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**Handbook Mailing HM-12-5**

[6705-01-P]

**FARM CREDIT ADMINISTRATION**

**12 CFR Parts 604, 611, 612, 619, 620, 621, 622, 623, and 630**

RIN 3052-AC65

**Unincorporated Business Entities**

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA, we, or our) is proposing to establish a regulatory framework for Farm Credit System (System) institutions' use of unincorporated business entities (UBEs) organized under State law for certain business activities. For purposes of this proposed rule, a UBE includes limited partnerships (LPs), limited liability partnerships (LLPs), limited liability limited partnerships (LLLPs), limited liability companies (LLCs), and any other unincorporated business entities, such as unincorporated business trusts, organized under State law. This rule does not apply to UBEs that one or more System institutions may establish as Rural Business Investment Companies (RBICs) pursuant to the institutions' authority under the provisions of title VI of the Farm Security and Rural Investment Act of 2002, as amended (FSRIA), and United States Department of Agriculture (USDA) regulations implementing FSRIA. This rule does apply, however, to System institutions that organize UBEs for the express purpose of investing in RBICs.

**DATES:** Comments on this proposed rule must be submitted on or before November 13, 2012.

**ADDRESSES:** We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we do not accept comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- E-mail: Send us an e-mail at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).
- FCA Web site: <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or from our Web

site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

#### **FOR FURTHER INFORMATION CONTACT:**

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#### **SUPPLEMENTARY INFORMATION:**

##### **I. Objectives**

The objectives of this proposed rule are to:

- Affirm FCA's authority to regulate and examine the System institutions' use of UBEs, including the authority to impose any conditions FCA deemed necessary and appropriate on UBE business activity, and to take enforcement action against System institutions' activities involving UBEs;
- Prohibit System institutions from using UBEs to engage in direct lending or any activity that exceeds their authority under the Act or circumvents the application of cooperative principles;
- Limit the amount of a System institution's equity investments in UBEs;
- Create a process for FCA review and approval of requests by System institutions to organize or invest in UBEs for certain business activity;
- Establish standards for the proper and adequate disclosure and reporting of System UBE activity; and
- Ensure that the System's use of UBEs remains transparent and free from conflicts of interest.

##### **II. Background**

Beginning in the early 1980s, FCA approved joint ventures among System institutions, as well as System institution contractual alliances with non-System entities, that sought to improve the reliability and delivery of authorized products and services to agriculture and rural America. These collaborative initiatives enabled System institutions to provide services and products more efficiently and inexpensively, resulting in improved and less costly services and products to the farmer and rancher System borrowers and rural communities.

Business models and structures have significantly evolved since the 1980s, as more and more States have adopted uniform statutes governing unincorporated, largely limited liability, business structures. The System's use of UBEs has been a logical outgrowth of its earlier collaborative initiatives implemented through joint ventures and alliances. Like these earlier joint initiatives, UBEs enable the System to provide more efficient, less costly services and products to the agricultural or rural community,

but through more sophisticated, formal and flexible structures that address ownership rights, management, operations, assumptions of liability, allocation of profits and losses and payment of taxes. Further, UBEs have the added advantage of providing more protection for System stockholders by enabling a System institution to limit its liability to the amount of its equity investment in a UBE.

### **III. The Statutory Basis for the Proposed Rule**

#### **A. System Institutions' Authority**

The System's existing investment<sup>1</sup> and incidental powers<sup>2</sup> provide the authorities for System institutions to invest in and form UBEs for certain business activity. Specifically, under § 615.5140(e), System institutions may exercise their investment authorities to invest in "other investments approved by the FCA" provided the funding bank has approved the investment. System investments in UBEs fall under this category, and may be approved by FCA upon a request that explains the risk characteristics of the investment and the System institution's purpose and objectives for making the investment.

Unlike the express authority to organize service corporations under sections 4.25 and 4.28(A) of the Act,<sup>3</sup> no provision under the Act explicitly authorizes System institutions to organize entities under State law to engage in business activity. However, Congress has long encouraged coordinated initiatives by System institutions to provide joint products, services or functions to System borrowers. We note that the farmer-owned, cooperative and jointly liable System, by its very establishment, is designed to accomplish the most efficient and effective delivery system of credit and related services to agriculture and its producers and rural communities. Moreover, various provisions in the Act have authorized or directed System institutions to offer joint products or services. The same year that Congress added the service corporation authority to the Act (1980), it also directed System institutions to establish programs for young, beginning and small (YBS) farmers and ranchers "in coordination with other units of the Farm Credit System serving the territory and with other governmental and private sources of credit."<sup>4</sup> These 1980 additional authorities evidence Congress' intention that System institutions be able to provide coordinated services and products to System borrowers and rural communities using business structures that can best facilitate such efforts.

In fact, System institutions, with FCA approval, have been using their incidental authority to enter into non-corporate joint ventures to promote coordinated and expedient initiatives, which in recent years have included State-chartered UBEs.

This proposed rule will provide a more uniform approval and oversight process for the System's continuing use of UBEs. The rule emphasizes that incidental powers can neither be the basis for broadening or circumventing the limitations and restrictions of a System institution's express powers in carrying on the business of the bank or association nor used to engage in activities that are impermissible under the Act. The delivery of System credit, services and other products will still chiefly be provided by System institutions' direct use of their express powers to serve their eligible borrowers and customers. As a Government-sponsored enterprise (GSE) of cooperative institutions owned and controlled by their member-borrowers, it is essential that System institutions maintain their strong cooperative traditions and reputations.<sup>5</sup>

In recognizing changing business practices through the System's use of UBEs, the preservation of the System's member-focused principles remains paramount. This proposed rule would therefore prohibit System institutions from engaging in direct lending activities or any other activity through UBEs that circumvents the application of cooperative principles such as borrower rights, stock ownership, voting rights or patronage.

Finally, to provide transparency to the public, FCA intends to post on its Web site the name and business purpose of UBEs organized and controlled by one or more System institutions that are approved under this rule.

## **B. FCA Authority over System Investments in UBEs and UBE Business Activity**

Under part C of title V of the Act, FCA has the ability to take an enforcement action against a System institution in connection with its equity investment in and use of a UBE for business activity to ensure an institution's safety and soundness.

## **IV. Section-by-Section Analysis**

### **A. Unincorporated Business Entities [new §§ 611.1150 through 611.1158]**

We propose adding a new subpart J to part 611 that would address the purpose and scope of unincorporated business entities organized or invested in by System institutions. Subpart J includes provisions on: (1) Definitions; (2) FCA's regulatory, examination, enforcement, and assessment authorities; (3) general restrictions and prohibitions on the use of UBEs; (4) notice-only requirements for certain activities conducted through UBEs; (5) FCA's review process for UBEs not meeting the notice-only provisions; (6) ongoing requirements; (7) disclosure and reporting requirements; and (8) transparency and conflict of interest requirements. Subpart J also contains a grandfather provision for those UBEs previously approved by FCA on a case-by-case basis and for those UBEs established under the guidance provided in FCA Bookletter BL-057,<sup>6</sup> which may be rescinded once a final rule becomes effective.

#### **1. Purpose and Scope [new § 611.1150]**

Proposed § 611.1150 affirms that System institutions have incidental power as may be necessary or expedient to carry on the business of the bank or association, as applicable. In exercising this incidental power, System institutions may continue to establish UBEs, provided the UBE business activity is necessary or expedient to the System institution's express authorities in carrying on the business of the bank or association and falls within the parameters of the rule.

The proposed rule would apply to any System institution that organizes or invests in a UBE for the delivery of services or functions. This proposed rule also pertains to any System institution that has an equity investment in a System-organized and controlled UBE regardless of the amount of the investment. The proposed rule would also apply to any System institution that is a partner or member of a UBE organized to acquire and manage unusual or complex collateral associated with loans under FCA Bookletter BL-057.

Except as authorized by this rule, System institutions cannot manage, control, or invest in any State-chartered or organized business entity. The proposed rule would not permit System institutions to make equity investments in UBEs that are organized, controlled or managed by a non-System entity (third-party UBE) except as may be approved by FCA under § 615.5140(e) for de minimis and passive investments. Such approvals would be considered outside of this rule.

As previously stated, this rule is not applicable to any UBEs that System institutions may establish as RBICs under their separate statutory authority. System institutions' activities under the RBIC authority must be carried out in accordance with the authority of and regulations issued by USDA.<sup>7</sup>

However, this rule does apply to System institutions that organize UBEs for the express purpose of investing in a RBIC.

## **2. Definitions [new § 611.1151]**

We propose a definitions section in § 611.1151 that defines the following relevant terms used in the proposed rule.

Articles of Formation refers to the relevant State documents on the establishment, ownership, and operation of a UBE and includes registration certificates, charters, articles of organization, partnership agreements, membership or trust agreements, operating, administration or management agreements, fee agreements, or any other documentation on the establishment, ownership or operation of a UBE.

Control<sup>8</sup> distinguishes whether a System institution controls the business activities, operations, and actions of the UBE. Control means that one System institution, directly or indirectly, owns more than 50 percent of the UBE's equity or serves as the general partner<sup>9</sup> of an LLLP or constitutes the sole manager or is the managing member of a UBE. However, under generally accepted accounting principles (GAAP), the power to control may also exist with a lesser percentage of ownership, for example, if a System institution is the UBE's primary beneficiary; exercises significant influence over the UBE; or establishes control under other facts and circumstances in accordance with GAAP.

Under this definition, a System institution also will be deemed to have control over the UBE if it exercises decision-making authority in a principal capacity of the UBE as defined under GAAP.

A System institution must divest its ownership interest or withdraw as a member or partner from any UBE as soon as practicable if, after a System institution organizes or invests in a System-controlled UBE, non-System persons or entities obtain control as defined under GAAP. Alternatively, as soon as practicable the non-System persons or entities must relinquish control as defined under GAAP.

Equity investment means a System institution's contribution of money or assets to the operating capital of a UBE that provides ownership rights in return. The term is meant to include any such contribution of money or assets regardless of the terminology that might be used in an individual State's statute or regulations. The definition of equity investment does not include the costs of organizing a UBE, such as the cost of the articles of formation, attorney fees, filing fees, etc.

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

Third-party UBE means any UBE that is owned or controlled by one or more non-System persons or entities.

UBE is an acronym for Unincorporated Business Entity. As defined for purposes of this proposed rule, the term "UBE" includes unincorporated business entities that are formally established and maintained through applicable State law, such as limited partnerships, limited liability companies, and business or other trust entities.

UBE Business Activity refers to the delivery of services or functions by a UBE for one or more System institutions.

## **3. Regulation, Examination, Enforcement, and Assessment Authority [new § 611.1152]**

Proposed § 611.1152 affirms that FCA has full regulatory, supervisory, oversight, examination and enforcement authority over System institutions in connection with their equity investments in and control of UBEs and the services and functions that a UBE performs for the System institution. Such authority includes FCA's right to require a System institution to withdraw from a UBE through dissolution or disassociation or to divest of any investment in a UBE. Sections 5.17(a)(5), 5.17(a)(10), and 5.25(a) of the Act, as well as § 615.5354, also give FCA the authority to condition the approval of a System institution's equity investment in a UBE. The FCA's use of these authorities ensures that System institutions providing certain functions and services through State-organized or chartered UBEs remain safe and sound and operate in accordance with law and regulations.

Finally, this proposed section provides that the cost of regulating and examining equity investments in UBEs and the services and functions that UBEs can perform for System institutions will be subject to FCA's assessment authority under section 5.15 of the Act.

#### **4. General Restrictions and Prohibitions on the Use of UBEs [new § 611.1153]**

Proposed § 611.1153 sets forth certain general restrictions on any function, service or activity that a System institution(s) conducts through a UBE. These restrictions would ensure that the System continues to operate in a safe and sound manner and that its status as a cooperative system of lending institutions and a GSE is not jeopardized through the use of UBEs.

The first restriction would provide that any business a System institution conducts through a UBE must be necessary or expedient to the business of the System institution. A UBE cannot be used to deliver services or functions or to engage in any activity that a System institution itself could not engage in under the Act or implementing regulations.

A second restriction would protect the integrity of the System's cooperative structure by prohibiting System institutions from engaging in direct lending activities or from engaging in any other activity through the use of a UBE that would circumvent the application of cooperative principles, as determined by FCA, including borrower rights, stock ownership, voting rights or patronage.

A third restriction would ensure that the use of a UBE by a System institution is transparent to the public and free from conflicts of interest. This provision would require that a UBE be held out to the public as a separate or subsidiary entity; the business transactions, accounts and records of the UBE are not commingled with those of the System institution; and all transactions between officers, employees and agents of the UBE and a System institution are conducted at arm's length, in the interest of the System institution, and in compliance with the standards of conduct rules in 12 CFR part 612, subpart A.

A fourth restriction would limit a single System institution from conducting business through a one-member UBE, such as a limited liability company, other than for the limited purposes of: (1) Acquiring and managing unusual or complex collateral associated with loans, as set forth under the guidance of FCA Bookletter BL-057; and (2) providing electronic transaction, fixed asset, trustee or other similar services that are integral to the daily internal operations of System institutions.

We are proposing this limitation for a number of reasons. First, the Agency does not want to set in motion a proliferation of System-controlled UBEs organized for numerous purposes by a single System institution. Such a proliferation could create a costly administrative burden for the Agency and complicate FCA's oversight authority. Moreover, the creation of one-member UBEs does not foster System collaborative efforts aimed at providing more efficient System operations and improved services

to agriculture, agricultural producers, and rural America. Just as Congress encouraged System collaboration through the creation of the 4.25 service corporations, the use of UBEs would, generally, be reasonable and supportable from a business perspective when undertaken through System institution partnerships or multi-member limited liability companies. Finally, without reasonable and supportable reasons to form a UBE, including a one-member UBE, System institutions should conduct all aspects of their business activity either directly or through a service corporation under section 4.25 of the Act.

Regardless of the limitations on one-member UBEs, we recognize that the use of a UBE to perform services integral to a System institution's daily internal operations, as noted above, may lessen administrative burdens and reduce costs for a System institution. FCA may determine that some of these integral and internal services that a UBE, including a one-member UBE, could provide would become eligible for the notice provision in proposed § 611.1154. If so, we would inform System institutions of this development through an FCA Bookletter or other similar means.

We note that, under the agricultural credit association (ACA) structure, the ACA and its subsidiary production credit association (PCA) and Federal land credit association (FLCA) are treated by FCA as one entity for most regulatory purposes. Also, we note that an Agricultural Credit Bank (ACB) and its Farm Credit Bank (FCB) subsidiary are treated by FCA as a single entity for most regulatory purposes. Therefore, we would consider any UBE formed solely between an ACA and its subsidiary PCA and FLCA or an ACB and its subsidiary FCB as a one-member UBE (and not a multi-member UBE) that could be organized only for the limited purposes set forth above.

A fifth restriction would limit a UBE organized as a partnership to one that is established between or among two or more System institutions that do not have a common board of directors. An ACA and its PCA and FLCA subsidiaries, which operate under a common board of directors, are treated by FCA as one entity for most regulatory purposes, and could not create a partnership between or among themselves under this rule. Similarly, an ACB and its FCB subsidiary, also treated by FCA as one entity for most regulatory purposes, could not create a partnership between themselves.

A sixth restriction would prohibit one or more System institutions that organize or invest in a UBE from creating a subsidiary of the UBE, or enabling the UBE to create its own subsidiary or any other type of affiliated entity. This restriction is essential given FCA's obligations as an independent, safety and soundness regulator of a GSE. The complex arrangements that could possibly be established between System-owned or controlled UBEs and other special purpose vehicles currently permitted under various State laws could, as stated above, create a costly administrative burden for the Agency and complicate FCA's regulatory, examination, and enforcement oversight of the System's safety and soundness. For this reason, we are prohibiting System institutions from propagating additional subsidiaries or any other affiliated entities through their UBEs.

A seventh restriction requires that a System institution's liability be limited to the amount of the institution's equity investment in the UBE, thus preserving a significant benefit for the use of such a business structure — the concept of limited liability. Therefore, System institutions could not serve as a general partner in those UBEs organized as limited partnerships.

An eighth restriction would limit the aggregate amount of equity investments that a System institution is authorized to hold in all UBEs to one percent of the institution's total outstanding loans calculated at the time of each investment. The proposed rule allows FCA to approve an exception to this limitation on a case-by-case basis. In addition, FCA may impose a limitation that is lower than the one-percent aggregate limit based on safety or soundness and other relevant concerns. We believe this limit to be reasonable given that such an investment imposes a financial liability on a System institution

up to the amount of its total investments in UBEs. Such an investment remains at-risk; it is recovered only after the System institution sells its interest to other investors or the UBE owners receive some of the proceeds from the liquidated assets of the UBE (if any such proceeds remain after satisfying all other obligations of the UBE). To calculate the investment limit under proposed § 611.1153(h), the rule would require that equity investments held by a service corporation be attributed to its System institution bank and association owners based on their percentage of ownership of the service corporation. This limit would not apply to equity investments made in one-member UBEs organized to acquire and manage unusual or complex collateral associated with loans.

The ninth restriction prohibits a System institution from making any equity investment in a third-party UBE except as may be authorized by FCA on a case-by-case basis under § 615.5140(e) for de minimis and passive investment purposes (such requests would be considered outside of this rule). Also, a System institution is prohibited from being named as the general partner, manager or primary beneficiary of a third-party UBE. Such arrangements have the potential to subject a System institution to liability and reputational risks created by the third-party UBE and to result in actual or apparent conflicts of interest that neither a System institution nor FCA could adequately control. Finally, such arrangements could dilute the Agency's oversight of System activities and diminish FCA's ability to ensure the safety and soundness of the System.

A final restriction would prohibit non-System entities or persons from holding any equity interest in a System-controlled UBE with one exception. Non-System entities or persons would be able to hold up to 20 percent of the equity of a System-controlled UBE that is organized to provide services integral to the daily internal operations of a System institution. This percentage of non-System ownership is the same non-System ownership percentage that FCA regulations currently permit for service corporations organized by one or more System institutions under section 4.25 of the Act. The ninth and final restrictions do not apply to UBEs formed for the purpose of acquiring and managing unusual or complex collateral associated with multiple-lender loan transactions in which non-System persons or entities are participants.

## **5. Notice-Only Requirement for Certain UBE Equity Investments [§ 611.1154]**

In proposed § 611.1154, we describe the specific types of UBEs that a System institution may organize or invest in by providing sufficient advance notice to the FCA. This section also sets forth the specific information that a System institution must include in its notice as well as where the notice must be filed.

This "notice-only" provision would be limited to the following UBEs:

- a. Those engaged in acquiring and managing the unusual or complex collateral associated with loans as described in FCA Bookletter BL-057, dated April 2, 2009; and
- b. Those providing hail or multi-peril crop insurance services in accordance with § 618.8040.

FCA may determine that other UBE business activity is also appropriate for this "notice-only" provision and, in such an event, would notify all System institutions by booklet or other means. Only System institutions with a composite FIRS rating of 1 or 2 would qualify for the "notice-only" provision. All other System institutions that intend to form or invest in a UBE must obtain FCA's prior approval under the provisions in § 611.1155 regardless of the nature or purpose of the intended UBE.

A System institution that qualifies for the "notice-only" provision would be required to submit

articles of formation as defined in § 611.1151 that address basic information on the UBE's ownership, control, and operations. The System institution would also need to specify the dollar amount of its investment in the UBE and provide a certified resolution from its board of directors that the board has authorized the UBE investment and business activity and has given its approval to submit the notice to FCA. A letter from the funding bank that the bank has approved such investment would also be required. For those System institutions forming a UBE for hail or multi-purpose crop insurance services, or for other UBE activity that FCA determines appropriate for the "notice-only" provision, the notice would need to include a statement from the board of directors explaining the operating efficiencies and benefits to be gained from the conduct of business through a UBE. The statement must also affirm that the UBE is necessary or expedient to the institution's business; that it will operate with transparency; that it will operate in a manner that prevents conflicts of interest between the UBE and the institution itself; that the UBE will comply with all applicable Federal, State, and local laws; and that the UBE will not be used by the System institution to make direct loans, perform any functions, or provide any services that the System institution is not authorized to provide under the Act and FCA regulations or that go beyond the stated purpose of the UBE. FCA may require additional information under the notice provision or allow the omission of some information. Finally, System institutions that organize or invest in UBEs under this "notice-only" provision must comply with the ongoing requirements and disclosure and reporting requirements of §§ 611.1156 and 611.1157, respectively.

#### **6. Approval Process [new § 611.1155]**

In § 611.1155, we describe the documents that FCA would require to review a request for approval to organize or invest in a UBE if the request would not qualify for the "notice-only" provision in § 611.1154. We would ask a System institution to explain the risk characteristics of the investment, the initial amount of equity it plans to invest in the UBE, the purpose of the UBE, and its objectives. A System institution must provide support for its need to establish or invest in a UBE. We would also ask for a statement on the operating efficiencies that the System institutions expect to achieve and the benefits they expect to derive from using the UBE. A System institution would be required to submit the articles of formation defined in § 611.1151 that address basic information on the UBE's ownership, management structure, and operations. We would also require a certified resolution of the institution's board of directors approving the equity investment in the UBE and the UBE's business activity as well as a letter from the funding bank that it has approved the institution's investment in the UBE. In addition, we would require that an institution's board of directors provide us with a statement that the UBE is necessary or expedient to the institution's business; that it will operate with transparency; that it will operate in a manner that prevents conflicts of interest between the UBE and the institution itself; that the UBE will comply with all applicable Federal, State, and local laws; and that the UBE will not be used by the System institution to make direct loans, perform any functions, or provide any services that the System institution is not authorized to provide under the Act and FCA regulations or that go beyond the stated purpose of the UBE. The institutions may also submit any other information they deem necessary. FCA may require additional information or allow the omission of some information depending on the complexity of the UBE request. If FCA denies approval of the request, we will specify in writing our reasons for denial.

#### **7. Ongoing Requirements [new § 611.1156]**

Any System institution that organizes or invests in a UBE for the delivery of services or functions under the provisions of this rule would be expected to maintain and ensure FCA's access to all documents and records of the UBE. Also, a System institution would need to be prepared to divest its ownership interest or withdraw as a member or partner from any UBE that conducts activities beyond its approved limited purpose or that are contrary to the Act or FCA regulations. Under the proposed rule, if the FCA

directed the System institution to divest its equity investment in, or withdraw as a member, partner, general partner, managing member or primary beneficiary of, a System-owned and controlled UBE, the institution would be required to do so as soon as practicable.

If a System institution fails to divest its equity investment in, or withdraw as a member, partner, general partner, managing member or primary beneficiary of, a System-owned and controlled UBE, as directed by the FCA within a reasonable period of time, such institution may be subject to an enforcement action pursuant to FCA's enforcement authority under part C of title V of the Act.

## **8. Disclosure and Reporting Requirements [§ 611.1157]**

All System institutions that hold equity investments in UBEs would be required to include information about their equity investments and business activities in their annual reports to shareholders. We propose amending § 620.5, which prescribes the content of the annual report to shareholders, to include this requirement. FCA could also direct that System institutions holding equity investments in UBEs make periodic reports to FCA as required by § 621.12.

System institutions with UBEs that are grandfathered under the rule through the provision in § 611.1158 (discussed below) would be subject to the ongoing requirements of § 611.1156 and all disclosure and reporting requirements of § 611.1157.

We also propose that a System institution dissolving a UBE that it controls be required to provide a timely report to FCA when the dissolution occurs. This reporting will enable FCA to have current information on the status of UBE activity.

## **9. Grandfather Provision [new § 611.1158]**

We propose grandfathering from the Notice and Approval provisions of the rule a System institution's organization of, or investment in, a UBE that received specific, written approval by FCA prior to the date this proposed rule would become effective as a final rule. We would also grandfather those UBEs organized pursuant to the guidance in FCA Bookletter BL-057. All System institutions grandfathered would remain subject to the conditions of approval imposed at the time of FCA's approval and be subject to the ongoing requirements of § 611.1156 and the disclosure and reporting requirements of § 611.1157. System institutions so grandfathered could not change or expand the UBE business activity, ownership interests in, or control of the UBE without providing notice to FCA at least 20 business days in advance of any change. If FCA determined that the proposed change or expansion is material, it could require the System institutions to submit a new approval request under § 611.1155.

## **B. Other Miscellaneous Changes**

We propose conforming changes to various FCA regulatory sections to delete terms made obsolete by a final UBE rule and to add new regulatory sections cross-referenced in this proposed regulation.

### **Regulatory Flexibility Act**

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small

entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

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<sup>1</sup>Sections 1.5(15) and 3.1(13)(A) of the Act set forth the investment authorities for System banks. Sections 2.2(10) and 2.12(18) of the Act set forth the investment authorities for System associations. FCA regulations in subpart E of part 615 imbue service corporations, chartered under section 4.25 of the Act, with the same investment authorities as their organizing System banks and associations.

<sup>2</sup>Sections 1.5(3), (15) and (21); 2.2(3), (10) and (20); 2.12(3), (18) and (19); 3.1(3) and (16) of the Act.

<sup>3</sup>Section 4.25 and 4.28(A), added to the Act in 1980, expressly authorize System banks and associations to organize service corporations. Congress stated that this authority was needed to provide a more efficient way for System banks to coordinate services. Service corporations, like System banks and associations, are federally chartered instrumentalities and subject to the same FCA supervisory, regulatory and enforcement oversight as System banks and associations. Service corporations are authorized to provide the same functions and services as banks and associations with two significant exceptions: they cannot extend credit or provide insurance services.

<sup>4</sup>Section 4.19 of the Act.

<sup>5</sup>This perspective is noted in the FCA Board's Policy Statement (FCA-PS-80) on Cooperative Operating Philosophy—Serving the Members of Farm Credit System Institutions, dated October 14, 2010, and published in the Federal Register at 75 FR 64728 on October 20, 2010.

<sup>6</sup>FCA Bookletter BL-057 on "Use of State-Chartered Business Entities to Hold Acquired Property," dated April 2, 2009, provides guidance on the System's use of UBEs to acquire and manage unusual or complex collateral associated with loans.

<sup>7</sup>Pub. L. 107-171, title VI, sec. 6029 (2002), as amended by the Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, title VI, sec. 6027, and USDA regulations at 7 CFR 4290.10 through 4290.3099. FCA has the authority to ensure that a System institution's investment in a RBIC is safe and sound and that they operate the RBIC in accordance with law and regulation.

<sup>8</sup>The term control as it is used in the context of this proposed rule is based on the guidance provided in Generally Accepted Accounting Principles (GAAP) under the Financial Accounting Standards Board's Accounting Standards Codification (ASC). See primary discussion of control at ASC 810-10-15 and ASC 810-10-25; significant influence over an investment at ASC 323-10-15; and control for limited partnerships and similar entities, including LLCs, etc. at ASC 810-20-25. See also proposed Accounting Standards Update 2011-220 for possible revisions to these sections.

<sup>9</sup>The rule would allow a System institution to serve as a general partner of an LLLP, but not an LP, since the liability for the partnership's debts and obligations is limited to the amount invested by the general partner in an LLLP but not in an LP. We note that an LLP does not have a general partner because all partners in an LLP have limited liability.



## **List of Subjects**

### **12 CFR Part 604**

Sunshine Act.

### **12 CFR Part 611**

Agriculture, Banks, banking, Rural areas.

### **12 CFR Part 612**

Agriculture, Banks, banking, Conflict of interests, Crime, Investigations, Rural areas.

### **12 CFR Part 619**

Agriculture, Banks, banking, Rural areas.

### **12 CFR Part 620**

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

### **12 CFR Part 621**

Accounting, Agriculture, Banks, banking, Penalties, Reporting and recordkeeping requirements, Rural areas.

### **12 CFR Part 622**

Administrative practice and procedure, Crime, Investigations, Penalties.

### **12 CFR Part 623**

Administrative practice and procedure.

### **12 CFR Part 630**

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 604, 611, 612, 619, 620, 621, 622, 623, and 630 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

#### **PART 604--FARM CREDIT ADMINISTRATION BOARD MEETINGS**

1. The authority citation for part 604 continues to read as follows:

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

#### **§ 604.420 [Amended]**

2. Section 604.420 is amended by removing the words "service organizations" in paragraph (i)(1) and adding in their place, the words "service corporations chartered under the Act."

#### **PART 611--ORGANIZATION**

3. The authority citation for part 611 is revised to read as follows:

**Authority:** Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 3.21, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0-7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2142, 2154a, 2183, 2184, 2203, 2208, 2209, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a-2279f-1, 2279aa-5(e)); secs. 411 and 412 of Pub. L. 100-233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100-399, 102 Stat. 989, 1004.

### **§ 611.1130 [Amended]**

4. Section 611.1130 is amended in the first sentence of paragraph (a) by removing the words "service organizations organized under the Act" and adding in their place, the words "service corporations chartered under the Act".

5. Amend Part 611 by revising the heading of subpart I to read as follows:

#### **Subpart I--Service Corporations**

### **§ 611.1136 [Amended]**

6. Section 611.1136 is amended by:

- Revising the heading of § 611.1136;
- Removing the words "and unincorporated service organizations" in paragraph (c); and
- Removing the words "service organizations" each place they appear and adding in their place, the words "service corporations".

The revision reads as follows:

#### **§ 611.1136 Regulation and examination of service corporations.**

7. Part 611 is amended by adding a new subpart J, consisting of §§ 611.1150 through 611.1158, to read as follows:

#### **Subpart J--Unincorporated Business Entities**

##### **Sec.**

611.1150 Purpose and scope.  
611.1151 Definitions.  
611.1152 Authority over equity investments in UBEs for business activity.  
611.1153 General restrictions and prohibitions on the use of UBEs.  
611.1154 Notice of equity investments in UBEs.  
611.1155 Approval of equity investment in UBEs.  
611.1156 Ongoing requirements.  
611.1157 Disclosure and reporting requirements.  
611.1158 Grandfather provision.

### **§ 611.1150 Purpose and scope.**

(a) *Purpose.* This subpart sets forth the parameters for one or more Farm Credit System (System) institutions to organize or invest in an Unincorporated Business Entity (UBE) in accordance with the Farm Credit Act of 1971, as amended (Act).

(b) *Scope.* Except as authorized under these regulations, no System institution may manage,

control, become a member or partner, or invest in a State-organized or chartered business entity. This rule applies to each System institution that organizes or invests in a UBE, including a UBE organized for the express purpose of investing in a Rural Business Investment Company. This rule does not apply to UBEs that one or more System institutions have the authority to establish as Rural Business Investment Companies pursuant to the provisions of title VI of the Farm Security and Rural Investment Act of 2002, as amended (FSRIA) and United States Department of Agriculture regulations implementing FSRIA.

**§ 611.1151 Definitions.**

For purposes of this subpart, the following definitions apply:

Articles of formation means registration certificates, charters, articles of organization, partnership agreements, membership or trust agreements, operating, administration or management agreements, fee agreements or any other documentation on the establishment, ownership, or operation of a UBE.

Control means that one System institution, directly or indirectly, owns more than 50 percent of the UBE's equity or serves as the general partner of an LLLP, or constitutes the sole manager or the managing member of a UBE. However, under generally accepted accounting principles (GAAP), the power to control may also exist with a lesser percentage of ownership, for example, if a System institution is the UBE's primary beneficiary, exercises significant influence over the UBE or establishes control under other facts and circumstances in accordance with GAAP. Under this definition, a System institution also will be deemed to have control over the UBE if it exercises decision-making authority in a principal capacity of the UBE as defined under GAAP.

Equity investment means a System institution's contribution of money or assets to the operating capital of a UBE that provides ownership rights in return.

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

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

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

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

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

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

(b) Assessing UBE investments and business activity. In accordance with section 5.15 of the Act and § 607.2(h), the cost of regulating and examining equity investments in UBEs and the services and functions that UBEs can perform for System institutions will be taken into account when assessing a System institution for the cost of administering the Act.

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

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

(1) Necessary or expedient, as determined by the FCA, to the business of one or more System institutions owning the UBE; and

(2) In no instance greater than the functions and services that one or more System institutions

owning the UBE are authorized to perform under the Act and as determined by the FCA.

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

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

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

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

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

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

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

(2) Providing limited services such as electronic transaction, fixed asset, trustee or other services that are integral to the daily internal operations of a System institution.

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

(f) Prohibition on UBE subsidiaries. A System institution is prohibited from creating a subsidiary of a UBE that it has organized or invested in under this subpart or from enabling the UBE itself to create a subsidiary or any other type of affiliated entity.

(g) Limit on potential liability.

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

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

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

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

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

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

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

(j) Limitation on non-System equity investments.

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

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

#### **§ 611.1154 Notice of equity investments in UBEs.**

(a) *Applicability.* This notice provision is applicable only to System institutions that have a composite Financial Institution Rating System (FIRS) rating of 1 or 2 and wish to make an equity investment in UBEs whose activities are limited to the following purposes:

- (1) Acquiring and managing unusual or complex collateral associated with loans;
- (2) Providing hail or multi-peril crop insurance services in collaboration with another System institution in accordance with § 618.8040; and
- (3) Any other UBE business activity that FCA determines to be appropriate for this "notice-only" provision.

(b) *Notice requirements.* A System institution must provide reasonable written notice to FCA. System institutions are encouraged to submit such notice as soon as possible, but it must be submitted no later than 20 business days in advance of making an equity investment in a UBE for authorized UBE business activity described in paragraph (a) of this section. The notice must include:

- (1) The UBE's articles of formation, including its name and the State in which it is organized, length of time it will exist, its partners or members, and its management structure;
- (2) The dollar amount of the System institution's equity investment in the UBE;
- (3) A certified resolution of the System institution's board of directors authorizing the equity investment in, and business activity of, the UBE and the board's approval to submit the notice to the FCA;

(4) A letter from the funding bank that it has approved the institution's equity investment in the UBE;

(5) For those UBEs identified in paragraphs (a)(2) and (3) of this section, a detailed statement from the System institution's board of directors that the UBE:

- (i) Is needed to achieve operating efficiencies and benefits;
- (ii) Is necessary or expedient to the System institution's business;
- (iii) Will operate with transparency;
- (iv) Will conduct its business activity in a manner designed to prevent conflicts of interest between its purpose and operations and the mission and operations of the System institution(s);
- (v) Will otherwise be in compliance with applicable Federal, State, and local laws; and
- (vi) Will not be used by the System institution to make direct loans; perform any functions or provide any services that the System institution is not authorized to perform or provide under the Act and FCA regulations; or to exceed the stated purpose of the UBE as set forth in its articles of formation.

(6) Any additional information the System institution wishes to submit.

(c) *Supplementation or omission of information.* FCA may require the supplementation or allow the omission of any information required under paragraph (b) of this section.

(d) *Other requirements.* All System institutions under this "notice-only" provision must also comply with the ongoing requirements and disclosure and reporting requirements set forth in §§ 611.1156 and 611.1157, respectively, of this subpart.

#### **§ 611.1155 Approval of equity investments in UBEs.**

(a) *Request.* System institutions must receive FCA approval before organizing or investing in any UBE that does not qualify for the "notice-only" provision set forth in § 611.1154 of this subpart.

A request for approval under this section must include the following information:

- (1) A detailed statement of the risk characteristics of the investment, as required by § 615.5140(e) and the initial amount of equity investment;
- (2) A detailed statement on the purpose and objectives of the UBE; the need for the UBE and the operating efficiencies and benefits that will be achieved by using the UBE;
- (3) The proposed articles of formation addressing, at a minimum, the following:
  - (i) The UBE's name, the State in which it is organized, the city and State in which its principal office is to be located, and its partners or members; and management structure;
  - (ii) Specific business activities that the UBE will conduct;
  - (iii) General powers of the UBE;
  - (iv) Ownership, voting, partnership, membership and operating agreements for the UBE;
  - (v) Procedures to adopt and amend the partnership, membership or operating agreement of the UBE;
  - (vi) The standards and procedures for the application and distribution of the UBE's earnings; and
  - (vii) Length of time the UBE will exist.
- (4) A certified resolution of the System institution's board of directors authorizing the equity investment in the UBE and the UBE business activity and the board's approval to submit the request to the FCA.
- (5) A letter from the funding bank that it has approved the institution's equity investment in the UBE;
- (6) A statement from the System institution's board of directors that the UBE:
  - (i) Is necessary or expedient to the System institution's business;
  - (ii) Will operate with transparency;
  - (iii) Will conduct its business activity in a manner designed to prevent conflicts of interest between its purpose and operations and the mission and operations of the System institution(s);
  - (iv) Will comply with applicable Federal, State, and local laws; and
  - (v) Will not be used by the System institution to make direct loans; perform any functions or provide any services that the System institution is not authorized to perform or provide under the Act and FCA regulations; or exceed the purpose of the UBE as stated in its articles of formation.
- (7) Any additional information the System institution wishes to submit or any other supporting documentation that FCA may request.
  - (b) *Supplementation or omission of information.* FCA may require the supplementation or allow the omission of any information required under paragraph (a) of this section based on the complex or noncomplex nature of the proposed UBE.
  - (c) *Denial of a request.* The FCA will specify in writing to the submitting System institutions the reasons for denial of any request to organize or invest in a UBE.

#### **§ 611.1156 Ongoing requirements.**

A System institution that makes an equity investment in a UBE under §§ 611.1154 or 611.1155 of this subpart must also comply with the following requirements:

- (a) Maintain and ensure FCA's access to all books, papers, records, agreements, reports and other documents of each UBE necessary to document and protect the institution's interest in each entity;
- (b) Divest, as soon as practicable, the institution's equity or beneficial interest in (or withdraw membership from) any UBE that conducts activities beyond those authorized to carry out its limited purpose or that are contrary to the Act or FCA regulations; and
- (c) Divest the institution's respective ownership or managerial duties in the UBE as soon as practicable, if directed to do so by FCA.
- (d) Divest the institution's ownership interest or withdraw as a member or partner from any UBE as soon as practicable if, after a System institution organizes or invests in a System-controlled UBE, non-System persons or entities obtain control as defined under GAAP. Alternatively, as soon as

practicable, the non-System persons or entities must relinquish control as defined under GAAP. This paragraph does not apply to UBEs formed for the purpose of acquiring and managing unusual or complex collateral associated with multiple-lender loan transactions in which non-System persons or entities are participants.

**§ 611.1157 Disclosure and reporting requirements.**

(a) *Annual report to shareholders.* In its annual report to shareholders, as set forth in § 620.5(a)(12), a System institution must provide information on its UBE investment and business activity.

(b) *Periodic reports as directed.* As directed by FCA, a System institution may be required to submit periodic reports to FCA on any equity investment in a UBE or UBE status as provided under § 621.12, and in accordance with §§ 621.13 and 621.14.

(c) *Dissolution of a UBE.* A System institution must submit a timely report to FCA on the dissolution of a UBE that it controls.

**§ 611.1158 Grandfather provision.**

(a) *Scope.* The following equity investments in UBEs are grandfathered from the Notice and Approval provisions under §§ 611.1154 and 611.1155, respectively, of this subpart.

(1) Those UBE formations or equity investments that received specific, written approval by FCA prior to the effective date of this regulation; and

(2) Those UBEs organized to acquire or manage unusual or complex collateral associated with loans.

(b) *System institutions' obligations.* All System institutions with grandfathered UBEs:

(1) Remain subject to their conditions of approval;

(2) Are subject to the ongoing requirements of § 611.1156 and the disclosure and reporting requirements of § 611.1157 of this subpart; and

(3) May not change or expand the UBE business activity, ownership interests in, or control of the UBE without providing notice of such changes to FCA at least 20 business days in advance of any change or expansion. If the proposed change or expansion is determined to be material, FCA may require the System institution(s) to submit an "Approval" request under § 611.1155 of this subpart.

**PART 612--STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS**

8. The authority citation for part 612 continues to read as follows:

**Authority:** Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

9. Section 612.2130 is amended by revising paragraphs (p) and (t) to read as follows:

**§ 612.2130 Definitions.**

\* \* \* \* \*

(p) *Service corporation* means each service corporation chartered under the Act.

\* \* \* \* \*

(t) *System institution* and *institution* mean any bank, association, or service corporation in the Farm Credit System, including the Farm Credit Banks, banks for cooperatives, Agricultural Credit Banks, Federal land bank associations, agricultural credit associations, Federal land credit associations, production credit associations, the Federal Farm Credit Banks Funding Corporation, and service corporations chartered under the Act.

**PART 619--DEFINITIONS**

10. The authority citation for part 619 is revised to read as follows:

**Authority:** Secs. 1.4, 1.5, 1.7, 2.1, 2.2, 2.4, 2.11, 2.12, 3.1, 3.2, 3.21, 4.9, 5.9, 5.17, 5.19, 7.0, 7.1, 7.6, 7.8, and 7.12 of the Farm Credit Act (12 U.S.C. 2012, 2013, 2015, 2072, 2073, 2075, 2092, 2093, 2122, 2123, 2142, 2160, 2243, 2252, 2254, 2279a, 2279a-1, 2279b, 2279c-1, 2279f); sec. 514 of Pub. L. 102-552, 106 Stat. 4102.

11. Part 619 is amended by adding a new § 619.9338 to read as follows:

**§ 619.9338 Unincorporated business entities.**

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

**PART 620--DISCLOSURE TO SHAREHOLDERS**

12. The authority citation for part 620 is revised to read as follows:

**Authority:** Secs. 4.3, 4.3A, 4.19, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2154, 2154a, 2207, 2243, 2252, 2254); sec. 424 of Pub. L. 100-233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102-552, 106 Stat. 4102.

13. Section 620.5 is amended by:

- a. Removing the words "service organization" in paragraph (a)(3) and adding in their place, the words "service corporation chartered under the Act"; and
- b. Adding a new paragraph (a)(11) to read as follows:

**§ 620.5 Contents of the annual report to shareholders.**

\* \* \* \* \*

(a) \* \* \*

(11) For banks and associations, business relationships with unincorporated business entities (UBEs).

(i) Except as provided in § 620.5(a)(12)(ii) of this section, describe the business relationship with any UBE, as defined in § 611.1151, that was organized by the bank or association or in which the bank or association has an equity interest. Include in the description the name of the UBE, the type of business entity, the purpose for which the UBE was organized, the scope of its activities, and the level of ownership. If the bank or association does not have an equity interest, but manages the operations of a UBE that is controlled by a System institution, describe this business relationship and any fees received.

(ii) If the UBE is a one-member UBE as described in § 611.1153(d)(1), the bank or association need only disclose the name of the UBE, the type of business entity, and the purpose for which the UBE was organized.

\* \* \* \* \*

**PART 621--ACCOUNTING AND REPORTING REQUIREMENTS**

14. The authority citation for part 621 continues to read as follows:

**Authority:** Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa-11); sec. 514 of

Pub. L. 102-552.

**§ 621.1 [Amended]**

15. Section 621.1 is amended by removing the words "service organizations" and adding in their place, the words "service corporations".

**§ 621.2 [Amended]**

16. In § 621.2 paragraph (e) is amended by removing the words "service organization" and adding in their place, the words "service corporation."

**PART 622—RULES OF PRACTICE AND PROCEDURE**

17. The authority citation for part 622 continues to read as follows:

**Authority:** Secs. 5.9, 5.10, 5.17, 5.25-5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261-2273); 28 U.S.C. 2461 note; and 42 U.S.C. 4012a(f).

**§ 622.2 [Amended]**

18. In § 622.2 paragraph (d) is amended by removing the words "service organization chartered under part E of title IV of the Act" and adding in their place, the words "service corporation chartered under the Act."

**PART 623—PRACTICE BEFORE THE FARM CREDIT ADMINISTRATION**

19. The authority citation for part 623 is revised to read as follows:

**Authority:** Secs. 5.9, 5.10, 5.17, 5.25—5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261-2273).

**§ 623.2 [Amended]**

20. In § 623.2 paragraph (d) is amended by removing the words "service organization chartered under part E of title IV of the Act" and adding in their place, the words "service corporation chartered under the Act."

**PART 630—DISCLOSURE TO INVESTORS IN SYSTEM-WIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM**

21. The authority citation for part 630 is revised to read as follows:

**Authority:** Secs. 4.2, 4.9, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2153, 2160, 2243, 2252, 2254); sec. 424 of Pub. L. 100-233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102-552, 106 Stat. 4102.

**§ 630.20 [Amended]**

22. Section 630.20 is amended by removing the words "service organization" in paragraph (a)(2)

and adding in their place, the words "service corporation."

**Date: September 6, 2012**

**Dale L. Aultman,**  
**Secretary,**  
**Farm Credit Administration Board.**