educational or noncommercial scientific institution and that you seek the records for scholarly or scientific research, not for a commercial use.

(b) *Representatives of the news media.* We charge fees for reproduction costs only. The first 100 pages are free. You must be a representative of the news media, and the request must not be made for a commercial use. A request for records supporting news distribution is not a request for a commercial use.

(c) *Commercial use.* We charge the direct cost for search, review, and reproduction. Commercial use requesters are not entitled to free search time or free reproduction. We will charge you even if we do not disclose any records.

(d) *All others.* The first 2 hours of search time and the first 100 pages of reproduction are free. After that, we will charge you for search and reproduction costs. We will charge you for a search even if we do not disclose any records.

(e) *Fee table.* The fee information in paragraphs (a) through (d) of this section is presented in the table to this paragraph. You may apply for a waiver if your request is not mostly in your commercial interest and the disclosure is in the public interest. See § 602.13.

FEE TABLE

Type of requester	Charges for		Reproduction
	Search time	Review time	
•Educational •Noncommercial scientific users •News media Commercial Users ¹ All others ¹	No Charge	No charge	First 100 pages free, \$ 0.15 a page after that.
	All direct costs First 2 hours free, all direct costs after that.	All direct costs No charge	\$0.15 a page. First 100 pages free, \$0.15 a page after that.

¹ You are responsible for fees even if we do not disclose any records.

[64 FR 41770, Aug. 2, 1999; 64 FR 45589, Aug. 20, 1999]

§ 602.12 Fees.

(a) FCA may charge:

(1) For manual searches for records and for review, the pro rated cost of the salary of the employee doing the work.

(2) For computer searches for records, the direct costs of computer search time and supply or material costs.

(3) For each page made by photocopy or similar method, fifteen cents a page, and for other forms of copying, the direct costs.

(4) The direct costs of elective services, such as certifying records as true copies or sending records by special methods.

(b) We will not charge fees when total assessed fees are less than \$15.00.

(c) You must pay by personal check, bank draft drawn on a United States bank, or postal money order made payable to the Treasury of the United States.

(d) We treat a request about yourself under Privacy Act fee rules.

(e) The information in paragraphs (a) and (b) of this section is presented in the table to this paragraph. Direct costs means the costs FCA incurs in searching for, reviewing, and reproducing documents to respond to a request. Direct costs include pro rated salary and reproduction costs. We will not charge fees when they total less than \$15.00.

FEE AMOUNTS TABLE

Type of fee	Amount of fee
Manual Search and Review	Pro rated Salary Costs.
Computer Search	Direct Costs.
Photocopy	\$0.15 a page.
Other Reproduction Costs	Direct Costs.

FEE AMOUNTS TABLE—Continued

Type of fee	Amount of fee
Elective Services	Direct Costs.

(f) We will not assess fees if we fail to comply with any time limit under the FOIA or these regulations, and have not timely notified the requester, in writing, that an unusual circumstance exists. If an unusual circumstance exists, and timely, written notice is given to the requester, we may be excused an additional 10 working days before fees are automatically waived under this paragraph.

(g) If we determine that unusual circumstances apply and more than 5,000 pages are necessary to respond to a request, we may charge fees if we provided a timely, written notice to the requester and discussed with the requester via mail, Email, or telephone (or made at least three good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(h) If a court has determined that exceptional circumstances exist, a failure to comply with time limits imposed by these regulations or FOIA shall be excused for the length of time provided by court order.

[64 FR 41770, Aug. 2, 1999, as amended at 81 FR 63366, Sept. 15, 2016]

§ 602.13 Fee waiver.

We may waive or reduce fees if disclosure is not mostly in your commercial interest but, instead, is in the public interest because it will advance public understanding of the Federal government's operations or activities.

§ 602.14 Advance payments—notice.

(a) If fees will be more than \$25.00 and you have not told us in advance that you will pay estimated fees, we will tell you the estimated amount and ask that you agree to pay it. Except as noted in this section, we will begin processing the FOIA request when we receive your agreement to pay.

(b) If estimated fees exceed \$250.00 and you have a history of promptly paying fees charged for information requests, we may respond to your request based on your agreement to pay.

(c) If estimated fees exceed \$250.00 and you have no history of paying fees, we may require you to pay in advance.

(d) If you have previously failed to pay fees for information requests or paid them late, you must pay any fees still owed, plus interest calculated under § 602.15, and the estimated fees before we will respond to a new or a pending request.

(e) If we require advance payment or an advance agreement to pay, we will not consider your request to be received and will not respond to it until you meet the requirement.

§ 602.15 Interest on unpaid fees.

If you fail to pay fees on time, FCA may charge you interest starting on the 31st calendar day following the date we bill you. We will charge you interest at the rate allowed by law (31 U.S.C. 3717) on the billing date.

§ 602.16 Combining requests.

You may not avoid paying fees by filing multiple requests at the same time. When FCA reasonably believes that you, alone or with others, are breaking down one request into a series of requests to avoid fees, we will combine the requests and charge accordingly.

[81 FR 63366, Sept. 15, 2016]

Subpart D—Testimony and Production of Documents in Legal Proceedings in Which FCA is Not a Named Party

§ 602.17 Policy.

(a) The rules in this subpart preserve the confidentiality of FCA's documents and information, conserve employees'

time for official duties, uphold fairness in litigation, and help the Chairman decide when to allow testimony and to produce documents. This subpart does not affect access to documents under the FOIA or the Privacy Act. See subpart B of this part and part 603 of this chapter.

(b) Generally, we will not produce documents voluntarily and employees will not appear as witnesses voluntarily in any legal proceeding. However, in limited circumstances, the Chairman may allow the production of documents or testimony when the Chairman decides it would be in the best interest of FCA or the public. All privileged documents produced under this subpart remain our property. Any employee having information or privileged documents may disclose them only as allowed by the Chairman.

§ 602.18 Definitions.

Court means any entity conducting a legal proceeding.

Demand means any order, subpoena, or other legal process for testimony or documents.

Direct costs means FCA's costs to search for, review, and reproduce documents to respond to a request. Direct costs include the pro rated cost of the salary of the employee performing the work (based on the basic rate of pay plus 16 percent to cover benefits) and the cost of operating reproduction equipment.

Document means any record or other documentary materials, such as books, papers, maps, photographs, and machine-readable materials, regardless of physical form or characteristics (for example, electronic format) in our possession and control when we receive the request.

Employee means any present or former FCA employee, any present or former FCA Board member, any former Federal Farm Credit Board member, any present or former FCA-appointed receiver or conservator, and any present or former agent or contractor.

FCA Counsel means the General Counsel, a Department of Justice attorney, or counsel authorized by FCA to act for the FCA or an employee.

General Counsel means the FCA's General Counsel or designee.

§ 602.19

Legal proceeding means any administrative, civil, or criminal proceeding, including a discovery proceeding, before a court when FCA is not a named party and has not instituted the legal proceeding.

§ 602.19 Request for testimony or production of documents.

(a) *How to make and address a request.* Your request for an employee's testimony about official matters or the production of documents must be in writing and addressed to the General Counsel, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

(b) Your request must contain the following:

- (1) Title of the case;
- (2) Forum;
- (3) Your interest in the case;
- (4) Summary of the litigation issues;
- (5) Reasons for the request;
- (6) Why the confidential information is important; and

(7) An explanation of why the testimony or document you want is not reasonably available from another source. If you want testimony, you must also state how you intend to use the testimony, provide a subject matter summary of the requested testimony, and explain why a document could not be used instead.

(c) The General Counsel may ask you to limit your request to make it less burdensome or to give us information to help us decide if providing documents or testimony is in the public interest.

§ 602.20 Testimony of FCA employees.

(a) An employee may testify only as the Chairman approves in writing. Generally, an employee may testify only by deposition or written interrogatory. An employee may give only factual testimony and may not give opinion testimony.

(b) If, in response to your request, the Chairman decides that an employee may testify, you must serve the employee with a subpoena under applicable Federal or State rules of procedure and at the same time send a copy of the subpoena by registered mail to the General Counsel.

(c) Normally, depositions will be taken at the employee's office, at a

12 CFR Ch. VI (1-1-18 Edition)

time convenient to the employee and the FCA. FCA counsel may represent FCA's interests at the deposition.

(d) If you request the deposition, you must give the General Counsel a copy of the deposition transcript at no charge.

§ 602.21 Production of FCA documents.

(a) An FCA employee may produce documents only as the Chairman allows.

(b) Before we will release any documents, the requesting party must get an acceptable protective order from the court before which the action is pending that will preserve the confidentiality of the documents to be released.

(c) On request, we may provide certified or authenticated copies of documents.

§ 602.22 Fees.

(a) For documents released under this subpart, FCA will charge:

(1) The direct costs of searching for responsive records, including the use of a computer, reviewing the records, and reproducing them. We also will charge for the direct costs of any other services and materials that we provide at your request.

(2) Fifteen cents a copy for each page made by photocopy or similar process.

(3) The direct costs for each certification or authentication of documents.

(b) You must pay by personal check, bank draft drawn on a United States bank, or postal money order made payable to FCA. We will waive fees of \$15.00 or less. We will send the documents after we receive your payment.

§ 602.23 Responses to demands served on FCA employees.

(a) An employee served with a demand or a subpoena in a legal proceeding must immediately tell the General Counsel of such service, the testimony or documents described in the demand, and all relevant facts.

(b) When the Chairman does not allow testimony or production of documents, FCA Counsel will provide the regulations in this subpart to the party

Farm Credit Administration

§ 603.305

or court issuing the demand and explain that the employee may not testify or produce documents without the Chairman's prior approval.

(c) If the court rules the employee must comply with the demand regardless of the Chairman's instructions not to do so, the employee must respectfully refuse to comply.

(d) FCA's decision under this subpart to comply or not to comply with any demand is not a waiver, an assertion of privilege, or an objection based on relevance, technical deficiency, or any other ground. We may oppose any demand on any legal ground.

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

If you are not an employee and are served with a demand or a subpoena in a legal proceeding directing you to produce or testify about an FCA report of examination, other document created or adopted by FCA, or any related document, you must object and immediately tell the General Counsel of such service, the testimony or documents described in the demand, and all relevant facts. You also must object to the production of any documents on the basis that they are FCA's property and cannot be released without FCA's consent. You should tell the requester the production of documents or testimony must follow the procedures in this part.

Subpart E—Release of Records in Public Rulemaking Files

§ 602.25 General.

FCA has a public rulemaking file for each regulation. You may get copies of documents in the public rulemaking file by sending a written request to the Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090. We will charge fifteen cents a copy for each page. We will waive fees of \$15.00 or less.

[64 FR 41770, Aug. 2, 1999, as amended at 81 FR 47692, July 22, 2016]

PART 603—PRIVACY ACT REGULATIONS

Sec.

603.300 Purpose and scope.

603.305 Definitions.

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

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

603.320 Disclosure of requested information to individuals.

603.325 Special procedures for medical records.

603.330 Request for amendment to record.

603.335 Agency review of request for amendment of record.

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

603.345 Fees for providing copies of records.

603.350 Criminal penalties.

603.355 Exemptions.

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

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

§ 603.300 Purpose and scope.

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

(b) The records covered by this part include:

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

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

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

§ 603.305 Definitions.

For the purposes of this part:

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

§ 603.310

(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;

12 CFR Ch. VI (1-1-18 Edition)

(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

Farm Credit Administration

§ 603.340

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, Sun-

days, 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 Agency Services.

(b) The appeal shall be by letter, mailed or delivered to the Director, Office of Agency Services, 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

§ 603.345

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; 70 FR 69645, Nov. 17, 2005; 81 FR 47692, July 22, 2016]

§ 603.345 Fees for providing copies of records.

Fees for providing copies of records shall be charged in accordance with §§ 602.11 and 602.12 of this chapter.

[40 FR 40454, Sept. 2, 1975, as amended at 56 FR 28479, June 21, 1991; 71 FR 54900, Sept. 20, 2006]

§ 603.350 Criminal penalties.

Section 552a (i)(3) of the Privacy Act (5 U.S.C. 552a(i)(3)) makes it a misdemeanor, subject to a maximum fine of \$5,000, to knowingly and willfully request or obtain any record concerning any individual from an agency under false pretenses. Sections 552a (i) (1) and (2) of the Act (5 U.S.C. 552a (i) (1), (2)) provide penalties for violation by agency employees of the Act or regulations established thereunder.

[40 FR 40454, Sept. 2, 1975, as amended at 71 FR 54900, Sept. 20, 2006]

12 CFR Ch. VI (1-1-18 Edition)

§ 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.

Farm Credit Administration

§ 604.405

(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

§ 604.410

12 CFR Ch. VI (1-1-18 Edition)

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 corporations chartered under the Act, or the Funding Corporation; or

Farm Credit Administration

§ 604.435

(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; 75 FR 35967, June 24, 2010; 78 FR 31831, May 28, 2013]

§ 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, unless the Board fixes a different time and/or place for a meeting and follows the requirements of paragraph (b) of this section.

(b)(1) The Farm Credit Administration shall make available for public inspection the time, place, and subject matter of the meeting, and whether it is to be open or closed, by posting notice on its public notice board or on its public Web site except to the extent that such information is exempt from disclosure under the provisions of § 604.420 of this part. The public announcement must be made at least 1 week before the meeting, unless a majority of the FCA Board determines by a recorded vote that agency business requires that a meeting be called on lesser notice, in which case the announcement shall be made at the earliest practicable time.

(2) Once a meeting has been announced, the time, place, and subject matter of the meeting and whether it is open or closed to the public may be changed following the requirements of the Government in the Sunshine Act, 5 U.S.C. 552b.

[74 FR 44727, Aug. 31, 2009]

§ 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

§ 604.440

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 Secretary to the Board.

[42 FR 12161, Mar. 3, 1977. Redesignated and amended at 51 FR 41943, Nov. 20, 1986; 56 FR 2673, Jan. 24, 1991; 70 FR 69645, Nov. 17, 2005]

§ 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]

12 CFR Ch. VI (1-1-18 Edition)

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 13292 and directives issued thereunder by the Information Security Oversight Office (ISOO).

[49 FR 9859, Mar. 16, 1984, as amended at 71 FR 54900, Sept. 20, 2006]

§ 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 2001.33(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

Farm Credit Administration

§ 605.502

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, as amended at 71 FR 54900, Sept. 20, 2006]

§ 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 the incorporating, paraphrasing, restating or generating in new form information that is already classified, and marking the newly developed material consistent with the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing classified information is not derivative classification.

(c) *Mandatory declassification review.* "Mandatory declassification review" means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of the Executive order. All requests for review for declassification under the mandatory review provisions of the Executive order shall be handled by the Information Security Officer or his/her designee.

(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 and secured unopened until the Information Security Officer is available. Under no circumstances 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 4.2(g) 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 312—Classified Information Nondisclosure Agreement. Persons not executing such nondisclosure agreements are subject to sanctions of Executive Order 13292. 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; 71 FR 54900, Sept. 20, 2006]

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

Sec.

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

AUTHORITY: 29 U.S.C. 794.

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

§ 606.601 Purpose.

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

§ 606.602 Application.

(a) This part applies to all programs or activities conducted by the agency. For example, members of the public

Farm Credit Administration

§ 606.603

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

§§ 606.604–606.609

12 CFR Ch. VI (1–1–18 Edition)

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 opportunity 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

Farm Credit Administration

§ 606.650

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 struc-

tural 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.

Farm Credit Administration

§ 606.670

§§ 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 bur-

dens 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 Agency Services, 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 and Inclusion Director, 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; 70 FR 69645, Nov. 17, 2005; 80 FR 68429, Nov. 5, 2015; 81 FR 47692, July 22, 2016]

§§ 606.671–606.999 [Reserved]

**PART 607—ASSESSMENT AND AP-
PORTIONMENT OF ADMINISTRA-
TIVE EXPENSES**

Sec.

607.1 Purpose and scope.

607.2 Definitions.

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

607.4 Assessment of other System entities.

607.5 Notice of assessment.

607.6 Payment of assessment.

607.7 Late-payment charges on assessments.

607.8 Reimbursements for services to non-System entities.

607.9 Reimbursable billings.

607.10 Adjustments for overpayment or underpayment of assessments.

607.11 Report of assessments and expenses.

AUTHORITY: Secs. 5.15, 5.17 of the Farm Credit Act (12 U.S.C. 2250, 2252) 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 defined in §615.5201 of

this chapter) of banks, associations, and designated other System entities, calculated as follows:

(1) For a bank, association, or designated other System entity 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 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 a bank, association, or designated other System entity 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 for the quarters in which it was in existence immediately preceding September 15, divided by the number of quarters in which it was in existence immediately preceding September 15;

(3) For a bank, association, or designated other System entity that is the continuing institution after a merger of existing institutions or a newly formed institution formed through a consolidation of existing institutions and that has 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 for the most recent four quarters immediately preceding September 15 for all the institutions that were merged or consolidated, divided by four;

(4) For a bank, association, or designated other System entity chartered during the period July 1 through September 30 of each year that is not the continuing institution after a merger of existing institutions or a newly formed institution formed through a consolidation of existing institutions, the total of the average daily risk-adjusted assets as of the last day of 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 impor-

tant 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 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; 70 FR 35348, June 17, 2005; 75 FR 35968, June 24, 2010; 81 FR 49772, July 28, 2016; 82 FR 48759, Oct. 20, 2017]

§ 607.3

12 CFR Ch. VI (1-1-18 Edition)

§ 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		
$\$25,000,000 \times .0917\%$	=	\$22,925
$.85X_1 = .000780$ therefore		
$\$25,000,000 \times .0780\%$	=	19,500
$.75X_1 = .000688$ therefore		
$\$50,000,000 \times .0688\%$	=	34,400
$.60X_1 = .000550$ therefore		
$\$400,000,000 \times .0550\%$	=	220,000
$.50X_1 = .000458$ therefore		
$\$400,000 \times .0458\%$	=	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 ex-

amination 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

§ 607.6

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

12 CFR Ch. VI (1-1-18 Edition)

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

Farm Credit Administration

§ 608.802

maintained pursuant to section 5.15 of the Act. Such credits or charges shall be applied to the next applicable assessment payment due during the current or subsequent fiscal year. Where such adjustments are made, the FCA shall provide the institution with a statement of adjustment at least 15 days prior to the date when the institution's next assessment payment is due. Adjustments in assessments shall be made in principal amount only. Overdue amounts under §607.7 are not underpayments for assessment adjustment purposes.

§ 607.11 Report of assessments and expenses.

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

PART 608—COLLECTION OF CLAIMS OWED THE UNITED STATES

Subpart A—Administrative Collection of Claims

Sec.

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

Subpart B—Administrative Offset

- 608.820 Applicability.
- 608.821 Collection by offset.
- 608.822 Notice requirements before offset.
- 608.823 Right to review of claim.
- 608.824 Waiver of procedural requirements.
- 608.825 Coordinating offset with other Federal agencies.
- 608.826 Stay of offset.

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

Subpart C—Offset Against Salary

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

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

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

Subpart A—Administrative Collection of Claims

§ 608.801 Authority.

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

§ 608.802 Applicability.

This part applies to all claims of indebtedness due and owing to the United States and collectible under procedures authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982. The joint regulations and this part do not apply to conduct in violation of antitrust laws, tax claims, claims between Federal agencies, or to any claim which appears to involve fraud, presentation of a false claim, or misrepresentation on the part of the debtor or any other

§ 608.803

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 inter-

12 CFR Ch. VI (1-1-18 Edition)

vals 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,

Farm Credit Administration

§ 608.807

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.

§ 608.808

The debtor shall pay copying costs unless they are waived by the FCA. Copying costs shall be assessed pursuant to §§ 602.11 and 602.12 of this chapter.

[59 FR 13187, Mar. 21, 1994, as amended at 71 FR 54900, Sept. 20, 2006]

§ 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.

12 CFR Ch. VI (1-1-18 Edition)

(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.

Farm Credit Administration

§ 608.812

(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

§ 608.813

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.

12 CFR Ch. VI (1-1-18 Edition)

§ 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

§ 608.823

12 CFR Ch. VI (1-1-18 Edition)

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

Farm Credit Administration

§ 608.825

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

§ 608.826

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

12 CFR Ch. VI (1-1-18 Edition)

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

12 CFR Ch. VI (1-1-18 Edition)

§ 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

Farm Credit Administration

§ 608.843

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.