

## PART 613 - ELIGIBILITY AND SCOPE OF FINANCING

**Authority:** Secs. 1.5, 1.7, 1.9, 1.10, 1.11, 2.2, 2.4, 2.12, 3.1, 3.7, 3.8, 3.22, 4.18A, 4.25, 4.26, 4.27, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2017, 2018, 2019, 2073, 2075, 2093, 2122, 2128, 2129, 2143, 2206a, 2211, 2212, 2213, 2243, 2252).

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

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

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

(1) *Bona fide farmer or rancher* means a person owning agricultural land or engaged in the production of agricultural products, including aquatic products under controlled conditions.

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

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

(4) *Producer or harvester of aquatic products* means a person engaged in producing or harvesting aquatic products for economic gain in open waters under uncontrolled conditions.

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

[62 FR 4441, Jan. 30, 1997, as amended at 73 FR 30475, May 28, 2008]

#### § 613.3005 Lending objective.

It is the objective of each bank and association, except for banks for cooperatives, to provide full credit, to the extent of creditworthiness, to the full-time bona fide farmer (one whose primary business and vocation is farming, ranching, or producing or harvesting aquatic products); and conservative credit to less than full-time farmers for agricultural enterprises, and more restricted credit for other credit requirements as needed to ensure a sound credit package or to accommodate a borrower's needs as long as the total credit results in being primarily an agricultural loan. However, the part-time farmer who needs to seek off-farm employment to supplement farm income or who desires to supplement off-farm income by living in a rural area and is carrying on a valid agricultural operation, shall have availability of credit for mortgages, other agricultural purposes, and family needs in the preferred position along with full-time farmers. Loans to farmers shall be on an increasingly conservative basis as the emphasis moves away from the full-time bona fide farmer to the point where agricultural needs only will be financed for the applicant whose business is essentially other than farming. Credit shall not be extended where investment in agricultural assets for speculative appreciation is a primary factor.

[62 FR 4441, Jan. 30, 1997]

**§ 613.3010 Financing for processing or marketing operations.**

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

(1) Is a bona fide farmer, rancher, or producer or harvester of aquatic products who regularly produces some portion of the throughput used in the processing or marketing operation; or

(2) Is a legal entity not eligible under paragraph (a)(1) of this section in which eligible borrowers under § 613.3000(b) own more than 50 percent of the voting stock or equity and regularly produce some portion of the throughput used in the processing or marketing operation; or

(3) Is a legal entity not eligible under paragraph (a)(1) of this section in which eligible borrowers under § 613.3000(b) own 50 percent or less of the voting stock or equity, regularly produce some portion of the throughput used in the processing or marketing operation and:

(i) Exercise majority voting control over the legal entity; or

(ii) Constitute a majority of the directors of a corporation, general partners of a limited partnership, or managing members of a limited liability company who exercise control over the legal entity by determining and overseeing the policies, business practices, management, and decision-making process of the legal entity; or

(4) Is a legal entity not eligible under paragraph (a)(1) of this section in which eligible borrowers under § 613.3000(b) meet all of the following criteria:

(i) Own at least 25 percent of the voting stock or equity in the processing or marketing operation;

(ii) Regularly produce 20 percent or more of the throughput used in the processing or marketing operation;

(iii) Maintain representation on the board of directors or in the applicable management structure of the entity.

(5) Is a legal entity not eligible under paragraph (a)(1) of this section that is a direct extension or outgrowth of an eligible borrower's operation and meets all of the following criteria:

(i) The legal entity was created for the primary purpose of processing or marketing the eligible borrower's throughput and would not exist but for the eligible borrower's involvement,

(ii) The legal entity fulfills a business need and supports the operation of the eligible borrower through product branding or other value-added business activity directly related to the operations of the eligible borrower,

(iii) The legal entity and the eligible borrower coordinate to operate in a functionally integrated manner, and

(iv) The legal entity regularly receives throughput produced by the eligible borrower representing either:

(A) At least 20 percent of the throughput used by the legal entity in the processing or marketing operation; or

(B) At least 50 percent of the eligible borrower's total output of the commodity processed or marketed.

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

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

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

associations, shall ensure that such processing or marketing loans are equitably allocated among its affiliated direct lender associations.

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

(c) *Reporting requirements.* Each System institution shall include information on loans made under authority of this section in the Reports of Condition and Performance required under § 621.12 of this chapter, in the format prescribed by FCA reporting instructions.

(d) *Institution policies.* The board of directors of each System institution making processing and marketing loans to legal entities under authority of this section must adopt a policy that addresses eligibility requirements for such entities and ensures that the institution, at a minimum, develops and implements:

(1) Procedures on how, at or before the time a loan is made, the institution will document:

(i) Eligible borrower ownership, control, throughput, integration of operations and other factors, as applicable, sufficient to establish eligibility of legal entities at the time a loan is made under this section; and

(ii) Each legal entity's plan and intent for maintaining eligible borrower ownership, control, throughput, and integration of operations, as applicable, during the duration of the loan;

(2) Procedures that encourage financing under paragraph (a)(4) of this section of credit-worthy entities whose operations directly benefit producers, have local community investment support and provide accessible ownership opportunities for local farmers and ranchers.

(3) Procedures for determining functional integration for loans made under paragraph (a)(5) of this section that require consideration of all relevant facts and circumstances, which include the extent to which:

(i) The operations share resources such as management, employees, facilities, and equipment;

(ii) The operations are conducted in coordination with or reliance upon each other; and

(iii) The eligible borrower and legal entity are dependent upon each other for economic success.

(4) Portfolio restrictions necessary to comply with paragraph (b) of this section and any board-defined limits on financing provided under this section; and

(5) Reporting requirements necessary to comply with paragraph (c) of this section and any board-defined reporting on financing provided under this section.

[62 FR 4441, Jan. 30, 1997, as amended at 73 FR 30475, May 28, 2008]

#### § 613.3020 **Financing for farm-related service businesses.**

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

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

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

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

(c) *Limitation.* The authority of Farm Credit banks and associations operating under section 1.7(a) of the Act to finance eligible farm-related service businesses under paragraphs (b)(1) and (b)(2) of this section is limited to necessary capital structures, equipment, and initial working capital.

[62 FR 4441, Jan. 30, 1997; 66 FR 28643, May 24, 2001]

**§ 613.3030 Rural home financing.**

(a) *Definitions.*

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

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

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

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

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

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

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

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

(d) *Portfolio limitations.*

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

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

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

[62 FR 4441, Jan. 30, 1997; 66 FR 28643, May 24, 2001]

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

**§ 613.3100 Domestic lending.**

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

(1) *Cooperative* means any association of farmers, ranchers, producers or harvesters

of aquatic products, or any federation of such associations, or a combination of such associations and farmers, ranchers, or producers or harvesters of aquatic products that conducts business for the mutual benefit of its members and has the power to:

- (i) Process, prepare for market, handle, or market farm or aquatic products;
- (ii) Purchase, test, grade, process, distribute, or furnish farm or aquatic supplies; or
- (iii) Furnish business and financially related services to its members.

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The cooperative restricts dividends on stock or membership capital to the maximum percentage per year permitted by applicable state law.

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

(2) Other eligible entities. The following entities are eligible to borrow from banks

for cooperatives and agricultural credit banks:

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

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

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

(c) *Electric and telecommunication utilities.*

(1) *Eligibility.* A bank for cooperatives or an agricultural credit bank may lend to:

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

(ii) Cooperatives and other entities that:

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

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

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

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

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

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

(2) *Purposes for financing.* A bank for cooperatives or agricultural credit bank may extend credit to entities that are eligible to borrow under paragraph (c)(1) of this section in order to provide electric or telecommunication services in a rural area. A subsidiary that is eligible to borrow under paragraph (c)(1)(iii) of this section may also obtain financing from a bank for cooperatives or agricultural credit bank for energy-related or public utility-related purposes that cannot be financed by the lenders referred to in paragraph (c)(1)(ii), including, without limitation, financing to operate a licensed cable television utility.

(d) *Water and waste disposal facilities.*

(1) *Eligibility.* A cooperative or a public agency, quasi-public agency, body, or other

public or private entity that, under the authority of state or local law, establishes and operates water and waste disposal facilities in a rural area, as that term is defined by paragraph (a)(4) of this section, is eligible to borrow from a bank for cooperatives or an agricultural credit bank.

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

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

[62 FR 4441, Jan. 30, 1997; 62 FR 33746, June 23, 1997; 69 FR 43514, July 21, 2004; 71 FR 65386, Nov. 8, 2006]

### § 613.3200 International lending.

(a) *Definitions.* For the purpose of this section only, the following definitions apply:

(1) *Agricultural supply* includes:

(i) A farm supply; and

(ii) Agriculture-related processing equipment, agriculture-related machinery, and other capital goods related to the storage or handling of agricultural commodities or products.

(2) *Farm supply* refers to an input that is used in a farming or ranching operation.

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

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

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

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

(c) *Export transactions.* Pursuant to section 3.7(b)(2) of the Act, a bank for cooperatives or an agricultural credit bank is authorized to finance the export (including the cost of freight) of agricultural commodities or products therefrom, aquatic products, or agricultural supplies from the United States to any foreign country. The board of directors of each bank for cooperatives and agricultural credit bank shall adopt policies that ensure that exports of agricultural products and commodities, aquatic products, and agricultural supplies which originate from eligible cooperatives are financed on a priority basis. The total amount of balances outstanding on loans made under this paragraph shall not, at any time, exceed 50 percent of the capital of any bank for cooperatives or agricultural credit bank for loans that:

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

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

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

operations of such cooperatives.

(e) Restrictions.

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

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

[62 FR 4441, Jan. 30, 1997; as amended at 69 FR 43514, July 21, 2004]

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

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

(a) Definitions.

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

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

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

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

(1) Lending limits.

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

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

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

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

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

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

(d) Approval by other Farm Credit System institutions. A bank for cooperatives or

agricultural credit bank may not participate in a loan to a similar entity under title III of the Act if the similar entity has a loan or loan commitment outstanding with a Farm Credit Bank or an association chartered under the Act, unless agreed to by the Farm Credit Bank or association.

[62 FR 4441, Jan. 30, 1997, as amended at 69 FR 43514, July 21, 2004; 75 FR 18743, Apr. 12, 2010]